

Post Office Box 36123
Albuquerque, NM 87176
www.nationalrsol.org



1709 19th Street, Ste 33
Dupont Circle
Washington, DC 20009

ASSERTION: PUBLIC REGISTRATION, PROXIMITY AND RESIDENCY RESTRICTIONS THAT ARE EXTENDED BEYOND AN INDIVIDUAL'S SENTENCE ARE PUNITIVE AND THEREBY VIOLATE PROTECTED CONSTITUTIONAL RIGHTS

Executive Summary

While intended for good, the sex offender public registry, proximity restrictions, and residency restrictions are punitive, although many argue they are not. With the goal of punishing an offender in mind, individual's constitutional rights are violated through common sex offender laws. While laws vary from state to state, there is a sense at the federal level that sex offender laws are reactionary and accomplish little to nothing but, in fact, achieve more damage than help. Specific constitutional rights are violated when there are solutions to improving the system and advocating for sensible sex offense laws.

Moving far beyond the original intent of the public sex offender registry, states and even the federal government have taken the liberty of punishing those who have committed sex crimes further than their sentences allow. Proximity restrictions and residency restrictions are common for sex offenders, both of which stem from being on the public registry. There are usually many other restrictions as well, most of which violate a citizen's constitutional rights. A sentence is designed to punish one for a crime committed, and it always has a clearly defined ending point. For sex offenders, however, punishment does not end with the period of time served in the sentence. It rather continues with sex offender registration. The primary way states have gotten away with this is by not acknowledging the registry as punishment but as monitoring. The U.S. Supreme Court in *Smith v. Doe*, 538 U.S. 84 (2003), ruled that registration is administrative, not punitive, but since then every state took that ruling and ran with it as permission to restrict anything.¹

NATIONAL ASSOCIATION FOR RATIONAL SEXUAL OFFENSE LAWS

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Several factors have coalesced to create a system in which sex offender registration laws have become unmoored from their regulatory purposes, and, as applied to the strict liability offender, create punitive laws without the benefit of due process. These factors include the Supreme Court’s approval of a registration system that does not require individualized assessment of dangerousness; a persistent and incorrectly held position that strict liability serves as an appropriate framework for the determination of serious criminal offenses, particularly in statutory rape; and, finally, a narrow view of the protected interest of loss of reputation that may not correspond with evolving liberty interests under *Lawrence vs. Texas*.ⁱⁱ

Largely the reason for reactionary legislation regarding sex offenses is due to generalization. The public must be educated about sex offenses and how to handle them. Entrapped in the many myths about sex offenses, many do not realize that the recidivism rate for sex offenders is extremely low and is, in fact, among the lowest of any crime. This chart offers just a few examples.

Recidivism Rates by Individual State Studies			
(*) Percentages represent sex offenders charged with a new sex crime. Recidivism rates may appear higher in studies that include arrests and convictions of sex offenders for non-sexual crimes or for technical violations of parole or probation			
State	Study Title	Follow-up Period	Recidivism Rate (*)
Alaska	Recidivism of Alaska Sex Offenders	3 Years	3.4%
Arizona	Recidivism of Sex Offenders Released from the Arizona Department of Corrections 2001.	3 Years	2.4%
California	California Sex Offender Management Board; Recidivism of Paroled Sex Offenders — A Five (5) Year Study.	5 Years	3.21%
Minnesota	Sex Offender Recidivism in Minnesota April 2007.	8 Years	10%
Ohio	Ten-Year Recidivism Follow-up of 1989 Sex Offender Releases.	10 Years	11%
Wyoming	Wyoming Legislative Service Office Memo October 13, 2005.	5 Years	5%

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Most offenses are isolated events as well. If legislation weren’t primarily reactionary but instead founded on research and facts also given to an educated public, perhaps people would not so willingly take away citizens’ or even their own constitutional rights.

With regard to the constitutionality of the public registry, proximity restrictions, and residency restrictions, the underlying issue is that these are punitive. While many states pass the sex offender requirements off as monitoring rather than punishment, there is no other crime that requires monitoring after the term of sentence. Among many classified sexual crimes are items that involve deviant behavior sometimes without a victim. Yet offenders involved in these crimes are often classified among the most violent predators. While the issue at hand is not the fairness of punishment for sex crimes, it should certainly be taken into consideration when dealing with sensible laws.

