



PA REGISTRATION RULED UNCONSTITUTIONAL

By Bill Dobbs, The Dobbs Wire

The Pennsylvania Supreme Court in July handed down an important ruling concerning the state's sex offense registry law—yes, it is “punishment” and no, it cannot be applied retroactively. Pennsylvania's registration statute was already harsh but lawmakers enacted an even harsher version in 2012 and made the new law apply even to those who had been sentenced under the old law.

The court took a close look and declared what just about anybody familiar with these 21st century scarlet letter schemes knows – it's punishment. That's a key finding as so many courts have refused to reckon with the devastating impacts of registration by claiming those life-wrecking Megan's Law websites with name, address, photos, and more are just an administrative tracking system.

The Pennsylvania Supreme Court went on to hold that piling more punishment on “after” sentencing is unconstitutional. More than 20,000 individuals are required to sign the Pennsylvania registry and an estimated 4,500 are impacted by this decision; one district attorney predicts lots of lawsuits, “numerous numerous numerous challenges.”

Congratulations to the man at the center of this case, Jose M. Muniz, and kudos to the many legal eagles involved including Michael Halkias, Timothy Clawges, Linda Hollinger, and Joshua Yohe of the Cumberland County Public Defender's Office, and all the groups that supported this challenge with friend-of-the-court briefs, especially Pennsylvania Association of Criminal Defense Lawyers and Defenders Association of Philadelphia.

Aaron J. Marcus, who was deeply involved in this case, writes for Collateral Consequences Resource Center, states the effect of the decision is to immediately alter the registration terms of thousands of registrants across Pennsylvania who saw their periods of registration increase dramatically on the date SORNA took effect. For those individuals, their periods of registration will likely revert back to the periods they were originally given at the time of their convictions. This means that hundreds if not thousands of people could suddenly find that they have completed their original registration terms and will now be removed from Pennsylvania's registry altogether.

Finally, Marcus states, the Court says nothing about whether the decision has an effect on SORNA prospectively. However, if the law now says that SORNA is punishment, registrants, attorneys, and the courts will have to take a long hard look at the current statutory scheme and decide whether it can continue to be enforced in its current form, or whether certain protections typically attached to criminal sentences must now apply. Only time will tell how broad this ruling actually is.

Minnesota suit pending in Supreme Court

By Barbara L. Jones, Minnesota Lawyer

A case began in December 2011 as a pro se proceeding by patients in the Minnesota Sex Offender Program disputing the conditions including room searches, restrictive telephone and mail policies and bad food, among other things — that's how the defendant state of Minnesota characterized it, anyway.

When the petitioners got an attorney, it got re-characterized as a matter of substantive due process.

It's now pending at the United States Supreme Court, where the justices will consider the patients' petition for certiorari. The briefs are all in now — one from the state, two from petitioners and four from amicus curiae supporting the petitioners.

The constitutional issue presented to the Supreme Court is the standard of review that should apply to substantive due process claims brought by the patients. Strict scrutiny, the highest standard, as employed by U.S. Judge Donovan Frank? Or simply a reasonable relation standard, as used by the 8th U.S. Circuit Court of Appeals in reversing Frank's ruling in January? And must one's conscience be shocked by the actions of the respondents, and if so, at what stage of the review?

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From the Editor's Desk

By Wayne Bowers

Major changes next issue

Like a number of organizations, CURE SORT is finding that we can no longer afford to mail our newsletter to members based upon the current level of contributions and the cost of the process. Honestly, a larger database to mail and a seemingly reduction in donations recently makes this move inevitable.

We received a significant amount of donations since our last issue stated the situation and the National CURE newsletter also pointed out our circumstances. But it still is feasible to make a change so that more budget remains for other tasks and projects.

Starting with the Fall issue, all newsletters to the public, or non-prisoner, on our database will go to an email address. We have many of them, but to make sure we do have your address, please send us a note to info@cure-sort.org to give it to us. If you do not have an email address, we'll continue to mail your copy. Also, we post the newsletter on our website, so you can go there. We already post past issues of our newsletters on the website and invite you to visit the site to look at the archived issues. (www.cure-sort.org).

All those in a facility on our database will continue to receive the newsletter by mail.

