

Free sanctions applied to sex offenders in united states research paper sample

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Introduction

The United States of America has experienced a new trend in the draconian restrictions on the activities and privacy of sex offenders convicted under the United States criminal justice system. This new trend is troublesome and the question of whether the burden fits the crime is common among many citizens. However, it is also, true that there an increase in the number of sex offenders, which is also a worrying trend. The question of morality, societal values and norms seem to have lost value among many people. The point of concern is on what are the best measures that can be taken to curb this vice and create a better society. Chances of creating, a win-win situation on these issues is a difficult one and even becomes more complicated in the hands of the United States criminal justice system. Numerous questions are asked on the rulings given by the judges on matters relating to sex offenders.

The government in recognition of the gravity of these matters in 1996 and 2006 has held national dialogues with an emphasis to the crime against children. It is in recognition to that such an incidence is currently sparked by several high-profile incidents. Other efforts on the same include; registrations of laws. The congress passed two major laws requiring states to register and regulate sex offenders (Cole, Smith & DeJong, 2013). They would particularly focus on those that reside within their borders. This particular law was welcomed by many, but did not lack criticism from a few who had doubts on the capacity of the states to conduct this exercise credibly. Soon after the states had this responsibility, the municipalities soon caught on, and these meant that the restriction was stricter. Following these developments, the subsequent following five years saw local governments

forbid the sex offenders from residing within 2000 feet of schools (Cole, Smith & DeJong, 2013). The other regulations relating to this included; sex offenders were supposed to be within the 500 feet of parks and movie theaters. Later on the regulations included other public places such as libraries, photograph minors, and restricted on using the social networking websites such as Facebook and twitter. The magnitude of these regulations did not end here as in other states sex offenders were required to advertise their status on drivers licenses, wear GPS bracelets and notify the local police when present in the country within the state for a period longer than 10 days. These extreme measures also included; also, providing notice to all neighbors especially those within the quarter mile radius when they move, and it was a requirement for the payment of \$100 on an annual basis for the maintenance of sex offender registries. However, the measures taken by the local government on protecting the local communities were important. There was a general feeling among the people that the governments were adding them some burdens. Their concerns were that the regulations developed were unclear, whether they would last for a decade or life. However, it was clear that most of this regulations and laws were subject to the jurisdiction and the type of crime committed.

The laws and regulations controlling the sex offenders in the society are good, but the issue of compliance has been a major point of concern. It is because some of the sex offender restrictions are harder to comply with than it is apparent at first glance. For example, residency restrictions have the potential for creating overlapping forbidden zones that prevent sex offenders from living in the city entirely. However, it is also clear that sex offenders

who fail to comply with these regulations risk going to prison for long periods. This situation has seen interesting developments in some of the states such as Miami, whereby sex offenders have formed places for camping under a bridge, which is among the locations identified as an exclusion zone.

Legislators justify sex offender restrictions on the basis of preventing recidivism and often see sex offenders as the main targets. The argument is that if the public is informed of existing dangerous past sex offenders in their neighborhood, and those offenders get prevented from accessing public areas visited by vulnerable groups of persons. The future sexual assaults could possibly be prevented and easily controlled. Based on this premise, the restrictions are often indiscriminately perceived by all sex offenders, irrespective of their danger.

Notably, some of the reasons that may make the sanctions not warranted to sex offenders are; many sex offenders' restrictions apply in most cases to first-time offenders and those involved or convicted of minor offenses. An example is the case of an eighteen year boy who had sex with his sixteen year old girlfriend and the case ended up convicting the boy for statutory rape in Arizona. The case leaves one wondering, is it justified by any chance for the boy to be separated from the society by being controlled public places and required to register as a sex offender. Sex offender restrictions statutes, if not carefully understood and developed may be carelessly drawn and contradict the constitutional checks. Many legal experts are of the opinion that, the restrictions meet the rational basis test, therefore, they allege that sex offenders pose a threat of recidivism (Uggen, Manza &

Thompson, 2006). Ultimately, this results to restricting their freedom of movement or privacy, which reduces the threat, even when they fail to target the sex offenders who pose the greatest and actual danger. The courts in recognition of the magnitude of the issues revolving around the sex offenders have resulted in reviewing some of their previous rulings (Andrews & Bonta, 2010). For example, in the recent times the Courts had demonstrated that they condoned sex offender restrictions statutes under rational basis review even when some of the legislators acted on completely erroneous information relating to recidivism rates among sex offenders. It has further led to the Supreme Court to advocate constitutional review of sex offender restrictions. In order to demonstrate the willingness to change the statutes, some of the recent cases have witnessed changes in the interpretation of the statutes. For example, in the recent case of Smith v. Doe, the Court was clear and supported that community notification laws for sex offenders do not violate the Ex Post Facto Clause. In this case, the argument was that a post-sentence restriction on sex offenders could only be identified to be “civil” rather than “criminal.” It was an interesting perspective in the cases on sex offenders (Uggen, Manza & Thompson, 2006).

Presumably this means sex offender restrictions cannot be subjected under the cruel and unusual penalties or controversial clauses, either. This is because for a significant amount of time sex offender restrictions have typically enrolled sex offenders based on prior convictions at trial (Shoham, Beck & Kett, 2008). The Court held in the case of Smith that the clauses do not need the government to hold individualized hearings to determine

whether an offender should be subject to sex offender restrictions. However, the lack of constitutional checks and balances might often be surprising in that courts focus on reviewing civil sanctions for the purposes of proportionality especially within the underlying mistakes under the due process clauses.

