Meagans Law Essay, Research Paper

CRIMINOLOGICAL SEVERITY OF SEXUAL PREDATORS

The fear of not being able to protect our children from the evils of the world is perhaps the greatest fear of all. Our children are our link to innocence. However, despite our best efforts to shield them from forces that they do not yet know about, we know it is impossible to do so without several forms of government intervention.

For the goals of this testimony, the definition of sexual offenders will be the following: A sex offender will refer to any person convicted of these offenses.

1. Rape

2. Rape of a child

3. Child Molestation

4. Sexual Misconduct with a Minor

5. Sexual Violation of Human Remains

6. Incest

7. Communication with a Minor for Immoral Purposes

8. Felony with a finding of Sexual Motivation (CiBellevue)

Unsupervised sexual offenders living among us is truly a severe problem that

Megan Kanka, Amanda Wengert and their families have faced firsthand (West Depford).

There are 264,228 sex offenders in the United States as of May 1999, 60 percent of them are either on probation or parole. This leaves 158,537 estimated sex offenders living among us (chron.com). Sex offenders also have a higher recidivism rate than any other criminal, repeating their crimes nine times as often as other criminals (Freedom). In addition to this, two thirds of sex offenders victimize children (Freedom). One third of these children are younger than the age of eleven (Freedom). The sex offenders knew their victims seventy one percent of the time and fifty nine percent of the time they used enticement to lure their prey (PreventAbuse). This statistic was never more evident than in the case of Megan Kanka and Jesse Timmendequas, a two-time sex offender who lured the young girl with the promise of a puppy. The most alarming statistic of sexual predators was found during a study conducted by the National Institute of Health. It concluded that an average child sex offender would molest an average of one hundred seventeen children. Sadly many of these offenses go unreported by the victims (MembersAOL).

These statistics insinuate how heinous sex offenses are. As a result legislation must be upheld, enforced and updated in order to lower these horrible results and protect our children against these predators. Without Megan s Law and laws that surpass it, Americans are left without the necessary protection for themselves and their children.

STATUS OF CURRENT LAW

H.R. 2137, the Federal Megan s Law, is designed to release relevant information to protect the public from sexually violent predators (CiRedding). In many versions it requires adult and juvenile sexual offenders to register with their communities. The law also requires the offender to release his/her social security number, age, sex, date of birth, physical description, date and place of employment, date and place of conviction, description of crime and fingerprinting (KlassKids).

The notification and registration programs are administered by the Superintendent of State Police, the Department of Corrections, Administrative Office of the Courts, Department of Human Services, the Division of Motor Vehicles of the Department of Law and Public Safety, the Attorney General and local law enforcement (KlassKids). These groups give wide authority measures to prevent numerous offenders from slipping through the cracks. In addition, address verification is required by law agencies every ninety days (KlassKids).

In order to prevent criminals from being lackadaisical and therefore threatening to our communities, a registration period is also implemented as part of the law. This part of the law requires released offenders to register prior to release or within four days of judgment if not confined. It also applies to out of state offenders, requiring them to register seventy days prior to entering the state. Registration also applies to offenders who move within the state, requiring them to give notice ten days prior to the change of address (Klass Kids).

The important portion of Megan s Law deals with the notification of the public. Information is relayed to the public based on how dangerous the offender is to the community. The danger levels are divided into three categories: Low-Risk, Moderate-Risk, and High-Risk. In low risk situations only the victim and law enforcement agencies are informed of the offenders residence. Moderate risk situations are characterized by the notification of community organizations such as schools, church groups and youth groups such as little league as well as those notified during low risk occasions. High risk offenders pose the greatest threat to the safety of communities. Because of this, public notification is given. Primarily, notification is given to those who are most likely to have contact with the offender. Offenders who do not comply with Megan s Law are subject to a Crime of the Fourth Degree (KlassKids).

EXTENSIONS AND COUSINS OF MEGAN S LAW

The Protection of Children from Sexual Predators Act was passed into law on October 30, 1998. This act does many things, but it primarily enhances the punishments of sex offenders. Much like Hate Crime legislation, it punishes for selecting a victim; in this case it is an individual who has not yet turned the age of twelve. The act doubles the maximum punishment for this crime (Prevent Abuse, 2ac).

Congressional Bill HR 2488, also known as the Volunteers for Children Act was passed in late 1997. This bill updated the Oprah Winfrey Act passed in 1993. The two acts are essentially the same, giving access to FBI fingerprinting to schools, day care facilities and youth organizations such as Little League or the Boy Scouts. The need is based on ensuring that these organizations do not accidentally hire convicted sexual offenders. The difference in the two acts is HR 2488 holds the costs of FVI fingerprinting checks to the actual costs, in addition the act authorized twenty million dollars to offset the costs of these checks (PreventAbuse2488).

