



**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 public registry, proximity restrictions, and residency restrictions are punitive, although many argue they are not. With the end result of punishment for all affected parties, constitutional rights are violated through many sexual offense laws. While these laws vary from state to state, there is a sense that at the federal level sexual offense laws are reactionary, and they accomplish little to nothing but, in fact, achieve more damage than help. Registrants' constitutional rights are violated when there are fact-based alternative solutions which will improve the system without sacrificing public safety.

Moving far beyond the original intent of the public sex offense 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 persons with sexual offense convictions, both of which stem from being on the public registry. There are usually many other restrictions as well, many 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 persons with sexual offense convictions, however, punishment does not end with the period of time served in the sentence. It rather continues with public registration. The primary way states have gotten away with this is by not acknowledging the registry as punishment but rather maintain it is 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]

Several factors have coalesced to create a system in which registration laws have become unmoored from their regulatory purposes, and as applied to the strict liability offender,

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Fighting to restore dignity & constitutional rights to millions

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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 v. Texas*.^[iii]

Generalization is largely the reason for reactionary legislation regarding sexual offenses. The public must be educated about sexual offenses and how to handle them. Entrapped in the many myths about this category of offense, many do not realize that the recidivism rate for persons convicted of sexual crimes is extremely low and is, in fact, among the lowest of any crime. [This chart offers just a few examples.](#) [iii]

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 registration 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 on its freedom yet is also one of the few countries in the world with a public registry. Our Constitution was written clearly so as to be understood without difficulty. There have been instances of criminal sexual convictions being overturned and sexual offense 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 state's registry is unconstitutional.^[v]
- In Indiana, the registry was found to be unconstitutional in 2012 because it “. . . violates due process rights for not 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:
 1. The law was unconstitutional because it was an ex post facto law for anyone convicted before July 1, 2002;
 2. 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;
3. It violated plaintiffs' procedural due process rights;
 4. It infringed on fundamental rights to travel and decide how to conduct their family affairs; and
 5. 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 sexual offense laws.
- In Bloomington, Illinois, a requirement that registrants report all Internet sites they use to police is unconstitutional because it violates the registrant’s 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 sexual offense laws. The public registry, proximity restrictions, and residency restrictions violate a citizen’s constitutional rights, primarily regarding the following federal amendments:

Amendment I

The First Amendment states that the freedom of speech shall not be abridged by government. Many sexual crime 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 the likelihood of committing a crime, not actually committing the crime itself. Even after conviction and serving a sentence, a registrant, 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 restrictions 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 persons on the registry. 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. Anyone who has completed their 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 registered persons is the right not to be subject to punishment for the same offense twice and put in jeopardy of life or limb. This is most evident in registration requirements. Often a registrant who neglects to register for any particular reason is charged with yet another sexual crime (sometimes a felony) although failure to register is not sexual in nature.

Another aspect of this amendment is violation of due process of law. Because of the nature of sexual crimes and the false stigma placed on many individuals who commit such acts, due process is difficult to achieve. Public outcry against such individuals 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, persons accused of a sexual crime often do not have an impartial jury. This is largely due to hefty punishment mandates on sexual crimes that, although minor in nature, are associated with much more serious sexual crimes. The generalization of sexual offenses certainly contributes to this.

Amendment VIII

The Eighth Amendment prohibits the possibility for cruel and unusual punishment. Some say that is precisely what the public registry is. Even more than the punishment for a murder conviction, public registration produces a stigma like none other.

Amendment XV

The Fifteenth Amendment clearly states, “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 persons on registries in many states.

The issue at large is that continued restrictions and public registration are punishment. Registration and accompanying restrictions may have been intended as monitoring; however, because of research-backed facts that show that the registry accomplishes little to no good and perhaps even creates more damage than benefits, the public registry and restrictions placed on persons convicted of sexual crimes are indeed additional punishments applied after one’s sentence is complete. This makes the restrictions largely unconstitutional.

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^[i] Devoy, Mary. “Constitutional or Unconstitutional: Sex Offender Registration.” *Restoring Integrity Sex Offender Blog*. Accessed September 16, 2015.
<http://restoringintegritytovirginiaregistry.blogspot.com/p/theconstitutionality-of-sex-offender.html>.

^[ii] Carpenter, Catherine L. “The Constitutionality of Strict Liability in Sex Offender

Registration Laws.” *Boston University Law Review*, vol. 86:295 (Boston: Boston University Law), 204.

- [iii] Cordeiro, Jon and John Haralson. *Unprecedented: How Sex Offender Laws Are Impacting Our Nation*. PCG Legacy, 2012, Kindle Electronic Ed. Loc. 764.
- [iv] Nicholson, Eric. “Texas’ Highest Criminal Court Overturns Ban on ‘Titillating Talk’ with Minors.” *Dallas Observer*. October 30, 2013. Accessed September 16, 2015. <http://www.dallasobserver.com/news/texas-highest-criminal-court-overturns-ban-on-titillating-talk-with-minors-7143413>.
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- [vi] News Channel 18. “Sex Offender Registry Unconstitutional. September 5, 2012. YouTube video. <https://www.youtube.com/watch?v=EnP-9PRKIbY>.
- [vii] Accessed September 16, 2015. <http://criminal.findlaw.com/criminal-charges/residency-restrictions-for-sex-offenders.html>.
- [viii] Brady, Edith. “Judge: Sex Offender Rule Unconstitutional.” *Pantagraph.com*. July 10, 2015. Accessed September 16, 2015. http://www.pantagraph.com/news/judge-sex-offender-rule-unconstitutional/article_8c569d46-b7a8-5175-8359-dfe58coab7a6.html.