



The Digest

Volume 8, Issue 6 June 2015

Public Registration—Untold Collateral Damages RSOL 7th National Conference, Dallas, Texas ~ June 25-27

By Sandy

This month is all about the conference. Are you ready? Registered? Hotel and travel arrangements made? We are, at this point, 24 days out and counting, and around the RSOL campfire, the excitement is building.

This year's line-up of speakers, presenters, and workshops is top of the line all the way. There is nothing you will want to miss.

Discounted registration and hotel rooms end at midnight tonight. On June 2 hotel rooms go up by approximately \$50.00 nightly. Remember that your hotel price includes breakfast for two days, and the RSOL registra-

tion includes lunch Thursday and Friday. Space is limited, and there is no point in paying full price, so get online and take care of that right now.

For the first time, this year we will have live streaming. The link will go live in June on our conference site: rsolconference.org.

Remember also to sign up for Friday night's fundraising dinner and silent auction. If needed, child care is offered and can be signed up for when you register. Do NOT wait until it is too late to take advantage of the discounted prices.

See you in Dallas!

Justice—but for Whom?

By Sandy

Some issues that should go away just won't. The proponents of the concept that our nation is a "rape culture" and their opponents have battled back and forth for several years with no resolution—or end—in sight. However, looking back, the arguments have changed in a very disturbing way.

Over two years ago, this blog about "rape culture" made note of the fact that one characteristic of living in a rape culture was the tendency to handle the situation "in-house" ra-



ther than involving law enforcement, and that, more likely than not, interfered with the victim seeing justice done and therefore should be eliminated. (<http://with-justiceforall.blogspot.com/2013/04/what-is-rape-culture.html>)

Looking forward, it is said, is done with blinded eyes, but hindsight is 20-20. Hindsight in this case is so twisted with irony as to be almost unrecognizable. One of the cries of those whose voices grow shriller

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RSOL does not in any way condone sexual activity between adults and children, nor does it condone any sexual activity that would break laws in any state. We do not advocate lowering the age of consent, and we have no affiliation with any group that does condone such activities.

Legal Corner

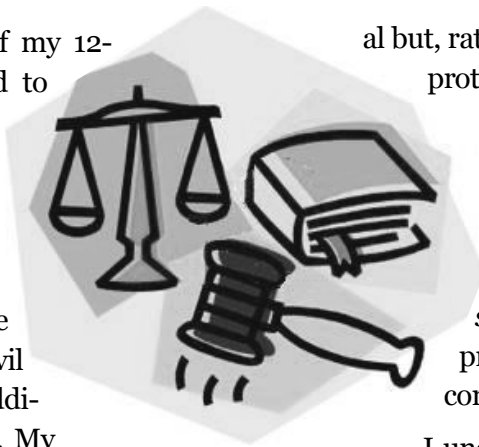
This is a reader contribution section that solicits legal questions from our readers. Each month a question will be chosen and answered in the newsletter by a member of our Legal Project. This section is intended for information only. It is by no means to be considered legal advice, and it should never substitute for seeking the services of an attorney.

Please note: We often get specific legal questions about someone's conviction or about state-specific registration obligations. Unfortunately, we can't answer them individually because: (1) no one here at RSOL is licensed to practice law; and (2) we do not have the staff or budget to answer the large volume of incoming mail.

*Please send your legal questions to The Legal Corner, RSOL, PO Box 36123, Albuquerque, NM 87176. Your question should focus on only one issue, and it should be a question that has relevance to a wide number of registrants and not specific to just your individual case. **This month's answer is provided by Eric Tennen, attorney at law, Swomley-Tennen in Boston, Massachusetts.***

Question: I am nearing the end of my 12-year prison sentence looking forward to being free. My hopes were dashed because the prison presented me with papers indicating that New York has filed a petition for civil commitment. This is not right because I have served my time. Based on all the research I've done, sex offender civil commitment is nothing more than additional punishment in a locked facility. My question is twofold: First, if I am mentally ill, why did they choose to prosecute me in the first place rather than seeking mental health intervention? Second, how is it constitutional to lock a person up after they have served their sentence?