The original Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act was established in the 1994 Crime Bill. Its intentions were to set guidelines concerning sex offender registration programs. The Jacob Wetterling Improvements Act attempts to close loopholes available to sex offenders. The act s improvements are:

1. Registration applies to federal sex offenders.

2. Registration applies to military personnel

3. Offenders must register in the community in which they are employed or study as well as their home residence.

4. Transferring from state to state requires honoring registration laws in the new state.

The improved bill also aims to heighten awareness of states concerning child stalking laws and requires the states to provide the Justice Department with a report detailing their existing laws dealing with child stalkers (McCollum). Only a short period after Megan s law was passed, Congress passed the Pam Lyncher National Sexual Offender Tracking and Identification Act. This provided nationwide availability of sex offender registration in order to keep track of sex offenders that cross state lines (Scoreboard).

An extension of Megan s Law was also passed in the state of Delaware. The new law requires sex offenders who are released form prison to obtain a new driver s license that designates them as a sex offender. The designation is marked by the letter Y (IDCard). The state of Florida, however, did not pass legislation that would require sex offenders to apply for a special identification card, a license or special motor vehicle registration requirements (IDCard).

CONSTITUTIONALITY

The United States Supreme Court refused to hear arguments against Megan s Law and by doing so upheld a ruling by the United States Court of Appeals for the third circuit. The appeals court found that the law was constitutional but held that procedures used to determine the risk level of offenders and the scope of notification as violating due process rights. Petitioners against Mean s Law claimed that the law violated the Double Jeopardy and Ex Post Facto clauses in the Constitution. Double Jeopardy is a clause that prohibits prosecution for the same crime more than once by the same sovereign. The argument was that Megan s Law doled out double punishment. The petitioners arguments in this regard were easily defeated because the state was not attempting to try anyone twice for the same crime and that registration was part of one punishment. This could be compared to a judge levying a fine and probation.

In both Philadelphia and New York appeals courts it was held that Megan s Law was not extra punishment but protection of the public from potential danger. In San Francisco, Washington State s version of Megan s Law was upheld, adding that the humiliation of registering as a sex offender is no different than the harsh effects imposed such as losing a professional license, the right to vote or carry a firearm, or even deportation. None of these limitations have been found to be punitive (Law2aa).

In Doe v Patacki the U.S. Court of Appeals for the second circuit in New York held that Megan s Law did not violate the Ex Post Facto clause of the Constitution. It acknowledged that registering for a minimum of ten years is a burden, however they concluded that it was not a punitive one. They stated that the Supreme Court has upheld heavier burdens against Ex Post Facto challenges. They used examples like deportation, termination of financial support and loss of livelihood. They also held that requiring persons who are at a greater risk of re-offense to register is reasonable. They upheld a lower court s decision to dismiss claims of retroactive punishment. The law did not violate the Ex Post Facto clause of the Constitution (2ndCir).

WHAT NEEDS TO BE DONE?

I propose some changes and extensions of the laws. First, I propose federal legislation similar to that which Delaware passed and Florida did not, that all sex offenders should be required to obtain an ID card or driver s license that designates them as what they are. The cost of such a project would be minimal, a simple Y placed upon the identification and a one line sentence on the back that interprets what that letter stands for. These changes to the current system would be minuscule and not affect the financial structure of any private or state run divisions of motor vehicles. There are 264,000 sexual offenders in the entire United States, a simple Y placed upon the identification of these criminals is not a burden to any of these agencies.

This policy is just as constitutional as Megan s Law itself. I believe that any challenges to this policy would suffer the same defeats as when Megan s Law was challenged. It would be deemed constitutional and the ruling would be that there is indeed a humiliation but no punitive punishment. Also, it would be held that there is no extra punishment but protection from danger.

Having these types of identification is necessary because it would limit the amount of sex offenders who slip through the cracks of Megan s Law. This would be done in one primary way. Though driving has been held a privilege, in today s world it is almost a necessity. This would be a backup plan for Megan s Law and reinforcement for the Pam Lyncher Act. Therefore the law helps track offenders from state to state and inhibits the ability of the criminal to undermine the law.

Currently, all fifty states have a version of Megan s Law, however, only thirty seven states have both registration and notification as part of the law. The remaining thirteen states lack the notification section of Megan s Law. This in essence makes the law a paper tiger. Without notification of the public, what real use is the law? I would like to enforce the standards of the Federal Megan s Law for all states. The states without notification laws would have to submit programs that cover the levels of risk, who gets notified, and verification of current residence. This is necessary because with registration in the absence of public notification, the public is at the same risk as if there was no Megan s Law at all. As with all other versions of Megan s Law, this would pass as constitutional in those states.

