

## WHY ACLUM OPPOSES SEX OFFENDER RESIDENCE RESTRICTIONS

Several municipalities in Massachusetts have adopted or are considering ordinances that prohibit sex offenders from living within a certain distance of schools, daycare centers, parks and other places where children congregate. ACLUM has opposed these local restrictions. To be sure, it appears in most cases that these residence restrictions are motivated by an understandable desire to protect children from individuals who have been convicted of sex crimes. The empirical data suggest, however, that these measures are not only ineffective, but may actually increase the likelihood of sex offenses. In addition, they raise serious constitutional questions by infringing upon well established civil rights.

Residence restrictions frequently have the effect of punishing both sex offenders and their families. A sex offender who is subject to residence restriction may be required to move away from his family in order to avoid violating the law. Alternatively, the entire family may be forced to relocate or to leave the community. Because schools, parks and daycare centers are usually located throughout the community, what is often left for offenders and their families are industrial zones and expensive neighborhoods. As a result of a similar law in Florida, 44% of offenders had to move away from family members and 57% had difficulty finding affordable housing.

Despite the hardship which such laws create for ex-offenders and their families, there is little evidence to suggest that these measures are effective. There is no correlation between residence and sexual abuse. Empirical studies have found that sex offenders often commit crimes outside the area where they live. Moreover, residence restrictions are based on the flawed assumption that most sexual abuse is committed by strangers. In fact, most sex crimes are committed by family members or acquaintances, not by strangers who find their victims at schools or parks.

There is a substantial body of evidence, however, that uprooting sex offenders can actually increase the the risk of sex crimes. This is because residence restrictions often force offenders to live away from supportive family members and employment and treatment resources. This lack of community support structures tends to make rehabilitation more difficult and relapse more likely. And in some cases, the restrictions can drive sex offenders “underground” and make them less likely to register or indicate their correct address. In Iowa, for example, the enactment of a statewide residence law was followed by an increase in the number of sex offenders who could not be accounted for.

While courts in other jurisdictions have disagreed as to the constitutionality of sex offender residence restrictions, there is no question that local ordinances of this type raise serious constitutional questions, given their impact on sex offenders. The Due Process Clause of the Fourteenth Amendment protects certain fundamental rights, including the right of family members to live together as a unit and the right to travel. In addition, such measures would appear to be invalid as *ex post facto* laws, in that they impose an additional punishment long after the time for the offense. They differ in this respect from sex offender registration laws in that they have no demonstrable regulatory purpose. Finally, most of the measures which have been proposed in Massachusetts discriminate on the basis of wealth. Those who own their own homes are usually exempt from the law, whereas renters are required to move.

There are, of course, alternatives to what amounts to a policy of banishment. Massachusetts already has a comprehensive sex offender registration requirement. And an increasing percentage of sex offenders are subject to parole supervision by parole officers who are well situated to make individualized decisions about how to supervise and control offenders. Finally, there are numerous studies indicating that offenders who participate in psychological treatment are less likely to commit additional crimes. Residence restrictions add little to these existing approaches and may actually interfere with them.

## RESOURCES

*Peckenpaugh, Controlling Sex Offender Reentry: Jessica's Law Measures in California*  
[http://www.law.stanford.edu/programs/academic/criminaljustice/workingpapers/JPeckenpaugh\\_06.pdf](http://www.law.stanford.edu/programs/academic/criminaljustice/workingpapers/JPeckenpaugh_06.pdf)

*Levenson, Sex offender Residence Restrictions: A Report to the Florida Legislature*  
<http://ccoso.org/residence%20restrictions%20FL.pdf>

*Kersting, New hope for sex offender treatment*  
<http://www.apa.org/monitor/julaug03/newhope.html>

*Levenson & Cotter, The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?*  
[http://www.nacdl.org/sl\\_docs.nsf/issues/sexoffender\\_attachments/\\$FILE/Levenson-1000feet\\_rule.pdf](http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/Levenson-1000feet_rule.pdf)

*Iowa County Attorneys Association, Statement on Sex Offender Residency Restrictions in Iowa*  
[http://www.nacdl.org/sl\\_docs.nsf/issues/sexoffender\\_attachments/\\$FILE/IowaProsecutors-ResRestricts\(2006\).pdf](http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/IowaProsecutors-ResRestricts(2006).pdf)

*Iowa's Residency Rules Drive Sex Offenders Underground*  
<http://travel2.nytimes.com/2006/03/15/national/15offenders.html>

*Kansas Department of Correction, Twenty Findings of Research on Residential Restrictions for Sex Offenders and the Iowa Experience with Similar Policies*  
[http://www.dc.state.ks.us/SOHR/Twenty Findings on Restrictions for Sex Offenders.htm](http://www.dc.state.ks.us/SOHR/Twenty_Findings_on_Restrictions_for_Sex_Offenders.htm)