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FEATURE ARTICLE

**NEW ILLINOIS INTERNET
GROOMING LAW: WHEN
INDIVIDUAL RIGHTS
COLLIDE WITH
PUBLIC POLICY**

by JEREMY MOOREHOUSE

Illinois Senate Bill 2382 came into effect on January 1, 2009, granting law enforcement broad power to punish alleged sex offenders who utilize the internet to solicit sex from children.¹ Albeit the new legislation is well-intentioned and focuses on the protection of children, such laws have traditionally

faced various challenges alleging unequal treatment and overly harsh punishments.²

LAYING THE GROUNDWORK FOR CHILD PROTECTION

Illinois Senate Bill 2382, frequently referred to as the “Internet Grooming Law” (IGL),³ prohibits any person from knowingly using a computer or internet media, including bulletin boards or other transmissions, “to seduce, solicit, lure, or entice” a child or their guardian to commit a sexual offense or engage in sex with a child.⁴ The new law punishes those convicted as class four felons.⁵ In this context, individuals face heavy penalties, including mandatory prison sentences of no less than one year and no more than three years, as well as public registration as a sex offender.⁶

Given the prevalence of online social networking and wide access to online media, the IGL is designed to protect children from sex predators who utilize technology as a means of seduction.⁷ Traditionally, public policy has overwhelmingly supported the protection of children, as have both local⁸ and federal governments.⁹ However, problems associated with creating laws to protect children from sex offenders are compounded due to definitional concerns and the problem of vigilantism.¹⁰ In some instances, individuals accused of sexually abusing a minor are subjected to physical confrontations, including vicious attacks by private citizens and confrontation from local media.¹¹

Additionally, defining a crime of this nature can be problematic, particularly where contact or harm is not directly required. Suppose an individual knowingly uses an online social networking website and law enforcement considers their use to involve solicitation of minors, even though the individual has no intent to target a minor. Under the IGL, regardless of whether or not they intended to solicit a minor, the individual faces potential imprisonment of up to three years and¹² public registration as a sex offender.¹³ If later charged under similar laws, that individual could face greatly enhanced punishment under Illinois’ recidivist (repeat) offender statute.¹⁴ Thus, the burden then falls upon lawmakers to carefully craft legislation that protects not only potential victims, but also those accused in sexual offense cases.¹⁵

Regardless of public policy concerns and the myriad of issues that arise when creating new legislation, lawmakers walk a thin line as two main viewpoints

have emerged, the “child advocate perspective” and the “civil liberties prospective.” Those embracing the child advocate perspective support harsher laws that penalize child predators, while those in favor of the latter believe these laws unjustly stigmatize and inhibit the civil rights of convicted individuals.¹⁶

THE CHILD ADVOCATE PERSPECTIVE

The “child advocate perspective” supports that protecting children is paramount and high penalties are necessary for those convicted of engaging in or attempting to engage in the sexual abuse of a minor.¹⁷ Indeed, protecting children is the focus of the new IGL as it targets only those engaged in, or attempting to engage in, sexual conduct with a child.¹⁸

Illinois State Senator Antonio Munoz backed the IGL.¹⁹ Senator Munoz believes that Illinois is taking positive strides in combating child predators in the State.²⁰ He explained, “I believe we need to take every possible step to ensure that children throughout the State of Illinois are protected from sexual predators.”²¹

Illinois faces legitimate, serious concerns when combating child predators in the State.²² Given the fact that 5,596 sex crimes were committed in Illinois during 2007 alone, local politicians have a vested interest in punishing those convicted of sexual offenses, particularly those committed against children.²³ Of the 5,596 sex crimes, 2,733 (49 percent) were committed against victims age 16 and younger.²⁴

Although the Illinois Attorney General and individual defendants have yet to challenge the IGL, a review of its text makes it apparent that legislators crafted the law to avoid arbitrary punishment while still permitting wide latitude by setting the mental state at “knowingly.”²⁵ This means that individuals must make some conscious, knowing action to commit a crime before being punished. Additionally, lawmakers attempted to create a high level of deterrence as the IGL works in conjunction with the Illinois recidivist enhancement statute, which results in enhanced sentences if a victim is a minor, or prison sentences of up to ten years for repeat offenses.²⁶ The purpose of such enhancements is to authorize enhanced sentences to deter the defendant or others from committing the same crime.²⁷

On this basis, supporters of the child advocate perspective find that expanding state laws to punish child predators more severely will protect more children and deter future crimes, particularly given the emerging threat that modern advances in technology and the internet pose to potential victims.²⁸

