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Andrea Binion

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Federal and State Laws Improve Sex Offender Registry

By Andrea Binion

On September 14, 2005, the U.S. House of Representatives passed the Children's Safety Act of 2005¹ in an effort to protect more children from the psychological and physical damage that associated with being a victim of sexual assault.² The Act is expected to easily pass in the Senate, since few issues garner as much widespread support as those involving the safety and protection of children.³

Congress acted in response to concern over the amount of exposure sex offenders have to children. According to the U.S. Department of Justice, 67 percent of the victims of sexual assault are younger than 18 years old and 34 percent of victims are younger than 12 years old.⁴ The National Center for Missing & Exploited Children ("NCMEC"), an organization advocating improved child protection laws, proclaims sexual assault to be a desperate issue for children because these offenses are associated with a great risk of long-term psychological harm for the victim.⁵

State and federal officials hope their recent efforts will protect more children from the disturbing and damaging effects of sexual assault by improving the sex registry systems that work to keep track of these offenders after they leave prison.⁶

The NCMEC has identified some of the major loopholes in the present child sex offender registry laws. Studies have shown that there are increasing numbers of "lost" sex offenders - those who fail to comply with registration duties and remain undetected due to law enforcement's inability to track their whereabouts.⁷ Of the 550,000 registered sex offenders nationwide, at least 100,000 of those offenders are now lost or unaccounted for.⁸ Among the reasons for losing sex offenders: general mobility of society, stereotypical personality type of sex offenders as loners, and the specific efforts of convicted sex offenders to "forum shop," or research which states have lenient laws, and choose those communities where it is easier to live in relative anonymity.⁹ Because states are free to create their own registration and

notification procedures, the requirements in each state are quite different.¹⁰

Child advocates, including the NCMEC, have recommended changes to the registry system that would enable easier coordination among the people charged with protecting children.¹¹ Advocates have called for federal funding to assist states in maintaining and improving the sex offender registration and notification programs with the desired result being more consistency and uniformity among the state programs.¹²

The NCMEC is also in favor of new technology that would be developed for tracking offenders and improving communication between and among various agencies (law enforcement, corrections, courts and probation).¹³ The Children's Safety Act of 2005 attempts to close some of the loopholes cited by the NCMEC and other child advocates with multiple new registry requirements and increased criminal penalties.¹⁴ The Act proposes a comprehensive, national system for sex offender registration that would eliminate the inconsistencies that come with having so many separate state systems.¹⁵ The national Web site will contain information about all sex offenders in all states and any changes in registry information will be immediately communicated and electronically transmitted to all states.¹⁶ The Act will expand the amount of information required on the national registry to include license plate and vehicle information, along with information about each offender's DNA.¹⁷

The Children's Safety Act of 2005 was introduced by Rep. Jim Sensenbrenner (R-Wis.) with one of its main provisions mirroring a Wisconsin state law, where juveniles who commit sex crimes against children are placed on sexual offender registries along with other convicted sex offenders.¹⁸

Persons convicted in foreign countries for crimes against children also will have to register, as will persons convicted of possession of child pornography.¹⁹ All offenders with felony convictions will be forced to comply with lifetime registration.²⁰

Under the Child Safety Act, offenders must complete initial registration before they are released from prison as opposed to after being released, which is the current procedure.²¹ Offenders must then verify registry information in person every six months and must notify law enforcement within five days of any

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change.²² Offenders will also face increased penalties (a state or federal felony) for failing to register or verify their information.²³ An interesting addition to the sex offender laws is a three-year pilot program in 10 states that will integrate electronic monitoring into the registry program.²⁴

These new requirements are being hailed as great improvements to the system, but it will take time to implement these changes assuming quick passage of the Children's Safety Act of 2005 in the Senate. Fortunately, there are other efforts being made to improve the abilities of law enforcement to protect the safety of children. U.S. Attorney General Alberto Gonzales announced on September 26, 2005 that awards of \$26 million will be allocated to state agencies to help the agencies link to national criminal record systems maintained by the FBI.²⁵ Better integration of the federal criminal databases will allow law enforcement to more effectively organize their child protection efforts.²⁶

The federal government first addressed concerns regarding sex offenders in 1994 with the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Act ("Wetterling Act").²⁷ The Wetterling Act mandated that every state have a sex offender registry or forfeit 10 percent of federal funds for state and local law enforcement under the Byrne Grant Program.²⁸ Before this law took effect only five states required convicted sex offenders to register their addresses with local law enforcement; today, all 50 states have sex offender registries.²⁹ While the registries provided law enforcement officials knowledge of the whereabouts of convicted sex offenders, the public was not provided with this information until federal law mandated state community notification programs. In 1996, the Wetterling Act was amended to include Megan's Law, which required all states to create Internet sites containing state sex offender information.³⁰ This initiative advanced child protection goals, but some child advocates criticized Megan's Law, because, apart from the required Internet site, it did not set out specific methods of communication between law enforcement.³¹ The states also were given broad discretion in creating their own policies.³² Communities are at a great disadvantage if the whereabouts

of convicted sex offenders are not known because, of all criminals, sex offenders represent the highest risk of repeat offenses.³³