Donations and contributions received in response to the statement made in our last issue, and also from the notice made in the National CURE newsletter have been plentiful and are greatly appreciated. The amount allows us to move forward as we have been operating with this issue and then the changes mentioned above in the Fall will reduce some of the production costs.

Special thanks to those of you in a facility. We know your funds are limited but we wanted to give you the opportunity to participate and contribute as we know how much this means to you. Of course, the funds assist us in all our efforts to assist in ways besides the newsletter.

Colorado Chief Judge speaks to polygraph legality challenge

Challenges of usage of polygraphs in either court or in treatment continues in Colorado. Last year that usage came under fire in a decision in the 10th Circuit Court of Appeals in Denver, Co.

Chief Judge Dennis Maes has been speaking at the Sex Offender Management Board (SOMB) in Colorado about the illegal use of the polygraph in court as an unreliable instrument and is working to eliminate the polygraph from use in offender treatment.

Chief Judge Maes was appointed to the District Court Bench in April 1988. He became Chief Judge in September 1995. Judge Maes has served the legal community with his presence on committees designed to improve the delivery of services to the citizens of Colorado, mentor young lawyers, guide the bar association and provide judicial discipline. He has served on the executive council of the Colorado Bar Association Board of Governors; Supreme Court Committees on Delay Reduction, jury instructions and multiculturalism; and, the Governor's Task Force on Civil Justice Reform.

Judge Maes' dedication to his community includes service on the Pueblo Regional Planning Commission, the Board of Trustees of the Sangre De Cristo Arts and Conference Center, the Board of Directors of the Eastside Child Care Center, the Board of Directors of Pueblo County Legal Services, Inc., the 10th Judicial District Board to Certify and Monitor Domestic Violence Treatment Facilities, and the David & Lucille Packard Advisory Board.

CURE and CURE-SORT banned

By Roy Marcum

Recently it has developed that CURE and CURE-SORT News have been banned or blocked from certain civil commitment centers and prisons. Along with this, some facilities, notably New York's civil facilities, either have telephone procedures that make it impossible to, or specifically ban their residents from, participating in conference calls sponsored by CURE.

This is clearly a violation of the U.S. Constitution First Amendment right to free speech, particularly in light of the recent U.S. Supreme Court decision allowing convicted sex offenders access to social networking sites in *Packingham v. North Carolina*, which states, in relevant part, "Even convicted criminals – and in some instances especially convicted criminals – might receive legitimate benefits from these means for access to the world of ideas, in particular if they seek to reform and to pursue lawful and rewarding lives."

More on this issue and others will be reported next issue.

Judge tosses out Kansas civil commitment suit

By John Hanna, Associated Press

TOPEKA, Kan. (AP) — A federal judge dismissed a lawsuit in July brought by Kansas sex offenders who are confined indefinitely in a state program for post-prison mental health treatment, saying they didn't do enough to substantiate their claims.

U.S. District Judge J. Thomas Marten ruled Monday that the lawsuit failed to adequately argue that the treatment the offenders are receiving at Larned State Hospital in western Kansas is so lacking that their confinement violates their constitutional rights.

Kansas law allows the courts to order sex offenders to be held indefinitely for treatment after they've served their prison sentences. Legislators created the program in 1994 after the rape and murder of a college student by a sex offender who had been released from prison, and the U.S. Supreme Court declared it constitutional in 1997 because of the promised treatment.

The 25 men who filed the lawsuit in 2014 are among 261 offenders now being held in the Sexual Predator Treatment Program. Four offenders have been released since the program's inception and nine others are living independently but are still under court supervision, according to the state Department for Aging and Disability Services.

The plaintiffs argued that because the services provided to them were inadequate, they couldn't finish treatment and earn their release. The state sought to have the lawsuit dismissed, and Marten said the offenders didn't document the details of their treatment and how it failed to meet accepted standards.

"Merely labeling the conditions as punitive or unwarranted, without accompanying allegations showing a plausible factual basis for such a finding, is insufficient to withstand a motion to dismiss," Marten wrote in his ruling.

Donald Peterson, a Wichita attorney representing the offenders, didn't immediately reply to a phone message seeking comment.

Attorney General Derek Schmidt said in a statement that the program "makes important contributions to public safety" and, "the court's decision leaves the program intact."