THE CIVIL LIBERTIES PERSPECTIVE

In contrast, the “civil liberties perspective” considers the heavy toll inflicted upon individuals convicted under the sex offender laws, including the new IGL.²⁹ Legislation such as the IGL may have an adverse impact on those convicted, including: harsh treatment, stigmatization, and public humiliation.³⁰

While child advocates point to the necessity of legislation that more harshly punishes sex offenders who target children, a disconnect has arisen.³¹ For instance, a recent investigation conducted by forty-nine state Attorney Generals found that the sexual solicitation of children via the internet does not pose a significant threat.³² Where no significant problems exist, then the rate of repeat offenders that target children is also very low—two factors that together suggest that sex offender laws may at times be poorly planned or overly harsh.³³ Indeed, if crime rates are low, then why are additional penalties required?

The IGL includes the mental state of “knowingly,” which indicates an elevated mental state to charge and convict an individual. However, the law also includes broad language that encompasses a wide range of conduct.³⁴ Civil liberties advocates argue that whether or not an individual convicted under such a law is actually guilty or wrongfully convicted, the punishments imposed lead to stigmatization, labeling, and castigation.³⁵ Though civil liberties advocates believe that child sex abuse should be punished, they believe that legislators too often focus on “Draconian legislation aimed at sex offenders.”³⁶ Even if a charged defendant is found innocent, the negative connotation of child sex abuse charges coupled with the public nature of proceedings could lead to severe stigmatization and the damaging of one’s reputation in the community, job market, and other realms.³⁷

Although the protection of children is paramount in our society and laws, civil rights advocates call for legislation that would punish sex offenders but avoid

drawing undue attention to those convicted under such legislation by way of public registration as a sex offender or other means.³⁸

PUBLIC POLICY COLLIDING WITH INDIVIDUAL RIGHTS

Although addressing paramount public policy concerns, rape and sex offender laws become problematic because they are often strict liability offenses, requiring a very reduced mental state and sometimes no intent requirement at all to face conviction.³⁹ Crafting the IGL to require a particular mental state and to avoid strict liability punishment is likely to give rise to judicial and jury misconceptions.⁴⁰ For example, there is no available precedent because the IGL has just come into effect. Thus, a case involving a defendant charged for showing offensive internet material to a minor may also be charged under the new law even if he had not met the requisite mental state or did not intend to solicit sex.⁴¹

Problems abound as victims, arguably, suffer no harm because the IGL covers attempted solicitation. Indeed, it is possible that there is no victim if an individual posts to an online message board available to the general public, but the posting is not targeted at a specific child and no child ever reads its contents.⁴² If an individual was indicted under the IGL for an online posting, regardless of whether or not he is ultimately convicted, he faces public stigmatization, humiliation, threats to employment, and threats to personal safety in his community.⁴³

However, child advocates believe any subsequent effects of punishment are greatly outweighed by the public's interest to protect children from a new mode of attack.⁴⁴ Accordingly, punishing an individual for making an online posting is entirely justified.⁴⁵ "I don't feel the regulations which protect our children from sexual predators are too harsh," Senator Munoz stated. He explained further, "In the digital age we live in, sexual predators can now get to our children through the internet and other electronic means. [The IGL] brings current statutes up to date so the internet cannot be used to lure children to the predator."⁴⁶

Conversely, civil liberties advocates would find the effect of charging an individual under the IGL has unduly harsh and stigmatizing effects, particularly where there is no clear victim.⁴⁷ As one author found, stigmatization of sex

offenders occurs “by creating registries to deter recidivists while simultaneously trying to ‘brand’ and ‘shame’ each offender.”⁴⁸ Although the protection of children is important, it cannot be used as a catchall excuse to impose harsh or disproportionate punishments on convicted sex offenders.⁴⁹ In our legal system where punishments must fit crimes, it may be haphazard to impose a devastating punishment on an individual, especially in situations where there may not be any victim or intended victim.⁵⁰

Because constitutional challenges to sex offender laws often fail, it falls upon lawmakers to rectify the opposing child and civil liberties views, to balance the protection of children with the sanctity of individual rights, and to avoid disproportionate or stigmatizing punishments. However, because it is unlikely that such laws will ever be scaled back or repealed, despite the best efforts of civil liberties advocates, it may be public awareness that has to change in order to reveal the true impact of such laws on both offender and victim.

