

From the Attorney's Desk
Lyn Ms. Schollett
Spring 2003

Juvenile Sex Offenders Required to Register in Illinois

Minors who commit serious sex offenses now will have to register as sex offenders with the state of Illinois, perhaps for the rest of their lives.

This significant policy shift advances the important goal of protecting Illinois citizens from known sex offenders, but it does not go far enough. Although juvenile sex offenders will be registered with the Illinois State Police, information about these offenders still will not be available to many of the people most able to protect children from sex offenders, including parents, neighbors, and other members of the public.

In a divided opinion, the Illinois Supreme Court upheld the constitutionality of requiring juvenile sex offenders to be subject to many of the state's registration and notification provisions. In the same opinion, the court held that the juvenile may not be banished permanently from his community. In Re: J.W., 204 Ill.2d 50, 787 N.E.2d 747, 272 Ill. Dec. 561 (2003).

The Respondent, J.W., a 12-year old boy, was adjudicated delinquent for aggravated criminal sexual assault, stemming from multiple offenses committed against two younger boys. The court sentenced J.W. to five years' probation, required him to register as a sex offender for the remainder of his life, and prohibited him from living in the town of South Elgin, where he committed the offenses. J.W. did not contest the five-year probationary period, but did appeal the latter two conditions of his probation.

Under the Sex Offender Registration Act most sex offenders are required to register their residence (and more recently, their place of employment or education) with the state of Illinois for ten years. 730 ILCS 150/7. Those persons found to be sexual predators, which includes persons convicted of aggravated criminal sexual assault, are required to register for the duration of their lives. 730 ILCS 150/2(E)(1). Effective July 1, 1999, the Registration Act was amended to add the definition of "juvenile sex offender" as well. 730 ILCS 150/2(A-5). Following this amendment, a number of cases interpreting the interaction of these three sections worked their way through the Illinois courts, resulting in this opinion.

In challenging his probation conditions, J.W. first argued that requiring him to register as a sex offender for his entire life violated his right to substantive due process. When a statute does not affect a fundamental constitutional right, as is the case here, the statute complies with the right to substantive due process if it bears a rational relationship to the purpose the legislature sought to accomplish in enacting the statute. The court stated that the purpose of the registration and notification laws in Illinois is to assist law enforcement in the protection of children. Keeping law enforcement and the public

aware of the whereabouts of convicted sex offenders is rationally related to that goal, and therefore satisfies the requirements of due process, according to the court.

In its analysis, the court also recognized the documented shift in the purpose of the juvenile court system in Illinois, from one focused exclusively on rehabilitation of the juvenile offender, to one that today includes protection of the public and holding juveniles accountable for violations of the law. The court also emphasized that information about juvenile sex offenders would not be available to the general public in the way that information about adult offenders is. Instead, it will be given only to schools in the area where the juvenile sex offender resides and to any person whose safety might be compromised by the juvenile sex offender.

J.W. next argued that requiring him to register violates his eighth amendment protection against double jeopardy. The court quickly resolved this question by pointing to its prior opinions holding that registration requirements are not a form of punishment for a sex offender, and therefore cannot violate a person's protection from double jeopardy.

J.W.'s third constitutional attack on the order requiring him to register as a sex offender was to argue that such a requirement is cruel and unusual punishment, by allowing for public dissemination of information about a juvenile's crimes. The court reiterated both the limited dissemination of such information and the fact that such dissemination is not in fact a punishment. As a result, requiring a juvenile to register also is not a violation of his protection against cruel and unusual punishment.

Leaving behind his challenges to the registration requirement, J.W. also challenged the order that he leave South Elgin permanently. The court looked more favorably on this claim. Although a trial court is entitled to require a person to leave a geographical area as a condition of probation, that requirement must have some limits on it. Prohibiting J.W. from re-entering South Elgin at any time in the future for any purpose is an overbroad restriction, according to the court. This singular provision was remanded to the trial court with an instruction that the court place some limitations on this order.

As a result of this opinion, juvenile sex offenders will be required to register with the Illinois State Police. One issue that appears to remain unresolved at this point is the intended duration of such registration. The In Re: J.W. majority opinion held J.W. to be a sexual predator and upheld his obligation to register for life. By contrast, the dissenting opinion and the policies and procedures implemented by the Illinois State Police find that juveniles can only be required to register for ten years.

Regardless of the duration for which juvenile sex offenders will be required to register, In Re: J.W., is a landmark case in the protection of children in Illinois. By requiring juvenile sex offenders to register, the state has begun to acknowledge what victims and victim advocates have long known: sometimes very young people commit very serious sex crimes.

While as a state we may have more hope that younger offenders can be rehabilitated, we cannot overlook the impact of their crimes and the reality that they may offend again. The pain, anger, fear, confusion and humiliation that a victim of a sex crime feels varies little based on the age of the offender. For that reason, juvenile sex offenders should be monitored in the same way as adults who commit these serious crimes. The threat of a young sex offender raping again is very real. Requiring juvenile sex offenders to register is a positive step forward in protecting Illinois children from known sex offenders. However, society deserves access to the same information about juvenile offenders that is available about adult sex offenders. Parents, teachers and other responsible adults deserve to be given the information needed to protect their children from young rapists. It is time for Illinois to take the next step and share the information it now has about Illinois' youngest sex offenders.