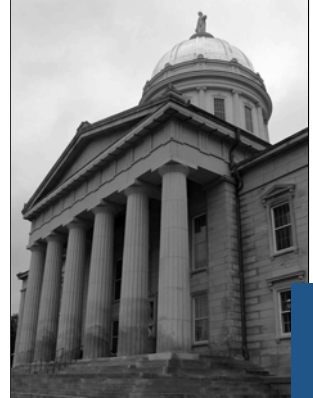




FOCUS: SEX OFFENDER LAWS



JUNE 2009

Like many states, Vermont has passed increasingly restrictive laws focused on individuals charged with or convicted of sex crimes.

Many such laws have been passed as the result of egregious incidents of sexual violence — hence “named” federal statutes such as “Megan’s Law” and the “Adam Walsh Law.” (Vermont does not personalize

laws, but many Vermont sex crime laws are also the result of specific incidents.)

Recently even municipalities have targeted sex offenders with special ordinances designed to restrict where they can live.

The laws raise numerous questions — about constitutionality, cost, and effectiveness. They also call into question society’s commitment to rehabilitation of offenders.

THE CONTEXT FOR LEGISLATION

For many years, vulnerable populations such as women and children suffered abuse and sexual violence in silence. The silence came in part from a criminal justice system that dismissed their complaints.

Women’s and children’s rights advocates drew attention to this injustice.

High-profile cases showed severe sexual abuse and violence against children. Many of the cases involved family members or trusted family acquaintances.

A child abuse reporting and registry system was created in Vermont in the 1980s.

Congress appropriated money to support victim services and victim advocacy organizations. Opposing sexual violence became an important issue for both women and men.

Vermont joined the rest of the nation and began passing legislation toughening penalties for sex offenses, and imposing restrictive conditions on individuals once they were released.

VERMONT TIMELINE

- 1996 — sex offender registry established
- 2004 — online registry created
- 2005 — study committee finds no evidence registries work
- 2007 — civil commitment “lite” law passed
- 2007 — DNA collection from felons mandated
- 2008 — residency restrictions established in some cities/towns
- 2009 — online registry expanded; DNA collection broadened.

SEX OFFENDER REGISTRIES

Vermont has two sex offender registries — a broad, “underlying” registry that contains information on all persons convicted of sex crimes, and an online registry that is a subset of the larger registry.

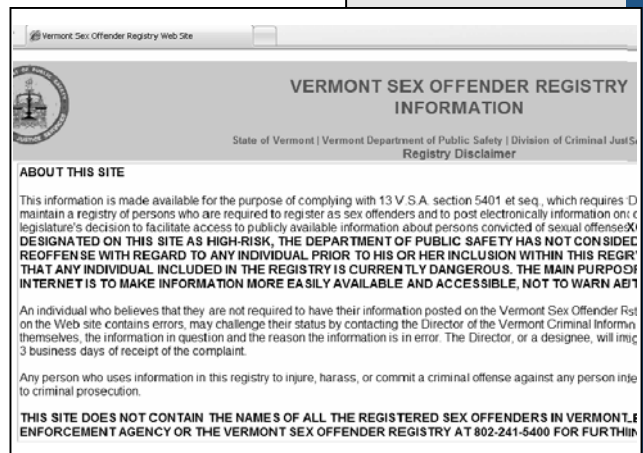
About 2,500 offenders are listed on the broad registry, to which only police have direct access. The public may request information if they can show a legitimate reason to do so.

The online registry is accessible to the public through the Department of Public Safety Web site. This registry originally contained only a small percentage of all sex offenders — about 10 to 20 percent. Inclu-

sion was based mainly on “risk assessment” — an offender’s perceived risk to re-offend.

In 2009 legislators passed a new law that will result in another 1,000 to 1,500 sex offenders added to the online registry —

roughly triple the original number. Risk to



offend will no longer be the main criterion for listing.

There is no evidence that registries work. Some national victim advocacy groups even worry that over-inclusive registries can harm public safety.

Detailed registries invite vigilante violence. In 2006 a Canadian man used the Maine registry to target offenders who had done their time and were living in their communities. He traveled to the homes of two and murdered them. Computer records show he also looked at Vermont's registry.

Fortunately, the Vermont registry did not then list specific street addresses. However, the registry expansion law of 2009 requires specific addresses be listed for individuals judged to be at high risk to re-offend, don't comply with sex offender treatment rules, or are the subject of an outstanding warrant.

CIVIL COMMITMENT

Civil commitment of sex offenders permits the state to continue to hold an individual past his maximum prison sentence if the state feels he will re-offend. Release is indefinite.

The individual is, in essence, jailed for crimes he hasn't yet committed. Yet the U.S. Supreme Court approved this approach in a 1997 case, *Kansas v. Hendricks*.

Gov. James Douglas began a push in 2005 for a Vermont civil commitment bill, but the Legislature demurred. Two legislative study committees concluded it was a bad idea and would be ruinously expensive.

Nonetheless, in 2007, during the chaos of a session's end, a version of civil commitment — termed "civil commitment lite" — was approved amid limited testimony and

rules suspensions.

Commitment occurs if someone deemed a "noncompliant high-risk sex offender" neglects, after release, to tell the Department of Corrections that he has changed jobs, enrolled in college, or gotten a new car, among other things. No Vermont offender has yet been subjected to this draconian treatment.

RESIDENCY RESTRICTIONS

Local ordinances restricting where people committed of a sex crime can live or be present have been adopted by several Vermont municipalities.

The "exclusion zones" are based on proximity to facilities such as schools, parks, and day care centers — essentially targeting child sex abusers.

Ironically, however, an estimated 90 percent of sex crimes against children are committed not by a stranger who lives in an apartment down the street but by family members or trusted family acquaintances.

The laws are largely seen as ineffective. They can actually be counter-productive, driving offenders underground with the result that police no longer know where offenders live. Vermont lawmakers passed legislation in 2009 discouraging communities from adopting the ordinances.

Challenges to residency restriction ordinances have been made in many states. Some have been successful, some not.

The ACLU-VT filed suit against the city of Barre in the spring of 2009, challenging its ordinance on the grounds that Vermont law prohibits communities from acting on issues for which they haven't been granted authority.



The dark areas mark portions of Barre in which those convicted of a sex crime may not reside, under a city ordinance passed in 2008.

COURT DECISIONS

- *Kansas v. Hendricks* (1997): civil commitment allowed
- *Smith v. Doe* (2003): registries not punishment, no ex post facto violation
- *Conn. Dept. of Public Safety v. Doe* (2003): registries don't violate due process

WHO'S A SEX OFFENDER?

Anyone committed of a sex crime as defined in law — 13 V.S.A. § 5401 (10).

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