I also support SB 700. This act increases punishments for felonies and sex offenders. The bill was not passed into law. The law that I propose is based on SB 700. The high rate of recidivism among sexual offenders requires us to impose life sentences with the possibility of parole for sex offenders who are found to be predatory sexual offenders. The categories that would indicate that a sex offender is of the predatory class are the following:

1. Rape

2. Rape of a Child

3. Child molestation

In order to be found of the predatory nature, the offender must fit one of these conditions:

1. Has been previously convicted of these offenses.

2. Is found to have sexually predatory propensity based upon an evaluation by the Department of Mental Health.

I also propose that the law increase the minimum sentences that sex offenders are punished by. The current punishments for sex offenders are these:

Class A felonies punishable: 10-30 years or life

Class B felonies punishable: 5-15 years

Class C felonies punishable: No minimum to 7 years

The act proposed would increase all of these. The new conditions would be:

Class A felonies punishable: 15-30 years or life

Class B felonies punishable: 10-25 years

Class C felonies punishable: 3-10 years

As always the offenders would have to register under Megan s Law no matter what the length of the sentence was. This act is necessary because of the high re-offense rate of sex offenders. I also believe that a longer length of sentence will help authorities in deciding the risk level of sex offenders. In that case, in may help with the decision of due process rights.

Along the same lines as increased minimum punishments, I am in favor of sentencing sex offenders to life in prison without the possibility of parole for offenders who have committed more than one offense in the same violent grouping. This grouping would include:

1. Rape

2. Rape of a child

3. Child molestation

4. Sexual assault

These new sentencing measures are a variation of the Three Strikes and you re out

law brought on by the murder of Polly Klass in California. This law would prevent sexual offenders from being released at all if they have violent tendencies and have been proven by action and by corrections therapists to be unable to conform to community norms.

I also advocate the use of an act that enables the corrections department to use tracking devices for paroled sexual offenders. After the offenders sentence has reached its maximum term, then this program would no longer be applicable to them. However, courts have upheld in other convicted felons cases that this as a condition of parole was constitutional. The program of electronic monitoring would be applied to sexual offenders for the duration of their sentence. This program however, will cost more money than many of the other programs. The equipment needed is an expensive proposition, but the cost is offset be negating the ability of sexual offenders to undermine the existing laws.

The program known as the Intense Supervision Program would give a solution, although temporary, to the monitoring of sex offenders. This program would apply to all sex offenders who are readmitted to the community through parole. The program is only an extension of the existing registration laws and could easily be made a part of the conditions of parole, just as it is for other typed of offenders. This law could also stand up to the tests of the Constitution because of the threat that sex offenders pose to society.

Another measure that I would like to propose is more severe punishment to those who undermine the boundaries of Mean s Law and its extensions. Convicted felons will attempt anything to avoid any further notice of their past offenses, it is no different for sex offenders. Name changes, address changes, loopholes to the existing laws; it is conceivable that a sex offender will use any means to avert attention to himself. New laws are needed to limit the number of offenders who will attempt to avoid existing laws and deter them from undermining authorities. The extent of these laws is clear, more severe penalties for these criminals. Most states punishments for not registering is only a misdemeanor. This new law would make not registering a felony and therefore a penalty of returning to imprisonment. I feel that the threat of returning to prison would be enough to deter sex offenders from not notifying authorities of their whereabouts.

CONCLUSION

Society did not create the stigma of having to deal with the burden of being a sexual offender, the offender himself is the originator of the shame that now he must cope with. We however must defend ourselves against the offenders who choose to blame society for their indiscretions rather than look at who is truly at fault.

Most of these offenses must be dealt with at the state level and my recommendations should be first considered at that level and then moved on to a federal level for national interests. Federal laws are needed in the case that local authority is found fallible. These crimes are loathsome and often discriminate to only women and children. These two groups are found to be the weaker and easier to violate of all groups and therefore must be protected with laws and action that consume every face of their lives. This covers schools, youth organizations, and churches for our children and for women the protection comes from the notification of the abominable humans amongst them.

Our nation s government has long been held a body that protects those who can not protect themselves. Many times it has come to the aid of people who needed its help. African-Americans first during the 1860 s and then during the 1960 s, women during the 1920 s, and now it must come to the protection of those who are most vulnerable, our children. It is time to put forth a great effort in order to contain such villainy to a minimum. Legislation is needed, men of action are required and awareness is called for. Clearly, our children are worth the time and efforts put forth by such people.

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