

Sex Offender Registration Law Update #1
February 7, 2008

1. **In re Crockett: 2008 Ca. App. LEXIS 159 (Jan. 31, 2008)**

- Interstate travel after juvenile adjudication
- No mechanism to require registration in receiving state

D was adjudicated delinquent of a penetration sex offense in Texas. He was placed on probation and Texas agreed that he could move to California to live with his mother. One of his probation conditions was that he was required to register as a sex offender in California. Even though his probation was transferred via Interstate Compact, the court concluded that he was not required to register as a sex offender in California according to California's sex offender registration statute. Therefore, he could not be prosecuted for failure to register.

SORNA Note: Once SORNA is fully implemented, the minimum registration requirements for the most serious juvenile sex offenders (required to register under SORNA) will be uniform and enforceable across state lines.

2. **Buffington v. State, 2008 Ark. LEXIS 71 (Jan. 31, 2008)**

- Sex Offender Registration scheme as "regulatory, not punitive"

Arkansas' registration and notification components are regulatory and not a form of punishment and his Habeas challenge to a requirement to register as a sex offender was rejected.

3. **Commonwealth v. Becker, 2008 Mass. App. LEXIS 63 (Jan. 25, 2008)**

- Interstate travel after adult conviction
- Registration required in receiving state
- No infringement on right to travel
- Not cruel and unusual punishment

D was convicted of a sex offense requiring registration in New York State in 1995. He subsequently moved to Massachusetts. He was notified, in person, of his registry obligations once in Massachusetts. Even though his New York conviction was a misdemeanor, Massachusetts' "like offense" was a felony and required registration, despite D's conclusions

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from reviewing the sex offender registry statutes to the contrary. The court also rejected his constitutional arguments regarding right to travel and cruel and unusual punishment.

SORNA Note: Once SORNA is fully implemented, the minimum registration requirements for sex offenders will be uniform and there will be immediate communication between jurisdictions when an offender moves from one state to another.

4. **Doe v. Pennsylvania, 2008 U.S. App. LEXIS 1265 (3d Cir. Jan. 23, 2008)**

- Disparate treatment of out-of-state offenders

Pennsylvania's registration scheme mandated community notification for offenders with out-of-state convictions, where those with Pennsylvania convictions were only subject to community notification after a civil hearing to determine if they were a 'sexually violent predator'. This disparate treatment was found to violate the equal protection clause and D's 42 USC §1983 claim was granted.

5. **Good v. Superior Court, 2008 Cal. App. LEXIS 62**

- Retroactive application of DNA sampling of sex offenders

Held that California's Proposition 69, passed in 2004, requires "misdemeanants who must register as sex offenders to provide DNA samples, regardless of whether the conviction triggering the registration requirement occurred before or after" the passage of Prop 69.

6. **State v. Finders, 2008 Iowa Sup. LEXIS 4 (Jan. 11, 2008)**

- Residency Restrictions
- Grandfather clauses

D was convicted of a sex offense against a minor. After his conviction, Iowa passed a 2,000 foot residency restriction law. D's house was within a 2,000 foot zone, but he was permitted to stay there because he was "grandfathered" in with the law. However, when D moved to a new home in that same 2,000 foot zone, he was no longer 'grandfathered' and could be prosecuted for violating the residency restriction. The 'grandfather' provisions are tied to the residence, not the individual.

7. **Christie v. State, 2008 Ark. App. LEXIS 10 (Jan. 9, 2008)**

- "Knowingly" Fail To Register

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Arkansas' failure to register statute does not require proof of a culpable mental state. "Failure to register as a sex offender is a strict-liability offense and...proof of a particular culpable mental state is not required."

8. Mireless v. Bell, 2008 U.S. Dist. LEXIS 2451 (D. Mich. Jan. 11, 2008)

- Ineffective assistance: failure to advise of registry requirement

Even though D was not advised that he would be required to register as a sex offender, because it is a "collateral consequence of conviction...and an attorney is not ineffective for failing to notify his client of all the collateral consequences of a plea", D's attorney was not ineffective and his claim was rejected.

9. Wallace v. State, 2008 Ind. App. 4 LEXIS (Jan. 9, 2008)

- Ex Post Facto: "intent-effects" test
- Plea Agreement

D entered in to a plea agreement in 1989 for a child molestation charge; the agreement did not call for registration as a sex offender. Sex offender registration did not exist at the time. In 2001, legislation was passed which required D to register as a sex offender. D refused to do so because the plea agreement didn't say he had to. However, the plea agreement did not control D's requirement to register, and D was properly charged and convicted of failure to register as a sex offender.

Evaluated D's ex post facto challenge under the "Intent-Effects" test of Smith v. Doe and has a good breakdown of those elements. In Indiana "the sex offender registration provisions [are considered to be] civil in nature."