Answer: I understand your frustration and confusion; it is a common reaction to finding out that the state is trying to civilly commit you. Unfortunately, to answer your second question, it is constitutional. The U.S. Supreme Court has held that involuntary commitment of potentially sexually violent persons is constitutional. In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the court found that these statutes are generally "civil" in nature and thus do not constitute double jeopardy or ex-post facto punishment. The purpose of the laws is to "treat" those committed and hold them only as long as they remain dangerous. Accordingly, the laws are not intended to be an additional criminal punishment of the individu-



al but, rather, a limited detention for the greater protection of society for as long as the person remains dangerous. Most laws have also been challenged, and upheld, in state court too; and New York is one of those states. More recently in *United States v. Comstock*, 560 U.S. 126 (2010), the Supreme Court upheld the federal civil commitment statute.

I understand this is probably cold comfort for you. Many men in your position rightly feel as if they are being given a new punishment after having served their prior sentence. While I am not familiar with the specifics of the New York treatment program, the ones I am familiar with can definitely feel like an extension of incarceration. That said, simply filing the petition does not mean you will be committed.

New York, like most states, provides certain due process protections. See Chapter 27, Title B, Article 10 (Sex Offenders Requiring Civil Commitment or Supervision). They will provide counsel, access to your own experts, and you have a right to a jury trial (and the general protections that accompany a trial). Most importantly, the burden of proof is on the state, and that burden is by "clear and convincing evidence," which is a very high standard to meet. There are many men who the state

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Legal, cont. from p 2

attempts to petition but who do not actually end up being committed.

The law requires two general findings (though they are called different things in different states). First, it requires a finding of some mental abnormality or personality disorder that affects your ability to control yourself sexually. You asked why did they choose to prosecute you rather than seek mental health intervention (if they are now saying you have mental health problems)? Well, the simple answer is that they can pursue both: criminal sanctions and civil commitment. The more complicated

answer is that one can be criminally liable even if he is diagnosable with a condition that warrants civil commitment. True, it would be more genuine if states offered some kind of treatment for incarcerated men it believes may be dangerous. But, unfortunately, it is not mandatory.

So, in order to commit you, the state will have to prove some mental abnormality or personality disorder that they claim caused you to offend. This can be more difficult than it appears, but of course everyone's case is dif-

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RSOL's View on Sex Offender Civil Commitment

By Larry

Frequently we receive letters from persons civilly committed in one of the 20 states that have sex offender civil commitment. This month's Legal Corner provides us the opportunity to follow Mr. Tennen's answer with RSOL's position.

RSOL believes that the commitment process in most states is seriously flawed for a number of reasons. First, the legal mechanism by which the offenders are detained depends on clinical criteria primarily created or defined by legislative bodies rather than by the scientific or mental health communities. Second, if the person is suffering from a diagnosable mental illness, he/she should have been diverted into a mental health treatment modality at the onset. Third, most states do not provide a person whose commitment is sought adequate legal and other expert resources to counter the govern-

ment's overwhelming advantage. Fourth, since the commitment process is supposedly civil rather than criminal, there is no constitutional requirement to provide indigent respondents legal representation. Finally, the treatment provided is minimal at best and is really nothing more than an extension of the person's incarceration cleverly disguised as medical treatment.

We understand that most individuals civilly committed do not have access to the internet where our Mission, Goals, and Assertions are continuously visible. This is a great opportunity to restate RSOL's goals related to civil commitment. We will:

1. advocate to limit post-prison civil commitment strictly to extraordinary cases where the state proves that the person presents a danger to the community;
2. promote treatment of civilly com-

mitted persons with the goal of reintegration back into society; and

3. advocate for review and removal of currently committed persons who do not meet the dangerousness criteria, without imposing an additional financial burden on those persons.

