

Sex Offender Deregistration

Is it really like unscrambling an egg?

Speaker: Laura Peterson

33RD ANNUAL Robert O. Dawson Juvenile Law Institute

February 16 - 19, 2020

**Galveston Island Convention Center at the San Luis Resort
Galveston, Texas**

Registration Overview

- Where did this come from?
- Why do we do this?
- How does it work?
- Where is this going?

Where it All Started

- 1991
- Health and Safety Code
- Complex combination of federal and state laws
- All contained in Chapter 62 of the Code of Criminal Procedure

Federal Law

1989 Jacob Wetterling Minnesota

- 11 year old
- Abducted by masked man at gunpoint
- 27 years later - Case solved in 2016 with DNA
- Cop told mom during the investigation that it would help in the search if there was a list of known sex offenders in the area

1994 Federal Law

- Mother campaigned for sex offender registry in Minnesota and then at federal level
- Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act
- Requires a state registry of sex offenders
- Requires states to track sex offenders for a minimum of 10 years after release into the community

Texas Law

- 1993 Ashley Estell
- 7 year old
- Abducted from playground
- Found strangled next day
- No signs of sexual assault
- Michael Blair, a sex offender, was convicted of her murder.

1995 Texas Law

- “Ashley’s Laws” expanded punishment and registration for sex offenders.
- Required registration for a period of years or up to lifetime registration
- Created child safety zones

Federal Law

- 1994 Megan Kanka
- 8 year old last seen riding her bike outside her home
- Lured into home of twice convicted sex offender who lived across the street with other sex offenders
- Raped and strangled and then raped again
- Body placed in toy box and dumped in park

1996 Federal Law

- Megan's Law amended Jacob Wetterling Act
- Requires community notification when a convicted sex offender moves into a neighborhood
- Requires public dissemination of registry info

Federal Law

■ 1981 Adam Walsh

- 6 year old son of John Walsh, host of America's Most Wanted
- Went to Sears with mother who left him playing video games in toy department
- Disappeared after 7 minutes
- Two weeks later, severed head found in a canal 120 miles from his home

An Aside

- 27 years after the fact, the Florida police claimed that Ottis Toole was responsible.
- In 1983, Toole confessed to the crime.
- But the police somehow lost Toole's impounded car and machete, hindering their ability to proceed with the investigation.
- Toole was once a cellmate of Ted Bundy.
- Also working in south Florida at the time was Jeffrey Dahmer.

2006 Federal Law

- Adam Walsh Child Protection and Safety Act
 - Sex Offender Registration and Notification Act (SORNA) is title I
- Replaces Wetterling Act
- Includes possible lifetime registration for juveniles age 14+
- Most states rejected SORNA and in 2016 the feds issued a guideline stating that states may be considered to have complied with SORNA if state policies and practices promote public safety in a manner that does not undermine the overall SORNA objectives.

Federal Law

- 2006 Dru's Law
- 22-year-old student at the University of North Dakota abducted by sex offender leaving the mall in Nov. 2003
- Body was recovered in April in Minnesota
- Very high profile case with 1000's helping in search.
- Body brought across state lines making it a federal case and death penalty eligible.
- First death penalty case in a century in North Dakota.

2006 Federal Law

Dru's Law

The Dru Sjodin National Sex Offender Public Website (NSOPW), is part of Adam Walsh.

It provides for a national online sex offender database that links all of the state and territory databases together.

Purposes of Registration

- Registry provides for the tracking of sex offenders once released into the community
- Designed to:
 - Assist law enforcement
 - Allow public to protect itself
 - Reduce recidivism

Release ?

Bad Cases = Bad Laws

- Jacob Wetterling
- Ashley Estell
- Megan Kanka
- Adam Walsh
- Dru Sjodin
- Capital Murder
- Capital Murder
- Capital Murder
- Capital Murder
- Capital Murder

Assist Law Enforcement

- Maybe ?

Ashley Estell is a cautionary tale of tunnel vision

Assist Law Enforcement

- Michael Blair was seen in the area where the victim's body was found.
- He had volunteered to help in the search
- Blair, who had a prior sexual offense, quickly became the lead suspect in this case.
- Blair was tried by a jury in 1994. The jury deliberated for 27 minutes before convicting Blair. He was sentenced to death.
- DNA testing later led to his exoneration

Public Protection

- The theory is that notification allows the public to protect itself
- The Texas Council on Sex Offender Treatment found in 2009:
- “The fact is that there is no evidence that public registries reduce sex crimes. The registries however, have provided a false sense of security to the general public.”