One outstanding success can often cover a multitude of blunders. Regrettably, one serious blunder can often wipe out years of good works

CURE-SORT NEWS

CURE-SORT News is a publication of CURE-SORT. SORT stands for Sex Offenders Restored through Treatment. CURE-SORT is one of eight issue chapters of a national criminal justice reform organization known as Citizens United for the Rehabilitation of Errants (CURE), located in Washington, D.C. CURE's address is P.O. Box 2310, Washington, D.C. 20013. For more information on CURE-SORT, send letters to:

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Sex Offender Specific Treatment

By Dr. JoEllen Wiggington

*Pacific Professional Associates
Member of CURE-SORT Board*

EDITOR'S NOTE: *As our mission is to promote the importance of counseling for the recovery of those who have sexually offended, when appropriate, a discussion will be held in our issue along this topic. This is the eighth article in this series. As said, this is a program of Dr. Wiggington and is not available by correspondence.*

This is part of an ongoing series dealing with outpatient sex offender specific treatment, with references and workbooks used in my treatment program at Pacific Professional Associates in Los Angeles CA.

One of the most critical tasks of any therapy is to identify deficits in self-esteem and enhance the client's belief that they can change. Self-esteem also impacts the client's levels of participation in treatment and commitment to change. According to Wikipedia "In sociology and psychology, **self-esteem** reflects a person's overall subjective emotional evaluation of his or her own worth. It is a judgment of oneself as well as an attitude toward the self. Self-esteem encompasses beliefs about oneself, (for example, "I am competent", "I am worthy"), as well as emotional states, such as triumph, despair, pride, and shame. Smith and Mackie (2007) defined it by saying "The self-concept is what we think about the self; self-esteem, is the positive or negative evaluations of the self, as in how we feel about it."

Self-esteem is attractive as a social psychological construct because researchers have conceptualized it as an influential predictor of certain outcomes, such as academic achievement, happiness, satisfaction in marriage and relationships, and criminal behavior. Self-esteem can apply specifically to a particular dimension (for example, "I believe I am a good writer and feel happy about that") or a global extent (for example, "I believe I am a bad person, and feel bad about myself in general"). Psychologists usually regard self-esteem as an enduring personality characteristic ("trait" self-esteem), though normal, short-term variations ("state" self-esteem) also exist. Synonyms or near-synonyms of self-esteem include: self-worth, self-regard, self-respect, and self-integrity."

In sexual offender treatment, it is also important to distinguish between guilt and shame for one's behavior. Shame is the feeling/belief that one is "a bad person" because of their behavior, and tends to be an obstacle to change, whereas guilty feelings focus on the offense behavior and tend to facilitate change. Marshall, Marshall, Seran and Fernandez (2006, citing Sparks, Bailey, Marshall and Marshall, 2003) say "Prior to treatment, sexual offenders characteristically display shame rather than guilt about their offenses, and their feelings of shame are significantly correlated with their levels of self-esteem."

While some clinicians focus on replacing negative self-statements with positive ones to improve self-esteem, in my program we approach it a bit differently. Our first assignment is a reading and exercise from Morin and Levenson's (2002) workbook, *The Road to Freedom* which helps the client identify and cognitively restructure irrational beliefs about themselves. The client is then encouraged by the group and therapists to adopt the more realistic beliefs about themselves. The second exercise (also from *The Road to Freedom*) identifies problem areas in client's lives that they have avoided, and they develop step-by-step strategies to tackle their problems. These problem-solving activities and the results are reported back to their treatment group on a regular basis and the group and therapists then provided positive feedback. Having realistic views about themselves and success in solving problems thus bolsters self-esteem and demonstrates that they can change.

Next time we will cover general empathy and victim harm.

Resources

We are pleased to offer the following resources. Donations accepted to cover cost of postage and printing. Mail donations to the CURE-SORT address noted on Page 3.

One Breath At A Time by Ila Davis (\$17.50)

Understanding Offending Behavior by Stephen Price (A collection of 9 of Stephen's articles from previous newsletters) (\$4.00 for the set of 9 articles)

When Someone on the Registry Moves Into My Neighborhood (Member Price \$5; Non-Member price \$10)

SUPPORT GROUP: Families & friends for those in civil confinement, contact Andrew Extein, MSW. Interested Persons please e-mail: ccn@curenational.org

"No More Victims—One Man's Journey Into Sexual Offending and Recovery", by S. Sands (Ed G), \$14.95 includes shipping. Order on line at gunder788@verizon.net, createspace.com or amazon.com.