We are hopeful that we can do more to address this issue in the future; however, lack of resources is the biggest barrier.

Calendar of Events

- 6/9 - Board of Directors (Admin Team) Meeting
- 6/10 - National RSOL Review
- 6/25-27 National Conference

* Details on our calendar at nationalrsol.org.

Justice, cont. from p 1

and more strident with every utterance is that, on college campuses especially, the victims of sexual assault and rape are too traumatized to deal with law enforcement and must—MUST—have access to a sympathetic, comforting, non-threatening body of “in-house arbitrators” who will mete out the desperately desired justice. The fact that this justice doesn’t bother with the rights of the accused or with a burden of proof that comes near that required by courts and juries is either overlooked or is the purpose to begin with.

In an argument on a blog comment board, one writer insisted “...the legal standard that applies in criminal cases is high (beyond a reasonable doubt),” and she uses that as proof that a less demanding standard must be available as an option.

This reasoning is a blatant attempt—and one that is proving successful—to circumvent the legal standard of proof that is the bedrock of our law enforcement and judicial systems. In practice it amounts to an accusation

being equivalent to a conviction. Any attempt to argue against this results in being called a “rape apologist” and a facilitator of rape culture.

Rape is a crime. It must be handled as a criminal case. This involves law enforcement investigation, enough evidence to result in charges being brought, and a fair hearing before a court. Rape culture advocates say that this “re-victimizes” the victims and results in unnecessary additional pain and that not believing every accusation of rape or assault is denying the trauma suffered by the victim and belittling the situation. Is it not more accurate that failure to treat it as a crime and failure to seek justice through the established legal and justice system is what denies and belittles and makes a mockery of what rape victims suffer?

Two parties are involved in this and similar situations. Do they not both have the right to the opportunity for justice?

Justice that cuts only one way is not justice at all.

Legal, cont. from p 3

ferent.

Nevertheless, even if they prove that, they will also have to prove that if you are released, you are likely to re-offend sexually. Thus, even if they prove you have a specific mental condition, you can only be committed if they prove you cannot control your actions because of that condition. Here, again, that can be more difficult to prove than it may appear.

All of this usually involves the testimony and assessment of psychologists or psychiatrists. They talk about diagnosis, psychological testing, and other accepted scientific principles that help determine whether someone is generally safe to be released.

In summary, do not despair just yet. Though you are beginning a process that may take some

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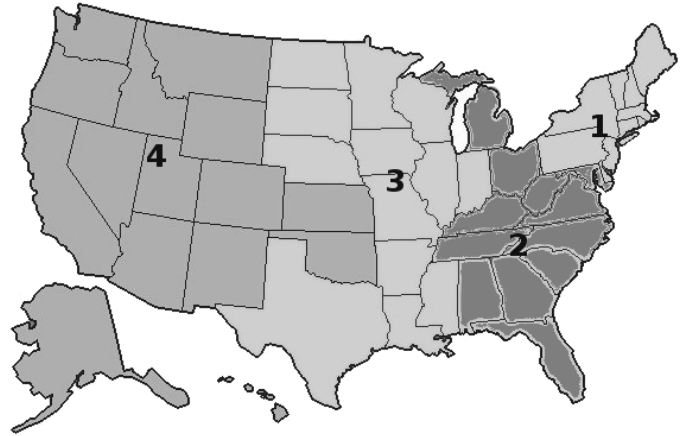
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From Our States

From the editor: From time to time we receive a letter or an email asking why there are no reports from a given state. The main reason is that we do not have a contact, advocate, or affiliate in every state. It might also be that our volunteers were too busy or had nothing newsworthy to report. If you want to see more "action," we encourage you to get involved, yourself! Without our volunteers, nothing will happen.