Public Protection – Registry as Hit List

California (75) Florida (30) Texas (29) South Carolina (18) Ohio (17) Washington (16) Illinois (15) Michigan (14) New York (14) Georgia (13) North Carolina (13) Colorado (12) Indiana (12) Maryland (11) Arizona (10) Virginia (9) Arkansas (8) Maine (8) Pennsylvania (8) Alabama (7) Oregon (7) Massachusetts (6) Nevada (6) Utah (6) West Virginia (6) Wisconsin (6) Kansas (5) Missouri (5) New Jersey (5) Oklahoma (5) New Mexico (4) Tennessee (4) Delaware (3) Idaho (3) Kentucky (3) Louisiana (3) Minnesota (3) Mississippi (3) Connecticut (2) Iowa (2) Montana (2) New Hampshire (2) Nebraska (1) South Dakota (1)

Reduce Recidivism

- University of Chicago Study - 2011
- Analyzed 20 years of FBI data (1984 to 2003)
- Little evidence supports the effectiveness of sex offender registries, either in practice or in potential.
- Rates of sex offense *do not decline* after the introduction of a registry or public access to a registry via the Internet

Registries in Other Countries

- 19 countries (out of 195) around the world have registries
- The United States and South Korea are the **only countries** with public registries;
- All other countries in the world have rejected that idea and have sex offender registries only accessible by law enforcement; with no or limited public information.

Why Don't They Work?

- Registries are based on myths
 - Stranger Danger (7% per DOJ)
 - High rates of recidivism (5% after treatment – 10 yr)
- Virtually no studies exist finding U.S. registries effective after 30+ years
- Registries have grown too broad
- Registries prevent offenders from engaging in pro-social activities such as employment, marriage and home ownership

Offense Based vs. Risk

- The vast majority of states have offense-based registries
- Ignores the actual risk of the offender
- States that have attempted to create risk-based system are pressured to adopt offense-based systems in accordance with the Adam Walsh act.
- The effectiveness of offense based registries have been called into question by professionals, and evidence exists that such registries are counterproductive.
- Patty Wetterling, Chair of the National Center for Missing and Exploited Children

Offense Based vs. Risk

These states register people convicted of
public urination

- Arizona
- Colorado
- Michigan
- New Hampshire
- New York
- South Carolina

Marginalize Offenders

- Registries keep almost a million Americans out of work and on the verge of homelessness.
- Residential instability = 25% increase in likelihood of re-arrest (Meredith, Speir, Johnson & Hull, 2003).
- Unstable living arrangement = strongest predictor of parole absconding (Williams, McShane, & Dolny, 2000).

Juvenile Registration is Different Than Adult Registration

- Registration length - 10 years after complete the terms of disposition
- Applies to
 - juveniles adjudicated in juvenile court
 - juveniles certified as adults
 - juveniles adjudicated in other states
- Failure to comply is a state jail felony
- Juvenile Judges have the discretion to exempt, defer or make non-public juvenile registration

Juvenile Law

Unregistration

- With pending adjudications
- Sent to TJJD and not been released on parole
- Transferred to TDCJ and not yet released on parole

Deregistration

- Already registered
- Have a continuing obligation to register

Juvenile Law

Unregistration

- What is the question?
- Whether the protection of the public would not be increased by registration **or**
- Whether any potential increase in protection is clearly outweighed by the anticipated substantial harm to the Respondent

Deregistration

- What is the question?
- Whether the protection of the public would not be increased by registration **or**
- Whether any potential increase in protection is clearly outweighed by the anticipated substantial harm to the Respondent

Juvenile Law

Unregistration

- Hearing
 - Before the judge
 - Juvenile has burden of persuasion
 - Preponderance standard

Deregistration

- Hearing
 - Before the judge
 - Juvenile has burden of persuasion
 - Preponderance standard

Juvenile Law

Unregistration

- Judge may rely on:
 - Witness testimony
 - Exhibits
 - Representations of counsel
 - Contents of social history report prepared by probation which may include psychological testing

Deregistration

- Judge may rely on:
 - Witness testimony
 - Exhibits
 - Representations of counsel
 - Contents of social history report prepared by probation which may include psychological testing

Juvenile Law

Unregistration Order

- Grant motion and exempt
- Grant motion and defer the decision until treatment is completed
- Make non-public
- Statute does not provide for denying the motion

Deregistration Order

- Grant motion and exempt
- Make non-public
- Deny motion

Out of State Adjudications

- If DPS determines the elements of the out-of-state adjudication are substantially similar to the elements of an offense listed in Chapter 62, then have to register (can appeal this in Travis Co.)
- File in juvenile court in the county of juvenile's residence in Texas
- Can file for unregistration or deregistration
- Same hearing/rulings as in other cases

Out of State Adjudications

- About 87,000 people are on the Texas registry.
- About 10,000 of those are on the registry for juvenile adjudications.
- Currently, most juveniles placed on the registry have out-of-state adjudications where there is no exemption process and they have not sought unregistration or deregistration.

Getting off of Registry

- When a juvenile's duty to register expires, they are not expunged from the registry system.
- The juvenile has the burden of notifying DPS that their duty to register has expired
- Juvenile must send copy of court order and notice of release from TJJD or notice from the probation department of when terms of disposition were completed or probation ended.

Juvenile Sex Offenses

- Facts can be disturbing.
- Account for only 3.1 percent of all juvenile offenses.
- Account for only 7.4 percent of all violent juvenile offenses.
- But account for over 25 percent of all sex offenses committed . (DOJ report 2009)

What Else Could We Do?

- The costs of administering the registry are huge—manpower and dollars.
- What else could we be doing that would increase public safety and reduce recidivism?
- How should that money be spent?
- How do we go about thinking about this?