States are also doing their part to protect children from sex offenders. Illinois provides a good example of the national trend of states providing for increased child protection from sex offenders.³⁴ The Illinois Attorney General's Office led an effort to create the Illinois Sex Offender Registration Team (I-SORT), which was established in December 2003.³⁵ I-SORT has recently improved Illinois' sex offender registry by including a Spanish translation and a new label clearly identifying offenders as "sexual predators," those sex offenders who are judged to be the most dangerous to the community and are required to register for life.³⁶ I-SORT also has enhanced the Web site by including information on the criminal history of registered offenders, as well as information on whether the offenders are compliant with the registry laws.³⁷

Sharon Hurwitz, Executive Director of Court Appointed Special Advocates ("CASA") for Children in Illinois, expressed approval for the recent Illinois initiatives aimed at protecting children.³⁸ "Any program that provides for greater protection of children is desperately needed and appreciated because the Illinois Department of Children and Family Services estimates that more than 8,000 children are sexually abused every year in Illinois," Hurwitz said.³⁹

In response to these disheartening statistics, Illinois Gov. Blagojevich signed a bill in the summer of 2005 that created lifetime supervised parole for sex offenders.⁴⁰ The state has also launched an aggressive sex offender management plan that will include more parole agents and support staff to expand the monitoring of sex offenders.⁴¹ The Illinois Department of Corrections will also implement a Global Positioning System and use satellite technology to track movement of parolees.⁴²

Along with improving the sex offender registry and sex offender management plan, Illinois recently has launched the nationally recognized Child Lures Prevention Initiative, which teaches parents and children to recognize potential danger signs and make smart decisions to avoid child predators.⁴³ The program will help protect children against predatory crime.⁴⁴

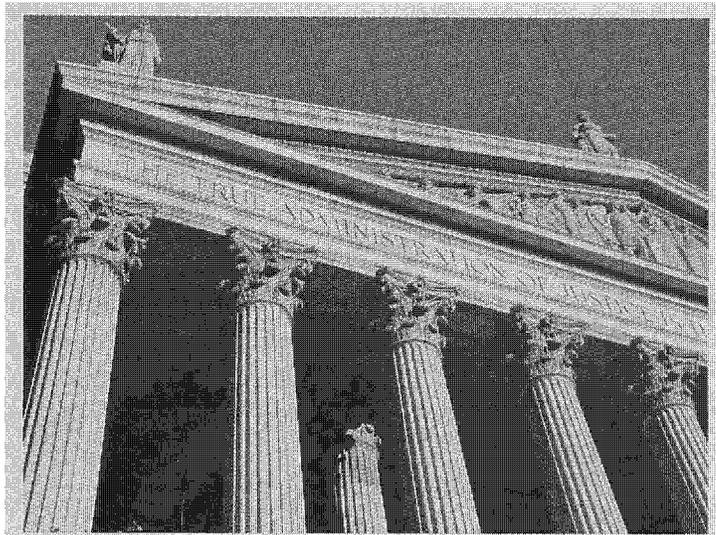
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Supreme Court Says no Federal Guarantee of Protection

By Shauna Coleman

In a landmark decision, the Supreme Court held in *Town of Castle Rock v. Gonzales*¹ that federal law provides no guarantee of a specific police response to domestic violence complaints, even when a restraining order has been issued against a potential perpetrator. The decision stemmed from allegations by a woman in Colorado that the police failed to make a serious effort to enforce a restraining order against her estranged husband, who then killed their three daughters before being fatally shot by the police.² The U.S. Supreme Court ruling protected the city of Castle Rock from a potential \$30 million lawsuit resulting from the police officers' failure to enforce the restraining order.³

Jessica Gonzales, the respondent in *Gonzalez* had obtained a domestic abuse restraining order against her husband.⁴ Several weeks after Gonzales obtained the order, Gonzales' husband took her three daughters, in violation of the protective order, while they were playing outside their home.⁵ Gonzales called the Castle Rock Police Department four times requesting that the restraining order be enforced. She was told to wait for an officer to arrive, but when no one came, she went to the police station and submitted an incident report.⁶ Later that night, Gonzales' husband arrived at the police station and opened fire using a semiautomatic handgun he had purchased earlier that evening.⁷ Police returned fire and killed him.⁸ After the gunfire, the officers inspected the cab of his pickup truck, found the bodies of all three of Gonzales' daughters and discovered that Gonzales' husband had murdered them.⁹



The Supreme Court's ruling in *Gonzales* may have serious consequences for those seeking protection.