California

California fought and won two significant battles during the month of May. We stopped two pieces of legislation that would have reversed last year's court victories by allowing cities and counties to restrict where registered citizens may be present, including both public and private places. We are able to achieve these victories through the help of like minded organizations, including the ACLU, as well as registered citizens and family members who testified in opposition to the bills.



During the hearing on the second piece of legislation, 15 people spoke in opposition to the bill while only 3 spoke in favor of it. The author of the bill was so surprised during the hearing that she agreed to the chairman's suggestion to withdraw her bill!

During the month of June, California RSOL will conduct a monthly meeting of registered citizens, family members, and supporters in San Diego on June 20 to discuss these victories as well as other relevant issues including the status of residency restrictions throughout the state.

Florida

The 2015 legislative session recently concluded in Florida, and it has been a successful year for The Florida Action Committee, whose lobbying efforts helped defeat some very bad and harmful bills. Among the bills that died was the "Lifetime Monitoring Bill" which would dictate that all registrants would automatically receive lifetime GPS monitoring. A thanks to our President, Gail Colletta, whose weeks travelling back and forth to Tallahassee have paid off.



Florida also recently experienced the bizarre case of a couple who are now lifetime registrants after being convicted for having consensual sex on a beach. The case illustrates how so many of those on our public registry are, in fact, no danger to the public. We ask all RSOL affiliates to help support our petition on Change.org to call on our governor to fix our broken registry that includes people who are not danger-

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Important Notice to Our Readers

RSOL sends a limited number of free newsletters each month to individuals we believe may be interested in supporting our mission. We gather names through a variety of sources including referrals from existing subscribers and prison inmate databases. If you would like to recommend a person's name to us for a trial subscription, please include your name and provide the name and complete mailing address on the enclosed subscription form. The person will receive four free issues and we will extend your subscription for an equal number of issues.

Note: If your copy of The Digest is marked "Trial Subscription," you are receiving the publication without cost as an inducement to become a subscriber.

Affiliate Development

By Sandy

We are most pleased to welcome new dedicated workers this month. Philip Kaso represents West Virginia in Region II as an advocate. To the best of my knowledge, we have never had a representative in West Virginia before, so this is especially exciting. Philip comes to us with twenty years' service to our country in the Navy. He and his wife of twenty-five years have two children and two grandchildren.

Additionally, we again have representation in New Jersey, which is in Region I, with advocate Rick Vin-

cent. Rick is an ordained chaplain; he has been in Christian service to the incarcerated since 2001 and specifically to the community of those who have sexually offended since 2008.

We also are pleased to now have a contact in North Carolina, which is also in Region II. Bob Lindsay joins us with a strong desire to

effect change. He has, on his own until now, been writing legislators. He comes to us with business, speaking, and computer skills.

Phillip, Bob, and Rick, you are welcomed and appreciated. We hope to meet you at the conference.

New Feature Being Added to Digest

The Digest will soon accept ads from attorneys and other professionals related to our advocacy for publication in both our e-version and our print version. Three ads are included this month as previews. More information to follow.

Join advocates and professionals seeking to overcome obstacles to more rational sentences for people convicted of sexual offenses and to restore their constitutional rights after they have paid their debts to society.

PUBLIC REGISTRATION: UNTOLD COLLATERAL DAMAGES RSOL National Conference—Dallas, Texas

June 25-27, 2015 Member and state discounts still available.
Two complimentary meals included.
Sign Up NOW: rsolconference.org

Great speakers and workshops, and a chance to meet and mingle with others in this Movement. And if you simply cannot be there in person, sign up to watch our live stream page at rsolconference.org/home/conference-2015-live-stream/

RSOL envisions effective, fact-based sexual offense laws and policies which promote public safety, safeguard civil liberties, honor human dignity, and offer holistic prevention, healing, and restoration.

States, cont. from p 5

ous, are no longer in the community, or even are no longer living! (<https://www.change.org/p/florida-governor-rick-scott-fix-the-florida-sex-offender-registry>)

FAC is also pleased to join with advocates from Texas and Arkansas to take on the challenges our government imposes on international travel. We invite all to join our June member call to discuss this important topic. Email gail@floridaactioncommittee.org for details.

