Residency Restrictions for Convicted Sex Offenders: A Popular Approach on Questionable Footing

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Introduction

Municipalities across the country are adopting residency restrictions prohibiting convicted sex offenders from living in close proximity to places that children are likely to frequent. The number of sex offenders is large—by one report there are some 550,000 registered sex offenders nationally. As more and more local and state governments adopt residency restrictions, municipal lawyers and planners are increasingly finding themselves at the center of the debate. The literature and most studies suggest that residency restrictions do not reduce recidivism, do not offer any real protection for potential victims, are generally not legally defensible, and thwart efforts to reform offenders and return them to society. This however, is ignored by the emotional demands of community residents to enact such laws to “protect vulnerable children” from convicted offenders. From the developing body of case law, it is apparent that municipalities may have difficulty defending residency restrictions.

An impediment to adopting effective public policy for dealing with convicted sex offenders is widespread acceptance of incorrect information and faulty assumptions about sex offenses and the potential for sex offenders reoffending after conviction and release. A literature review reveals four significant misperceptions:
1. The victim is usually a stranger

The reality is that most victims are family, friends or acquaintances of the sex offender. While statistics vary, the general consensus is that about 75% of the victims are known to the sex offender. More often than not, it is not strangers who seek out victims at schoolyards, playgrounds, and bus stops. While the most shocking of sex crimes involves the abduction of a young child—a complete stranger to the sex offender—who is then sexually abused and murdered, statistically this is an outlier. About 93% of victims of sex offenders know the perpetrator. About 34% are members of the family and another 59% are acquaintances, according to the Bureau of Justice Statistics. This most common misperception, which many commentators refer to as “stranger danger,” can create the counterintuitive effect of having parents focus more on protecting their children from strangers, rather than protecting them from family and acquaintances.

2. Recidivism is high among sex offenders

Sex offender legislation is driven by the public perception that high recidivism rates require the isolation of sex offenders. However, major studies by the federal governments in the United States and Canada have found that sex offense recidivism rates are substantially lower than most people believe. The U.S. Department of Justice reviewed recidivism rates among 9,000 offenders three years following their release from prison and found that only 5.3% reoffended. The Canadian government found a 14% average rate of recidivism among sex offenders from a sample of 30,000 followed over a four to six year period after their release. Even studies for periods as long as 15 years after release show the rate of recidivism to be remarkably low—76% were not rearrested for sex crimes. According to the Bureau of Justice Statistics, sex offenders have rates of recidivism among the lowest of all criminals; yet when asked what percent of

sex offenders commit another sex offense, the public offered a mean percentage of 74% and a median of 80%, virtually the inverse of the reality.

3. All sex offenders are equally dangerous

Gertrude Stein’s “A rose is a rose is a rose is a rose” does not apply to sex offenders. There are horrible, violent, and despicable pedophiles, such as John Couey, who murdered nine-year-old Jessica Lunsford, to teenagers experimenting with sex, such as Wendy Whitaker. Wendy Whitaker was a 17-year-old high school sophomore who had oral sex with a 15-year-old male classmate. In 1997, she pleaded guilty, received five years probation, and ended up on the state’s sex offender registry. Now, because of the state’s residency restrictions, at age 28 she can not live in many places. She has already had to move twice and has just been told by the local sheriff that she has to move a third time because the house she owns with her husband is within one of the restricted areas. As she says: “It’s a recurrent nightmare. It’s like a roller coaster. One minute, I’m okay, and then, I’m not. This time, I really thought everything was going to be all right.” Other offenses involving nonviolent and consensual sexual behavior may also be swept up with the broad brush of reporting requirements. After New York enacted penalties for “sexually motivated felonies”—or felonies committed for the purpose of “sexual gratification”—in 2007, the Montgomery County District Attorney sought to bring sex offense charges against a man who used a stolen credit card to pay for a stripper. Other sex offenders continue to be subject to registration requirements decades after their offenses and sometimes when their age and health conditions make recidivism unlikely.