The following article was submitted by an inmate in Arkansas:

An Essay on Recovery

By Anthony C.

For me, the downward spiral into sexual depravity began with an internal disregard of morality. Look in a dictionary and you will find the word “moral” defined as the good or right in conduct of character, sometimes specifically and being virtuous in sexual conduct.

It is my experience that these are inseparable inter-related virtues of a moral person and to disregard one a person must also disregard all. These core virtues include: Prudence: the ability to discern proper moral behavior and the means to achieve it. Integrity: The quality of being of sound moral principle upright, honesty and sincerity. Also, fortitude: The courage and strength to do the right thing.

There may come a time in a person’s life where they decide that their sexual behavior has become unacceptable, or the courts (and others) may decide this for you. We alone must learn to recognize in ourselves the desires and behaviors that need to change. We alone must find ways of coping and conquering that are otherwise unavailable.

Crucial to my goal of change was to realize that my behaviors are learned. I can then go back to the point at which I decided to participate in any certain behavior and reject the positive reinforcement I gleaned from the experience. In this way, among other reasons I discovered that I had stopped growing into moral maturity after I was sexually abused as a child.

This may not be everyone’s exact experience and to be clear, it does not excuse anyone for having committed any sex offense. It is merely a major factor in the demoralization of my sexual attitudes. I realize I have spent more than thirty years ignoring my moral compass! It was reflected in my character. I became a chronic drug abuser. I was a liar. I committed sex crimes! All the while knowing that what I was doing was wrong yet at that time I had no real desire to change my consciousness with drugs and rationalize how people should just come around to my way of thinking. Knowing that would never happen I hid my secret shame.

Having been given a life sentence, I was finally at a turning point. We all have to recognize that things are the way they are because of our own behavior. For a time, I was locked in despair, yet I clearly saw two outcomes: I could live and die as a convicted sex offender, or I could live out this life sentence as a person who made grave mistakes.

Today I am able to look myself in the mirror with good conscience, knowing I am on the path to recovery. I am practicing prudence with fortitude

capturing any runaway thoughts and analyzing my emotions so I can make better decisions. I am practicing the virtues of integrity and especially temperance, the virtue that moderates our desire for pleasure. I especially value the good counsel of those I’ve reached out to.

It takes a daily commitment to apply yourself to any program, and I encourage you to reach for any resource you have. Even if it seems there are none you still have one in the SAA 12-Step Program. Are you ready to heed your conscious morality? Recovery is only possible if we do, and help us to deconstruct the attitudes and behaviors we need to change. Treat each step in your recovery as if it were the most important; doing so will help us develop into a mature, moral character.

From Minn. Suit, Page 1

As the petitioners’ attorney, Dan Gustafson, sees it, the nub of the problem is that once a person is committed, he or she is labeled dangerous and loses the fundamental right to liberty effectively forever under the state system. The state has failed to enact a procedure to make sure that people are able to be released, Gustafson said.

The state does have a statutory reduction in custody scheme in place, but it shifts the burden of proof to the patient and it has never resulted in a release until this lawsuit was filed. “We’ve demonstrated that it hasn’t worked for the last 25 years,” Gustafson said.

The case is *Karsjens, et al. v. Emily Johnson Piper, et al.*

There is nothing wrong with having nothing to say—unless you insist on saying it.

Anon

From Open Letter Page 6

Some sources of respected experts on sexual violence are the Moore Center for the Prevention of Child Sexual Abuse, the Crimes Against Children Research Center, and the Association for the Treatment of Sexual Abusers.

And not all advocates are on one side—hundreds of lawyers and activists have been working for years for sex offense policy reform. So get the perspective of a group like the National Association of Rational Sex Offense Laws, Women Against the Registry, or the Alliance for Constitutional Sex Offense Laws.

Good reporting means good governance. An issue as important as sexual violence badly requires your objectivity and independent judgment to move our leaders away from policies that waste money or cause needless pain, and toward those that actually work.