Maryland

Our class action challenge has finally been filed! With 8 plaintiffs, all named, with various backgrounds, the goal is to force the Department of Public Safety and Correctional Services (DPSCS) to remove or roll back registry requirements for EVERY possible person “similarly situated” to the 2013 *Doe v DPSCS* decision and several subsequent Court of Appeals decisions.

After “Doe 2” (which clarified that there was no independent federal obligation to register, and that the decision should apply to others) in 2014, the DPSCS finally removed a number of registrants whose offenses pre-dated the start of Maryland’s registry on October 1, 1995. They did not, however, apply it to those whose offenses were later but

have seen their registry requirements and restrictions increase. Most dramatically, many people saw their terms of registration increase from 10 years to either 25 years or life in either 2009 or 2010. This is the injustice we are seeking to correct.

With the lawsuit filed, it’s “hurry up and wait” time, as we begin the process of responses and counter-responses, etc. We filed in Balti-

Quote of the Month:

Coming together is a beginning;
keeping together is progress;
working together is success.

Henry Ford

more City, and regardless of the outcome, there will certainly be an appeal to our higher courts. Patience is a virtue, and we will all feel very virtuous as this could easily take 18 months or more to reach its end.

Texas

The Texas Legislative session is almost over and thank goodness, none of the bad bills we opposed made it through the House of Representatives. Our members are breathing a bit easier for now, and we are looking forward to the upcoming RSOL Conference in Dallas.

Our next project will be to request an interim study regarding residency restrictions and the need for a broader deregistration process.

As always, our organization is growing, and we will continue to educate our members, legislators, and the general public. The work never ends here in Texas.

West Virginia

In West Virginia this past session, HB2429 was introduced requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction.

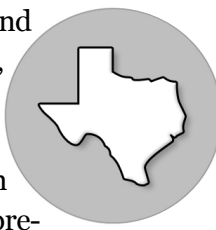
The bill passed the House on 3/5/15, was engrossed, and passed to the Senate where it was assigned to the Senate Judiciary Committee; however, no further action was taken before the WV Senate adjourned on 3/14/15, so the bill is marked Adjournment sine die.

Now that I’m on the job, I’ll be actively reviewing new introductions next session in case this bill is reintroduced.

Arkansas

The big news in Arkansas right now is Josh Dugger from Life-Time’s “19 and Counting.” <http://>

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deadline.com/2015/05/19-kids-counting-josh-duggar-child-molestation-accusations-apology-tlc-honey-booo-1201431751/

Arkansas Time After Time applauds Governor Huckabee for his sensible and compassionate remarks regarding the plight of those who commit sexual offenses and the plight of their victims.

According to Time Warner, GOP presidential hopeful Mike Huckabee issued a statement affirming support for the Duggar family. "Josh's actions when he was an underage teen are as he described them himself, 'inexcusable,' but that doesn't mean 'unforgivable,'"

Huckabee wrote, criticizing the media for turning a years-old situation into this week's headlines:



"Good people make mistakes and do regrettable and even disgusting things. The reason that the law protects disclosure of many actions on the part of a minor is that society has traditionally understood something that today's blood-thirsty media does not understand — that being a minor means that one's judgement is not mature," Huckabee said. "...there was no consideration of the fact that the victims wanted this to be left in the past, and ultimately a judge had the information on file destroyed — not to protect Josh but the innocent victims."

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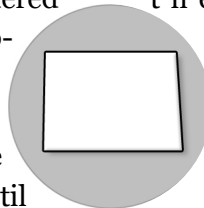
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Colorado

For the first time since advocate groups began in Colorado for those with a sexual offense, those groups and the people they serve have a voting representative on a Colorado Sex Offender Management Board (SOMB) Committee! This is amazing because no-one had even considered the possibility of advocacy for those with a sexual offense in the State of Colorado until about six years ago. The State took a stern "no known cure" approach to everyone who committed a sexual offense and zealously believed that they needed to be supervised



and watched for the rest of their lives.