There have been a series of studies from scholars who have conducted studies that show the effect of the sanctions, and many have given recommendations that do not endorse the punitive measures. For example, scholars have proposed constitutional review of sex offender restraints in regards to doctrines other than the ones articulated in the clause, “proportionality offers unique advantages.” Contrary to the review under the Ex Post Facto Clause, proportionality does not contravene Smith’s judgment that sex offender restrictions are strictly civil regulations. Therefore, unlike review for violation of certain constitutional liberties, such as speech, proportionality can be used to evaluate all sex offender restrictions without focusing to just those that infringe particular substantive rights and privileges. Proportionality analysis is a major issue that demonstrates and seeks to oppose the tough sanctions the United States criminal justice system uses and applies to sex offenders. Proportionality analysis also focuses to the problems with many recent sex offender restrictions, which target people, more harshly, than is necessary to achieving the objectives. This analysis could therefore go a long way to ensure they curb sex offender restrictions and review durations that are directed indiscriminately on or all categories of sex offenders, especially those convicted of non-violent crimes (Andrews & Bonta, 2010). Based on this argument, it is clear that the

sanctions are unwarranted due to the nature of indiscrimination and lack of justice in the administering of the sanctions.

Tough sanctions relating to Juveniles

Understanding Federal sex offenses is an important step and especially the ones against children. Sex offenses against children are divided into three which includes; pornography, transportation, and criminal sexual abuse (Shoham, Beck & Kett, 2008). The pornography guidelines involve convictions under 18 U. S. C. §§ 2251 and 2252. These guideline offenses involving the production of pornography include; advertising for minors to participate in pornography production and to take sexually explicit photographs of minors. The second guideline covers; maintaining computer bulletin board where subscribers can access or download child pornography, trafficking in child pornography or sending pornographic material through the mail. Receipt of such material can be covered. Third Guideline involves possession of items of child pornography.

The transportation guideline covers convictions under 8 U. S. C. § 1329 and 18 U. S. C. §§ 2421, 2422 and 2423(a). The statute takes into consideration, transportation of a minor for purposes of prohibited sexual conduct or other forms of prostitution. However, most cases that do not involve prostitution practices involve sexual abuse. Criminal sexual abuse in its various degrees can be prosecuted under 18 U. S. C (Barbaree & Marshall, 2008). The most serious and of concern to many people is, aggravated sexual abuse. It includes; rape by means of force, threats, or coercion, and other acts with a child under the age of 12 that are sexual in nature.

Notably, Federal sexual abuse convictions are only a small percentage of the total of nationwide convictions in regard to sexual abuse of minors. In the recently published data, it is estimated that there were approximately 8, 662 convictions related to the rape of a minor in state courts annually. Hence, it is evident from this estimate that federal convictions would easily account for approximately 1. 6% of such convictions nationwide. However, because the data provided are not available, similar contrasts and comparisons cannot be carried in regard to pornography offenses. In 2006, a sex offender registration and notification act (SORNA) was adopted. This act provides minimum standards for sex offender registration and notification in the United States. The main objective of the act is to close the potential gaps that existed under the prior law. It, therefore seeks to strengthen the nationwide network of sex offender registration and notification programs (Barbaree & Marshall, 2008). The coming of this act is a clear demonstration that there are many gaps that exist in the development of the regulations and laws relating to sex offenders. These also prove that there is the need to also review the tough sanctions, and they are hence, not warranted due to the existence of the gaps in the regulating system. Development and application of laws and regulations should not leave gaps and loopholes exposing the public to harsh sanctions due to lack of clarity and sufficient development of the laws (Brayford, Cowe & Deering, 2012). One of the most critical clauses on the sex offenses under SORNA includes; specified offenses against minors. This clause further escalates the need for reviewing regulations relating to sex offenders and questions of warranty to the sanctions. Some of the unclear offenses on specified offenses against minors

include; non-parental kidnapping and any conduct that is a sex offense against a minor. Despite, the title of the clause ' specified offenses', the highlighted offenses should further be clarified because they lack enough specificity.

There are many complex factors and scenarios that may revolve around the issue of the sexual offense especially in relation to minors (Brayford, Cowe & Deering, 2012). Lack for a complete analysis of these scenarios and factors in developing the laws and regulations relating to sex offenses may cause unnecessary sanctions. For example, non-parental kidnapping and non-parental false imprisonment are situations that might not necessarily involve sex offenses. Hence, subjecting the convicts of these acts to sex offender restrictions may be warranted.

There are other reasons why the sanctions in the United States criminal justice system applied to sex offenders should not be warranted. One, the laws and regulations developed by the local governments do not take into consideration or compare the harm inflicted on society by the act to the severity of the sanction taken against the offender. The development of the laws relating to sex offenders is in most cases subjective instead of being objective. It creates room for unfairness and biases on handling sex offence cases and hence sanctions could be called for rightfully.

Conclusion

The sanctions directed to sex offenders are good in bringing order and sanity to the society. However, prejudiced implementation process of the rules and regulations related to sex offenders is a common scenario and raises the

concern whether the sanctions must be warranted. Like any other criminals, sex offenders have the opportunity to reform hence stern actions, and sanctions mustn't be warranted in a manner that denies the victims chances of reforming. Sex offenders deserve due process rights and hence, prejudicial and ill- informed burdens imposed indiscriminately on all sex offenders should be disbanded and especially the sanctions that are not well developed with great interest for society development must not be warranted.

References

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