Collateral Damage in U.S. War on Sex Crimes

An Open Letter to Local Reporters

Steven Yoder, a terrific journalist on criminal justice and other issues, takes on the media with a pair of strong essays addressed to reporters who write about sex offenses. Following is one of them. This is surely an important topic because what news and entertainment media cover as well as how they cover it has a big impact on public opinion which, in turn, influences lawmakers and judges. Pushing for fair and accurate coverage is critical given the strong emotions that drive public policy resulting in draconian punishments for sex offenses. -- Bill Dobbs, The Dobbs Wire

Local reporters, you're a national treasure. You've got one of the tougher jobs going—coming up with story ideas, tracking down sources, writing on unforgiving deadlines, working nights. For all that, you're paid next-to-nothing. You do it because you love it, and we're grateful. The country needs journalists in every town committed to telling the whole truth.

With all that pressure, it's no wonder stories about people on the sex offender registry make a tempting target. Registries are in the public domain. Registrants' photo, address, place of work, school, and make and model of car are usually there for the taking. It's easy to write a story that looks investigative without doing much work—with everything in the open, you just ask a good question: "How many registrants are employed as taxi drivers?" "How many live within a mile of a school?" "Is anyone on the registry attending a local college?" and the story writes itself. It's also easy to cover the complaints of local residents who oppose registrants being allowed any constitutional protections.

Public hysteria seems like good copy. Actually, it's not—accurate, positive stories **are more likely to go viral**. And I bet journalistic standards and the truth matter to you. So here are a few questions to ask when you're assigned or are considering a story about someone on a sex offender registry.

Is it ethical journalism to out people for crimes they've been punished for? A backlash is brewing against reporters who make private details public simply to shock and embarrass. So, reporter Nico Hines nearly lost his job at the *Daily Beast* after luring Olympic athletes onto sex apps and then **outing them**. Publishing a story about an executive's extramarital texting with a gay porn star says more about the reporter than its target, as *Gawker's* Jordan Sargent learned. Local paper *The Anderson News* stopped posting the photos of drunk driving arrestees because, as its editor finally concluded, publishing mug shots "adds a level of punishment, or at least embarrassment, beyond what is imposed by a judge... I really don't think that the role of a community newspaper is to punish or embarrass anybody. It's to report the news and provide information." Likewise, ambushing a man

once convicted of child pornography possession who's attending a local college is little more than bullying, as the reporter who wrote the story concluded recently in the *Columbia Journalism Review*.

Journalism is supposed to hold accountable those in power. Does your story do that? Or does it encourage **harassment, threats, and violence?**

Have I considered data on the actual risk before doing this story? Elevator phobia affects thousands of people. But a new lift being installed in an apartment building isn't news because the chance of dying in an elevator crash is **1 in 10.5 million**. Likewise, it's not a story when a neighbor says they're afraid because someone who's served time for a sex crime lives nearby or opens a business near them.

Recidivism rates for those who've committed sex crimes are lower than nearly all other classes of ex-offender (**5 to 15 percent**, and **3 percent** for those who've been offense free after 10 years, a figure comparable to the risk in the non-offending population). **Upwards of 90 percent** of new sex crimes are committed by someone not on a registry.

Local reporter Joshua Vaughn of *The Sentinel* newspaper in Pennsylvania consulted the statistics and turned his research into an illuminating series on sex offender registration and sexual violence prevention.

If I'm covering a policy proposal, have I asked for evidence that it will work? Too often, proposed solutions don't have any research to back them up. For example, some states and towns have introduced laws to ban those on sex offender registries from living near schools, parks, playgrounds, and other places children congregate. It sounds like common sense. But it's not—after mountains of study, the federal government declared in 2015 that those policies do nothing to affect sex crime or sexual re-offense rates. What about banning registrants from participating in Halloween? That's a rule in search of a problem, researchers have concluded—sex crime rates don't change on Halloween.

The key questions to ask advocates of new policies are these: What's the data show about the problem you say you want to solve? What's the research say about whether your solution will make anyone safer?

Have I avoided loaded language? Neutral language isn't optional in reporting on sex offenses—it's essential to fair reporting. There are alternatives to prejudicial terms like "predator," "sex offender," and "child molester." Choices like "offender," "registrant," and "ex-offender" meet journalistic standards for impartiality.

Have I included the perspective of a state or national expert? Talking to police and prosecutors, victims' groups, and citizens is fine. But more important is to find out what people who have studied the issue say.

See Open Letter Page 5