The Committee that CSOR, Advocates for Change, and unaffiliated advocates are represented on is the Standards and Guidelines Rewrite Committee. The committee has members that represent the views of all stakeholders, including a victims' advocate, an offender advocate, a District Attorney/prosecutor, a representative from Community Corrections, therapist representatives etc. There are fourteen committee members altogether. The new Standards and Guidelines will have to be reviewed and voted on by the full SOM Board after the committee works through the many issues and points of view.

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However, the tone of these new Standards and Guidelines is so far decidedly different and gentler than previous versions. Here is one example:

Old version: Sexual Offending is a behavioral disorder which cannot be “cured.”

Sexual offenses are defined by law and may or may not be associated with or accompanied by the characteristics of sexual deviance which are described as paraphilias. Some sex offenders also have co-existing conditions such as mental disorders, organic disorders, or substance abuse problems.

Many offenders can learn through treatment to manage their sexual offending behaviors and decrease their risk of re-offense. Such behavioral management should not, however, be

considered a “cure”; a successful treatment cannot permanently eliminate the risk that sex offenders may repeat their offenses.

New version: Offenders are capable of change.

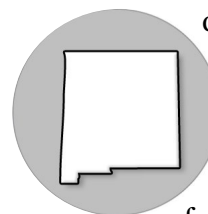
Responsibility for change ultimately rests with the offender. Individuals are responsible for their attitudes and behaviors and are capable of eliminating abusive behavior through personal ownership of a change process. While responsibility for change is the offender's, the therapeutic alliance between the offender and the therapist is a predictive and important facet of responsivity leading to behavioral change. An empathetic therapeutic approach contributes to an offender's motivation to change, as does the supervis-

ing officer's positive working alliance with the offender.

Two Outside Evaluations ordered by the Joint Budget Committee of the Colorado Legislature forced this change in tone and hopefully in present and future direction. We as offender advocates are delighted to be included in the process and are hopeful that the new Standards and Guidelines will paint a picture of hope and change for those accused of or convicted of a sexual offense.

New Mexico

We are grateful that the recently concluded 2015 legislative session turned out to be less disastrous than originally feared. There were a number of bills that would have



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Remember, subscriptions are only \$9 for the year for inmates, \$12 for those on the “outside,” which is less than RSOL's costs to print and mail the *Digest* to you each month. Just send a check (or ask a family member to do so.) And if you have no way to send a check, we also accept stamps.

States, cont. from p 9

increased criminal penalties for sexually related offenses; however, only two made it to the finish line and became law. From our perspective, it could have been far worse if not for the strong resistance from the Democratic-controlled Senate to increasing criminal penalties. This may change because 2016 is an election year with all 112 lawmakers facing the voters, which spells potential trouble for some of our key allies.

Representative Herrell's HB 270, proposing to add five new offenses to our list of registerable sex offenses, passed the House of Rep-

resentatives but did not fare well in the Senate. The bills that did make it through and become law are HB 101 and HB 142. HB 101 increases the penalty for hiring a minor below age fourteen (14) for prostitution to a first-degree felony.

HB 142 creates a new crime of Unauthorized Distribution of Sensitive Images. This is referred to as the "revenge porn bill" and is in response to people (formerly in relationships) distributing sensitive images after a breakup. This offense is a misdemeanor for a first conviction and does not require registration. A second conviction is a 4th-degree felony. We can reasonably anticipate that there will be proposals to add this offense to the list of registerable sex offenses at some point in the future.

