

## Defending the Rights of Convicted Sex Offenders

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*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

*--Fifth Amendment of the U.S. Constitution*

The Fifth Amendment of the Constitution of the United States of America protects individuals from double jeopardy and guarantees that one will not be deprived of life, liberty, or property, without the due process of law. Article 1 Section 9 of the Constitution prohibits the Federal Government from enacting ex post facto laws and Article 1 Section 10 prohibits states from doing the same. Ideally, these rights would hold true for everyone—national citizens, immigrants, law-abiding members of the community as well as those who deviate from the law—however, it seems that these rights can be stripped of those people that society deems undesirable.

When an individual's behavior becomes criminal and he becomes involved with the justice system, he is going to lose some of his rights—either until he is cleared of charges or until he serves his punishment and is released back into society. Once he has been granted release, he should once again be given the same liberties that everyone else enjoys because he has lawfully re-paid his debt to society.

However, convicts are rarely able to recover their full rights once they've become involved with the justice system. Ex-felons are not allowed to vote in the elections and having the status of ex-convict is often coupled with a burdensome stigmatization. Some types of criminals are stigmatized more than others. For instance, a drug dealer is likely to be looked down upon more than a corporate CEO arrested for tax evasion. However, due to some recent high-profile cases and subsequent legislation, there is one type of ex-convict that I believe is being deprived of more and more liberties while simultaneously finding fewer advocates to defend their rights. Sex offenders.

In my opinion, many people (including myself) regard convicted sex offenders as the most disgusting and heinous type of human being there is—especially those who prey upon children! People do not want them living in their neighborhoods, being around their children, or attending the same schools and functions as the rest of the community. However, according to the Center for Sex Offender Management (hereafter referred to as CSOM) (2000) there are approximately 134,000 sex offenders under some type of community supervision that are currently living in our communities. So the question for many people is what should we do with them? Do we allow them to live in our neighborhoods anonymously? Do we afford them the same rights as other ex-criminals?

In 1990, Jacob Wetterling, an eleven-year-old boy was returning home from a convenience store with two of his friends. A masked gunman came out of a driveway and abducted Wetterling. In response to this high-profile abduction, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Title XVII of the Violent Crime Control and Law Enforcement Act of 1994) or better known as the Wetterling Act. This Act requires states to create registries of convicted sex offenders and those convicted of crimes against children. Furthermore, the Wetterling Act requires convicted offenders—once released back into society—to verify their address annually for a period of 10 years and requires sexually violent predators to verify their current address quarterly for the remainder of their life (CSOM, 1999).

In response to the brutal rape and murder of seven-year old Megan Kanka in New Jersey, Megan's Law amended the Wetterling Act in 1996. Megan's Law required agencies to release relevant information concerning the registry information of sex offenders to the public. States were given discretion to determine how this information could be released, including proactively notifying communities via the mail, media releases and community meetings (CSOM, 1999).

The Wetterling act was amended yet again in 1996 following the brutal assault of Pam Lychner, a real estate agent. Pam Lychner was preparing to show a house to a prospective buyer—who also happened to be a twice-convicted felon. The Pam Lychner Act allowed for the creation of a national database—the National Sex Offender Registry (NSOR)—that would track sex offenders as they moved from one state to another and also subject those convicted of multiple registerable offenses or an aggravated sex offense to lifetime registration (CSOM, 1999).

In 1998, The Wetterling Act was amended again by section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (CJSA). The CJSA amendments require federal and military sex offenders to register in their state of residence and also requires sex offenders who work or attend school in another state to register in those states as well as their state of residence (CSOM, 1999).

Finally, the Campus Sex Crimes Prevention Act (CSCPA) of 2000 amends the Wetterling Act once more. The CSCPA requires sex offenders to provide notice of each institution of higher learning where the offender works, volunteers, or is enrolled as a student. The CSCPA amends the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act by requiring institutions to provide statements notifying the campus community where information relating to the local sex offender registry may be accessed. Also, the CSCPA amends the Family Educational Rights and Privacy Act of 1974, allowing institutions to disclose information given to the institution concerning registered sex offenders (Security on Campus, Inc., 2002). Many colleges and universities nationwide have already started to post photos of students and employees that have been convicted of sex crimes on the website of their respective institutions.

The Wetterling Act and its amendments were established to help protect the community from sex offenders who have been placed back into society. However, stories of community chaos and vigilante justice on the part of the community are rampant. CSOM (2000) gives several examples of such instances. In July 1998 an individual shot at the house of a recently paroled rapist after police in New Jersey distributed a notification flyer. In Oregon, a sex offender was threatened at gunpoint and

another offender received threats of arson to his residence. In Washington State, one case of arson of an offender's intended residence was reported, two cases of minor property damage were reported, two more offenders were physically assaulted (Matson and Lieb, 1996, as cited by CSOM 2000) and another offender was threatened at gunpoint.