Gonzales then brought a civil rights action under 42 U.S.C. § 1983, claiming that Castle Rock had violated the Due Process Clause because its police department had "an official policy or custom of failing to respond properly to complaints of restraining order violations" and "tolerate[d] the non-enforcement of restraining orders by its police officers."¹⁰ Before answering the complaint, Castle Rock filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).¹¹ The District Court granted the town's

motion, concluding that, whether construed as making a substantive due process or procedural due process claim, respondent's complaint failed to state a claim upon which relief could be granted.¹²

A panel of the Court of Appeals affirmed the rejection of a substantive due process claim, but found that respondent had alleged a cognizable procedural due process claim.¹³ On rehearing *en banc*, a divided court

reached the same disposition, concluding that respondent had a "protected property interest in the enforcement of the terms of her restraining order" and that the town had deprived her of due process because "the police never 'heard' nor seriously entertained her request to enforce and protect her interests in the restraining order."¹⁴

The Supreme Court overruled the 10th Circuit Court of Appeals' decision, and held that for purposes of the Due Process Clause, Gonzales did not have a property interest in police enforcement of the restraining order against her husband, even though the police officers had probable cause to believe it had been violated.¹⁵ The Supreme Court reasoned that the Due Process Clause's procedural component does not protect everything that might be described as a government benefit.¹⁶ Rather, the Court maintained,

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to have a property interest in a benefit, a person must have a legitimate claim of entitlement to it.¹⁷ A benefit is not a protected entitlement if officials have discretion to grant or deny it.¹⁸ Justice Scalia resolved that, in this case, state law did not truly mandate that such enforcement was mandatory, and, as such, Gonzales did not have a claim of entitlement.¹⁹

Further, the Colorado statute did not require officers to arrest the perpetrator, but only to seek a warrant.²⁰ This, however, would give Gonzales an entitlement to nothing but procedure, which cannot be the basis for a property interest.²¹

Many local governments see this decision as a victory for cities and states. According to Michael T. Jurusik, a local government attorney with Klein, Thorp and Jenkins, Ltd., “the Supreme Court’s decision in *Gonzales*, while unfortunate, ultimately preserves the principle of law enforcement discretion.” He maintains that,

A decision that upheld the Tenth Circuit’s ruling would have put the police in an impractical and virtually impossible situation. Police officers are regularly called upon to make judgment calls, and if *Gonzales* had succeeded, police officers would be second-guessed each and every time they did not enforce an order the way someone wanted.²²

Similarly, Attorney Thomas S. Rice, of Senter Goldfarb & Rice, LLC, counsel for Castle Rock in *Gonzales* doubts this decision will lead to increased violence. Further, Rice doubts “that [the decision in *Gonzales*] will result in any decrease in persons seeking these types of orders. In fact, the police provide excellent services with respect to these orders and they continue to be sought in great numbers.”²³

In contrast, the National Network to End Domestic Violence and the American Civil Liberties Union (“ACLU”), both of whom filed *amicus* briefs in this case, were disappointed by the U.S Supreme Court’s decision.²⁴ The ACLU views the Supreme Court’s

ruling as undermining the protection that victims of domestic violence seek from protection orders.²⁵ The ACLU strongly believes that police departments must be held accountable for complying with mandatory arrest laws and enforcing orders of protection.²⁶ Lenora Lapidus, Director of the ACLU Women’s Rights Project, said that “without systems of accountability in place, women and children are subjected to the whims of local police departments and may suffer grievous harm.”²⁷

This decision also affects other cases where restraining orders are vital, such as in elder abuse cases. The American Association of Retired Persons (“AARP”) filed a brief²⁸ in *Gonzales* stressing the need for enforcement of protective orders in elder abuse cases involving instances of physical harm.²⁹

AARP stated that the decision not to enforce a protective order can have a profound effect on elder abuse and the life of an older person.³⁰ Repeated violence, physical harm and possibly death can occur as a result of elder abuse as many older people are unable to take measures to prevent physical abuse.³¹

Despite the fact that this ruling does not strengthen the position of those that need restraining orders, the ACLU believes that the Supreme Court’s decision does not alter or weaken existing state laws regarding mandatory or presumptive arrest, pointing to Justice Scalia’s own words in the majority opinion.³² Justice Scalia explicitly states that the ruling “does not mean states are powerless to provide victims with personally enforceable remedies ... the people of Colorado are free to craft such a system under state law.”³³ The ACLU hopes that this ruling will push state legislatures to pass laws that will hold police accountable for taking protection orders seriously.³⁴ The ACLU Women’s Rights Project now strongly urges state legislatures to act immediately to protect women and their families from harm.³⁵

Domestic violence laws in Montana and Tennessee are considered good examples of how states can create legal mechanisms that protect victims and ensure that police departments are accountable for enforcing the law. The Montana Supreme Court has