Specific Constitutional Violations

The United States of America is a country that prides itself with freedom yet is also one of the few countries in the world with a public sex offender registry. Our Constitution was written clearly and so as to understand without difficulty. There have been several instances of criminal sex convictions being overturned and sex offender laws being struck down by higher courts because of the clear unconstitutionality of them. Here are a few of those cases:

- In Texas, the most evident example is the 2013 ruling by the Texas Court of Criminal Appeals that online solicitation of a minor is unconstitutionally vague.^{iv}
- In June of 2015, a federal judge in Minnesota ruled that the sex offender registry is unconstitutional.^v
- In Indiana, the sex offender registry was found to be unconstitutional in 2012 because it “violates due process rights for now allowing offenders to change wrong information about them on the registry.”^{vi}
- An Iowa residency restriction law was challenged in 2002 on the following grounds:
 - The law was unconstitutional because it was an ex post facto law for anyone convicted before July 1, 2002;
 - It violated plaintiffs' rights to avoid self-incrimination, because registrants would be required to report their addresses, even when the addresses were not in compliance with the law;
 - It violated plaintiffs' procedural due process rights;
 - It infringed on fundamental rights to travel and decide how to conduct their family affairs; and
 - It was not tailored narrowly enough to serve a compelling state interest.

The plaintiffs who challenged the Iowa law argued that it is “irrational because there is no scientific evidence to support the conclusion that residency restrictions will enhance the safety of children.”^{vii} Although the challenge was ultimately not successful, it is a reminder of the vague and generalized approach to sex offender laws.

- In Bloomington, Illinois, a requirement that sex offenders report all Internet sites they use to police is unconstitutional because it violates the offenders' free speech rights, according to a ruling by a McLean County Judge in July of 2015.^{viii}

These are only a few of the challenges courts have seen regarding sex offender laws. The sex offender public registry, proximity restrictions, and residency restrictions violate a citizen's constitutional rights primarily regarding the following federal amendments:

Amendment I

With all encompassing the First Amendment, the most violated portion among sex offenders is the freedom of speech, which shall not be abridged by government. Many sex convictions stem from a violation of this amendment, which is why we have seen cases involving online solicitation of a minor challenged and, at times, overturned. In most of those cases, offenders are convicted of likelihood of committing a crime, not actually committing the crime itself. Even after conviction and serving a sentence, a sex offender, in many cases, is not allowed to use social media, is forced to report online activity, and forcibly has all mobile phone activity monitored with the implication that violating these activities in any way is a crime, thus violating that citizen's freedom of speech.

Amendment IV

Many aspects of the Fourth Amendment are violated for sex offenders. With the government removing one's right to privacy by allowing unauthorized searches, an offender's Fourth Amendment right is void. Probable cause supported by oath or affirmation is constitutionally the manner in which a government is able to search the property of a citizen. A sex offender who has completed the sentence and has returned to normal society is a normal citizen and should be treated as such by the government, meaning that their right to privacy and security in their property is restored.

Amendment V

The portion of the Fifth Amendment most often abused for sex offenders is the right not to be subject for the same offense twice and put in jeopardy of life or limb. This is most evident in registration requirements. Often a sex offender who neglects to register for any particular reason is charged with yet another sex crime (felony) although failure to register is not sexual in nature.

Another aspect of this amendment in violation is due process of law. Because of the nature of sex crimes and the false stigma placed on many individuals who commit such acts, due process is difficult to achieve. Public outcry for shame and ridicule on that individual overwhelmingly influences legislators, law enforcement officials, judges, and juries. While public opinion is not objective, there are ways in which the public can be educated on the issues, thus allowing for a greater likelihood of due process.

Amendment VI

Regarding the Sixth Amendment, sex offenders often do not have an impartial jury. This is largely due to hefty punishment mandates on sex crimes that, although minor in nature, are associated with much more serious sex crimes. The generalization of sex offenses certainly contributes to this.

Amendment VIII

The Eighth Amendment obstructs the possibility for cruel and unusual punishment. This is precisely what the public registry is. Even more than the punishment for a

murder conviction, a sex offender is given a stigma like none other.

Amendment XV

The Fifteenth Amendment clearly states that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.” The right to vote (and many would advocate any other right) should be returned to the citizen after his or her term of sentence. Once the sentence is served, all rights should be restored. This, however, does not happen for sex offenders in many states, and in most states, punishment for the offender continues even after the sentence through the public registry, proximity restrictions, and residency restrictions.

Concluding Thoughts

The issue at large is that the continued restrictions and the public registry for sex offenders is punishment and cruel and unusual punishment to be precise. It could likely be intended as monitoring. However, because of research-backed facts that show that the registry accomplishes little to no good and perhaps even does more damage than helps, the public registry and restrictions placed on sex offenders are indeed punishments. Many attribute these items to large government and revenue building. It is an unnecessary industry. Since the sex offender requirements are indeed punishments, the restrictions are largely unconstitutional. One solution would be to categorize sex crimes in a more efficient manner, thus removing the generalization of sex offenders. Politicians and the general public are becoming more sensible regarding sex offender laws, but more work needs to be done.

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