One thing is clear, although released sex offenders have supposedly re-paid their debts to society—hence their release—new legislation enacted almost annually is making post-incarceration life more restrictive and much more dangerous for convicted sex offenders. The Oregonian printed an article in 1999 that told the story of a convicted sex offender (and ex-police officer) who was arrested in 1988 for first-degree sexual abuse. He had voluntarily sought out therapy and received recognition from his original sentencing judge for making a proactive effort to change his behavior. In fact, six years after his arrest, the judge reduced his crime from a felony to a misdemeanor because of his efforts and was awarded custody of his son. In 1999, eleven years after his arrest, Oregon State Police notified him that he would have to register in the sex offender registry and his photo and personal information would be disseminated on the Internet—despite the fact that the Wetterling Act was not enacted until 1994. Before he was entered into the sex offender registry, the Oregon State Police had distributed bulletins in his neighborhood, describing his criminal history. Shortly afterwards, his daughter was teased unmercifully at school. Then somebody placed a sign in his apartment building stating that a sex offender lived in apartment #14 (the sign did not specify the name of the offender). That night, rocks were thrown through his son's window and soon afterwards his son was attacked twice by unknown assailants. (Boule, 1999) Again, Article I sections 9 and 10 of the Constitution of the United States protect individuals from ex post

facto laws. The individual in this article has to suffer the consequences of a law that was passed six years after his conviction.

The Curry Coastal Pilot (November 02, 2002) printed an article related to a registered sex offender on the southern Oregon Coast. The article revealed that a registered sex offender—who had just moved to Oregon from Alaska—left town after his roommate’s car was egged and a police bulletin showing a photo and criminal history of the offender was left on the vehicle. Although the individual had not been arrested for over ten years, the individual was still required to register with Oregon authorities. A police official stated that the individual must report a new address to authorities in 10 days or return to the old one or an arrest warrant would be placed for his arrest (In other words, he has to choose between moving to another residence and have more police bulletins distributed about his presence, returning to his previous residence and almost certainly face more fear-tactics, or be placed under arrest (sexcriminals.com, 2002). This story is another example of an individual who has to deal with laws that were not established at the time of his arrests. Why should an individual have to be faced with the absurd consequences of a lifelong branding due to his previous behavior—especially if the consequence was not prescribed at the time of the offense?

An article in the San Mateo County Times (November 02, 2002) described a new policy affecting convicted sex offenders. Prior to Halloween, the offenders were told that they had to stay home with the lights off to avoid luring trick-or-treaters to their doorsteps. Agents of the task force then visited the homes of nearby sex offenders. Even if the offenders did as they were told, the agents entered into their homes and searched for contraband. As a result of the searches, three people were arrested—for testing

positive for drugs, possession of weapons, and child pornography (sexcriminals.com, 2002).

Although having a convicted sex offender in one's neighborhood probably is not a comforting thought for anybody, the truth of the matter is that there probably is not a single community that remains untouched by released sex offenders. Recently, the Albuquerque Tribune (November 11, 2002) printed a story how Mayor Martin Chavez is seeking donations from local banks and businesses to raise enough money to buy a convicted sex offender a one-way bus ticket out of town. Law enforcement officials stated that the offender had recently moved to the city and he has been obeying all laws since his arrival—including registering as a sex offender. However, Chavez stated, “We are very concerned about the children in this community. This is somebody who will re-offend” (Hovey, 2002) In short, Mayor Chavez is chasing this individual out of Albuquerque because of his past criminal activity despite the fact that he has obeyed all city and state laws since his arrival. Despite his good behavior, Mayor Chavez is certain that he will become a recidivist and re-offend—even though his actions suggest otherwise.

According to CSOM (1999) one of the purposes of sex offender registries is to increase public protection from sex offenders. After reading the articles mentioned above, perhaps it would be more accurate to state that one of the purposes of sex offender registries is to increase public reaction towards sex offenders.

The Constitution protects individuals from being subjected to double jeopardy and ex post facto laws. However, elected officials are proving time-and-time again that the Constitution applies only to desirable individuals. Although the punishment for sexual

assault should remain stiff and harsh, community members should not subject the individual to vigilante justice. An individual should not have his personal liberties violated by having to confirm his address quarterly or annually, nor should the individual have to be branded with a scarlet letter by distributing his past criminal history to his community. Active police records are already kept in a national database that is accessible to any law enforcement agency and that is where information regarding past criminal offenses should be kept. For non-sex crimes, law enforcement agencies are not allowed to distribute personal information—relating to criminal history—contained in the database to civilians, so why should they be encouraged to for sex crimes?

We, as a society, depend on our Justice System to convict and assign punishment for crimes committed on our soil. Once the individual has completed his assigned punishment, he should be set free—completely free! Sure, a record should be kept of his conviction but otherwise his rights and liberties should be completely reinstated. If the individual commits another offense, lock him or her longer than before—perhaps even for life. But until the individual commits another crime, he should remain free!

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