



DPS TRAINING BULLETIN

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ALASKA'S SEX OFFENDER
REGISTRATION ACT
DOES NOT VIOLATE U.S. CONSTITUTION

Reference: Delbert Smith and Bruce Botelho v. John Doe I et al. United States Supreme Court No. 01-729 March 5, 2003

FACTS:

Responding to the high rate of recidivism by sex offenders and a desire to inform residents about offenders, the Alaska Legislature passed the Alaska Sex Offender Registration Act. Other States passed similar legislation. These laws are commonly referred to as "Megan's Law," a seven-year-old New Jersey girl who was sexually assaulted and murdered by a neighbor. The neighbor, who was unknown to the victim's family, had prior convictions for sex offenses against children.

Alaska's Act was passed in 1994 and was made retroactive. The Act requires offenders to register with the Department of Public Safety (DPS). The offender's name, aliases, address, photograph, physical description, vehicle license number, place of employment, date of birth, crime for which convicted, date of conviction, and the court and location of conviction are all made available to the public. The DPS also posts this information on the internet. In addition, the Act requires offenders to notify the DPS about changes in their information, including any change in physical appearances.

John Doe challenged this Act, arguing that it is punitive in nature and the retroactive aspect should be declared

unconstitutional. Doe et al. prevailed in the Ninth Circuit Court of Appeals. The State of Alaska appealed this case to the United States Supreme Court.

ISSUE:

Is the Alaska Sex Offender Registration Act punitive and does its retroactive application violate the ex post facto clause of the United States Constitution?

HELD: No.

REASONING:

1. Nothing on the Statute's face suggests that the Legislature sought to create anything other than a civil scheme to protect the public from harm.
2. The Act does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences.
3. Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record. (emphasis added)
4. Offenders subject to the Alaska Statute are free to move where they wish and live and work as other citizens, with no supervision. Although registrants must inform the authorities (DPS) after they change their facial features (such as growing a beard), borrow a car, or seek psychiatric treatment, they are not required to seek permission to do so.

NOTES:

The fact that the Act's registration provisions are codified in the State's Code of Criminal Procedure is not dispositive, because its location does not transform a civil remedy into a criminal one. The offender only commits a criminal act when he or she does not register as

required by the Act. The Court stated that (a) the Act does not punish; (b) the Act does not subject registrants to an affirmative disability or restraint; (c) the Act does have a rational connection to advance public safety by alerting the public to the risk of sex offenders within their community; and (e) the Act's regulatory scheme is not excessive with respect to the Act's purpose.

In another opinion released the same day (Connecticut DPS et al. v. John Doe, No.01-1231) involving Connecticut's sex registry law, the Court ruled that the Statute did not violate "liberty interest" and it did not matter whether sex offenders were determined to be "currently dangerous."

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