The most controversial bill that did not make it to the finish line was HB 440 which defined a "Unit of Possession" for CP to be each individual image; it overwhelmingly passed the House of Representatives. This legislation is the result of a New Mexico Supreme Court decision which declared the current statute vague because it fails to define where one episode of possession ends and another begins. See *State v. Olsson*, 2014 -NMSC- 012, 324 P.3d 1230 (N.M. 2014). Most states treat each image as a separate count, which results in ex-

tremely long sentences. New Mexico is unique due to the Court's ruling in *Olsson*, which now results in multiple images merging into one single count.

HB 440 ultimately died in the Senate due to concern that enactment could easily result in sentences exceeding 100 years. Unfortunately, this issue will not go away and is already being used against Senate Democrats who did not blindly fall in line with the House's proposed remedy. In addition the Albuquerque media, especially the Albuquerque Journal, has been relentless in criticizing the Senate's "failure to protect children" and portraying them as soft on crime. We are fearful that the Senate will not be able to withstand the criticism on this issue and will simply go along with the House's wishes next session.

RSOL Letter Policy

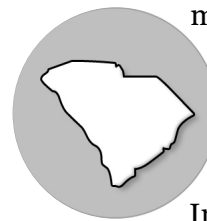
We appreciate the many letters we receive from you, and we do respond to as many of them as possible. We ask that you adhere to the following guidelines when writing to us.

- Keep your letter short and on point (extremely long letters with extensive background are difficult for volunteers to decipher in terms of what you are asking);
- Print or use a typewriter if one is available at your institution;
- Only write on one side of standard size paper so that we may scan the document;
- Make sure that your address is visible on the letter because we do not retain the envelopes;
- We cannot answer letters asking what the registration laws are in a particular state;
- We cannot answer letters asking which state is best for sex offenders to reside in;
- We cannot answer letters seeking legal advice or opinions because no one here at RSOL is licensed to practice law.

South Carolina

We were pleased to see some movement in the House Judiciary Committee on the bills regarding Juvenile offenders.

In effect, they substituted a toned-down replacement for the two bills that were originally submitted. The new bill would allow juvenile offenders, upon reaching the age of 21, to petition the Family Court to be removed from the registry. They would have



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to demonstrate to the court that they did not pose any ongoing threat to the public. Currently, juvenile offenders remain on the registry for life. The original bills submitted would have automatically removed juvenile offenders at age 21 unless the local solicitor petitioned the court to have them remain on the registry, so we are disappointed in the change, but realistically, the new bill has a better chance of passing.

The subcommittee dealing with these bills has passed this substitute bill up to the full Judiciary Committee with a favorable recommendation, but the legislature adjourns for a year next week, so no further action will be taken before January. If passed, this will be the first time there has been a possibility for anyone to get off the South Carolina registry. Opposition has been promised by a victims' advocacy group.

We are disappointed that a sexing bill in the Senate hasn't gotten any attention. There was some expectation that it had the best chance of passage of any of the registry-related bills this session. We will try to give it a push in January.

There is some exciting news regarding participation. Responding to a national inquiry, we have established a new alliance with a church in Greenville called Landmark Temple. Landmark makes a point of welcoming registrants,



and some of its members have been actively lobbying legislators for registry reform. We met with the pastor and another church leader last week for a very productive meeting and look forward to working closely with them in the future.

Maine

Our Maine advocate has been conducting an email campaign to keep the idea of residency restrictions from spreading. It has met with limited success. Biddeford decided to pass a residency restriction for the registrants in that town. It restricts registrants from living within 750 ft of a school or state park, which



is all the state law allows. Fortunately, at least so far, the bill has not made it to the state level, as they wanted. The ordinance came from a police officer who is accused of having molested a series of boys over the course of several years. Unfortunately, this has caused the knee-jerk reaction of instituting residency restrictions, despite the fact that they would have had NO effect on this series of alleged crimes.

Biddeford WAS one of the easiest places to live and work for people on the registry. It has had about the same rate of recidivism as the rest of the state, and about the same rate of new sex crimes, but this does not seem to be swaying the lynch-mob mentality of those who want to protect children at all costs.

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