

District Attorney to seek SCOTUS review of PA decision

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By Joshua Vaughn . . . Roughly two weeks ago the [Pennsylvania Supreme Court deemed](#) the state's current sex offender registration law to be punishment and ultimately barred by both the state and federal constitutions when applied retroactively.

That decision may now end up under review from the highest court in the country.

Cumberland County District Attorney David Freed said Friday his office would ask the Supreme Court of the United States to review the decision, which was handed down on July 19.

Freed contends the state court was split on whether the state constitution provides protections independent of the federal constitution, leaving the door open for possible review by the U.S. Supreme Court.

Punishment?

In 2012, Pennsylvania updated its sex offender registration law to come in compliance with an expanded federal registration law known as the Sexual Offender Registration and Notification Act.

Roughly 2,000 people who had previously been convicted but not required to register were added to the state registry.

An estimated 4,500 more people saw their registration requirements increase and many were required to register for life, according to the Associated Press.

“We’ve had clients where they’ve had previous registrations of 10 years or less than lifetime registrations and then having to come back and being told ‘you are now either lifetime or you are a 15-year registrant, 25-year registrant, something else,’” Cumberland County Chief Public Defender Michael Halkias said. “There’s been a lot of frustration from clients that it’s unfair that they now have these longer registration periods.”

Individuals on the registry are required to be photographed and submit information including their address, vehicle identification, employment and social media use to state police at regular intervals ranging from once a year to once every three months depending on the offense the person was convicted of.

Registrants are also required to update their record every time that information changes. Failing to do so can result in a criminal conviction and a prison sentence of several years.

At least 17 people in Cumberland County have been charged with failing to comply with the sex offender registry requirements since 2010, according to an analysis of court records conducted by *The Sentinel*.

“Our position has always been that it is punishment,” Halkias said. “It’s been very difficult to explain to people why it’s

not considered criminal punishment. ... I can't say why they rationalized it that way, other than they could and wanted to."

The case

The July 19 decision was a win for Halkias' office, which argued their client Jose Muniz was subject to harsher penalties under the Megan's Law update than were in place when he was convicted.

Muniz was convicted in 2007 in Cumberland Count of indecent assault of 12-year-old girl, but fled the state prior to sentencing. He was rearrested and sentenced in 2014. Under SORNA, Muniz was required to be on the sex offender registry for life. At the time of his conviction, Muniz would have only been required to register for 10 years.

Freed said his office has roughly 90 days to file its appeal with the Supreme Court.

"We believe that should put any action by the State Police regarding registration on hold and have informed them of the same," Freed said. "Ultimately, what they do is up to them and the Governor's Office of General Counsel."

There is no guarantee the U.S. Supreme Court will accept the petition for review. The high court is deciding if it will take up a [similar case from Michigan](#).

Recidivism

"My understanding is (the registry is) not considered punishment because it is post-sentencing and it is part of public safety," assistant professor of criminal justice and criminology at Sam Houston State University Brandy Blasko said. "It's not meant to punish the person, but it's meant to protect the public. That was the idea, but empirically we know it doesn't protect the public."

Blasko, who previously worked in sex offender rehabilitation for the Pennsylvania Department of Corrections, said current policy, like sex offender registries, make individuals less connected to society, which can make them more likely to commit crimes.

“We obviously know from desistance theory that people need to be connected to their communities and feel connected to their communities,” she said. “Not only having a criminal record restricts employment but having the label of sex offender really restricts employment.”

Blasko said much of current sex offender policy is based around the assumption that people convicted of sexual offenses are highly likely to commit more offenses once they are released. In passing the 2012 update, the Pennsylvania Legislature included language that the “Legislature found that ... sexual offenders pose a high risk of committing additional sexual offenses, and protection from this type of offender is a paramount government interest.” Blasko said the notion of high recidivism rates for all of the people on the registry is not true.

A [wide-scale study](#) released by the Bureau of Justice Statistics in 2016 looking at inmates who were released from prison found only 5 percent of people convicted of rape went on to be arrested for a new sexual offense within three years of their release.

Between 2013 and 2016, there were more than 300 charged sexual offense cases in Cumberland County. Less than 2 percent of those cases involved defendants on the state sex offender registry, according to an analysis of court records conducted by The Sentinel.

The concept of high recidivism rates for sexual offenders appears to have had less-than-scientific beginnings.

In a [2016 article](#), Arizona State University Law professor Ira

Ellman found the current legal argument for high recidivism rates comes from a [1986 *Psychology Today* article](#). The article, written by counselor Robert Longo to tout a sex offender treatment program he ran, quipped that up to 80 percent of untreated sex offenders go on to commit new offenses.

Figures from Longo's article have been cited by the U.S. Supreme Court to uphold previous iterations of sex offender registration laws. Longo has since disavowed the 80 percent figure and publicly opposed sex offender registries. In speaking with *The Sentinel* in 2016, Longo said the 80 percent figure is inaccurate and a "very high estimate." He said it was unfortunate that his work has been used to support registries because "those laws did nothing. (Registries) didn't prevent anything." He now places recidivism rates at roughly a quarter of his original estimate. "People are going to take anything that works to their advantage, or twist a quote, to make it work to their advantage, and I just think it's unfortunate," he said.

Source: [The Sentinel](#)