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Sex Offenders Living Near Schools

By Amy J. Borman

A recent decision out of the United States District Court for the Northern District of Ohio has garnered national attention and may affect communities throughout the state and across the country. Judge James S. Gwin ruled on September 4, 2007, that an Ohio law prohibiting sex offenders from living within 1,000 feet of a school is unconstitutional with respect to those who committed their crimes before the law took effect on July 31, 2003. The decision invalidated part of Ohio's Sex Offender Registration and Notification (SORN) statute, located at Ohio Revised Code 2950.034.

The case was originally brought by the Ohio Justice and Policy Center (OJPC) on behalf of Summit County sex offender Lane C. Mikaloff. Mr. Mikaloff plead guilty to charges of rape and aggravated battery in 1986, and served sixteen years in prison before returning to his family home in Akron in 2002. When Ohio's SORN statute was passed in 2003, Mr. Mikaloff found himself living within the so-called "buffer zone." He did not encounter any problems until 2005, when local prosecutors and other law enforcement officials were granted the right to file suit to evict offenders from homes located within 1,000 feet of a school. Mr. Mikaloff received an eviction notice shortly thereafter, which prompted this litigation.

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Because Mr. Mikaloff committed his crime 17 years before the residency restrictions took effect, Judge Gwin agreed with OJPC's argument that the restriction amounted to an ex post facto law. An ex post facto law is one that applies retroactively and criminalizes conduct that was legal when originally performed. Reaction to the decision was swift and strong, as other jurisdictions realized the possible implications of the ruling for their own sex offender laws.

Ohio Attorney General Marc Dann quickly issued a statement indicating that the decision applies only to Mr. Mikaloff and not to other sex offenders in the state. But this seems unlikely. Unless and until Gwin's ruling is reconsidered on appeal, the decision will control in northern Ohio when sex offenders committed their crimes prior to July 31, 2003. And according to data recently released by the Attorney General's office, this encompasses 7,099 individuals.

The OJPC contemplates an even broader application. The Center currently has a similar case pending before the Ohio Supreme Court, and other advocates have brought analogous cases before the courts in Florida, Georgia and Kentucky. It seems clear that the Mikaloff case holds some precedential value and that courts will look to Gwin's decision and line of reasoning when considering similar cases.

The Mikaloff case is, in fact, part of a growing trend. The *USA Today* reported in February 2007 that states across the country are taking a second look at sex offender residency restrictions. Some are choosing to stiffen their statutes, while others are easing up in the face of pressure from advocate groups, prosecutors and police. Locally, the Village of Ottawa Hills recently passed a new ordinance that prohibits sex offenders from living near public recreation land. One of the targets of the ordinance agreed to move voluntarily just one day before oral arguments were to be presented in Lucas County Common Pleas Court. The constitutionality of the Village's heightened residency restriction remains untested. The City of Toledo, in turn, is using the housing code to file nuisance charges against sex offenders living within 1,000 feet of school buildings. Two hundred sex offenders currently live within the 1,000 foot buffer zone. David Singleton, executive director of the OJPC, said that the move is "simply another attempt to try to enforce a flawed law."

The Ohio Supreme Court heard arguments on this issue in a related case in early October. A decision is expected some time this winter.

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