(Federal Guarantee, continued on page 33)

(Kelo, continued from page 18)⁵ *Id.* at 2659.⁶ *Id.*⁷ *Id.*⁸ *Id.*⁹ *Id.*¹⁰ *Id.*¹¹ *Id.* at 2659-60.¹² *Id.* at 2660.¹³ *Id.*¹⁴ *Id.*¹⁵ *Id.*¹⁶ *Id.*¹⁷ *Id.*¹⁸ *Id.*¹⁹ *Id.*²⁰ Conn. Gen. Stat. §8-186 *et seq.* (2005).²¹ 268 Conn. at 18-28, 843 A.2d at 515-21.²² 467 U.S. 229 (1984).²³ 348 U.S. 26 (1954).²⁴ 268 Conn. at 40, 843 A.2d at 527.²⁵ See *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158-64 (1896); *Strickley v. Highland Boy Gold Min. Co.*, 200 U.S. 527, 531 (1906).²⁶ *Kelo*, 125 S. Ct. at 2673. (O'Connor, J., dissenting.)²⁷ *Id.* at 2673. (O'Connor, J., dissenting.)²⁸ *Id.*; *Berman*, 348 U.S. at 34.²⁹ *Kelo*, 125 S. Ct. at 2673. (O'Connor, J., dissenting.)³⁰ *Id.* at 2674. (O'Connor, J., dissenting.)³¹ *Id.* at 2675. (O'Connor, J., dissenting.)³² *Id.* at 2669-70. (Kennedy, J., concurring.)³³ *Id.* at 2677. (Thomas, J., dissenting.)³⁴ *Id.* at 2676. (O'Connor, J., dissenting.)³⁵ *Id.* at 2671. (O'Connor, J., dissenting.)³⁶ *Id.* at 2668.³⁷ *Id.* at 2677. (O'Connor, J., dissenting.)³⁸ 471 Mich. 455, 684 N.W.2d 765 (2004).³⁹ See also D. Berliner, Public Power Private Gain: A Five Year, State by State Report Examining the abuse of Eminent Domain, Institute for Justice (Apr. 2003), http://www.castlecoalition.org/pdf/report/ed_report.pdf.⁴⁰ *Kelo*, 125 S. Ct. at 2677-78. (Thomas, J., dissenting.)⁴¹ 768 N.E.2d 1, 199 Ill.2d 225, 263 Ill. Dec. 241 (Apr. 4, 2002) (hereinafter "SWIDA").⁴² 70 ILCS 520/1 *et seq.* (Stat. 1998).⁴³ 70 ILCS 520/2(g) (Stat. 1998); *SWIDA*, 199 Ill.2d at 227.⁴⁴ *SWIDA*, 199 Ill.2d at 227.⁴⁵ *Id.* at 228.⁴⁶ *Id.*⁴⁷ *Id.* at 229.⁴⁸ *Id.***(Kelo, continued on page 34)****(Bankruptcy, continued from page 21)**

copies of all payment advices or other evidence of payment received within the 60 days prior to the filing date of the petition;²⁸ (iii) a statement of the amount of monthly net income, showing how the amount is calculated and (iv) a statement disclosing any reasonably anticipated increases in income or expenditures over the 12-month period following the filing of the petition.²⁹ The penalty for not filing these items is dismissal, unless an extension is requested and granted within 45 days.³⁰ Also, the following additional items are required to be filed with the court: a certificate from the nonprofit budget and credit counseling agency that provided the debtor with the services required under Section 109(h) prior to the filing of the case and a copy of any debt repayment plan developed through the agency.³¹

Significantly, BAPCPA now requires the provision and/or completion of tax returns during both Chapter 7 and Chapter 13 proceedings. In either a Chapter 7 or Chapter 13 case, a tax return or transcript for the most recent tax year must be provided to the trustee, and to any creditor who requests it, by seven days before the date first set for the meeting of creditors required under Section 341(a).³² The new code provides that court shall dismiss the case if this is not done.³³ Further, a party in interest or the court can request copies of tax returns or amendments that come due or are completed while a case is proceeding,³⁴ and also specifically allows for a taxing authority to request an order converting or dismissing the case if tax returns that come due are not filed.³⁵

The tax burdens upon a Chapter 13 debtor are significantly expanded. Chapter 13 debtors will need to file with all appropriate tax authorities any unfiled tax returns due for taxable periods over the four-year period ending on the date the petition is filed by the day before the first date of the Section 341(a) meeting of creditors.³⁶ While the trustee can hold the meeting period open for a reasonable period up to 120 days to allow the debtor to get the returns required filed,³⁷ it seems that the pressure will be on the Chapter 13 debtor to get this done, as a new Section 1325(a)(9) also specifies that all returns required

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