NOTES

1 720 ILCS 5/11-25 (West 2009). See also Andrea Zelinski, *Landmark Legislation Passes in 2008*, THE TIMES, Dec. 29, 2008, available at <http://mywebtimes.com/archives/ottawa/display.php?id=372610>.

2 ACLU of Illinois: Frequently Asked Questions, available at <http://www.aclu-il.org/aboutus/faq.shtml> (regarding the reasons for attacking Illinois sex offender laws). See also ACLU Letter to Rod Blagojevich, Governor of Illinois, available at <http://www.aclu-il.org/legislative/alerts/sb121letter.pdf> (explaining the ACLU’s point of view in regards to a different sex offender law; though the reasoning holds true in the case of the IGL).

3 720 ILCS 5/11-25 (West 2009).

4 *Id.*

5 *Id.*

6 730 ILCS 5/5-8-1(a)(7) (West 2009).

7 See e.g., 720 ILCS 5/11-25 (West 2009) focusing on the use of “computer online services . . . to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child”); see also Monique Garcia, *New Illinois Laws for 2009 Touch on Broad Range of Issues*, CHI. TRIB., Jan. 1, 2009, available at <http://www.chicagotribune.com/news/local/chi-new-laws-bar-01jan01,0,3507978.story> (stating that the purpose of the internet grooming law is to protect children).

8 In Illinois, sex offenders are subjected to additional penalties beyond normal sentencing requirements. See 730 ILCS 150 to 152 (West 2009).

9 On the federal level, the U.S. Department of Justice has taken significant strides in targeting and penalizing child predators and sex offenders. See U.S. Department of Justice, Child Exploitation and Obscenity Section Home Page, <http://www.usdoj.gov/criminal/ceos/> (this prosecutorial office is charged with trying cases involving the violation of federal child protection legislation, including child pornography, child prostitution, obscenity, trafficking and child sex tourism, international parental kidnapping, and child support enforcement).

- 10 See U.S. v. Morris, 549 F.3d 548, 551 (7th Cir. 2008) (addressing private vigilantism and private sting operations, including internet-based attacks and actual physical confrontations).
- 11 *Id.*; see also Michael Starr, 'Dateline' Perv DA a Suicide, N.Y. POST, Nov. 7, 2006, available at http://www.nypost.com/seven/11072006/tv/dateline_perv_da_a_suicide_tv_michael_starr.htm (regarding a Texas prosecutor who committed suicide after being confronted by a reality television show while being served).
- 12 730 ILCS 5/5-8-1(a)(7) (West 2009).
- 13 730 ILCS 150 *et seq.* (West 2009).
- 14 730 ILCS 5/5-5-3.2 (West 2009).
- 15 See *Morris*, 549 F.3d at 551 (addressing problems of vigilantism and impact on individual defendants).
- 16 See also Bernie Mayer, *Reflections on the State of Consensus-Based Decision Making in Child Welfare*, 47 FAM. CT. REV. 10, 11 (2009) (addressing the tradeoff between state interference and child protection, and noting that protecting children has been a longstanding principle in our legal system, descended from ancient times).
- 17 Email correspondence with Illinois State Senator Antonio Munoz (on file with author).
- 18 720 ILCS 5/11-25 (West 2009).
- 19 Munoz Bill to Increase Penalties for Luring Children On-Line, Apr. 1, 2008, available at http://www.senatedem.ilga.gov/GH_ShowArticle.asp?HID=594.
- 20 Antonio Munoz, *supra* note 17.
- 21 *Id.*
- 22 See e.g., Illinois Attorney General: Safeguarding Children, available at <http://www.illinoisattorneygeneral.gov/children/index.html> (Illinois Attorney General Lisa Madigan lists as a primary goal the protection of children by various means, including protection from sex offenders).
- 23 See Illinois State Police, *Executive Summary 2007*, available at <http://www.isp.state.il.us/docs/cii/cii07/ExecSummary07.pdf>.
- 24 *Id.*
- 25 720 ILCS 5/11-25(a) (West 2009).
- 26 730 ILCS 5/5-5-3.2 (West 2009). See generally Roger K. Warren, *Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce Recidivism*, 82 IND. L.J. 1307, 1309 (2007) (generally addressing recidivism and the purpose to prevent further repeat offenders).
- 27 *Id.*
- 28 Antonio Munoz, *supra* note 17; Krista Taylor, *Statute Note: Allowing Probation for Incest Offenses Against a Child: An Injustice to Child-Victims and a Call for Repeal*, 8 J. L. & FAM. STUD. 483, 490 (2006).
- 29 ACLU of Illinois, *The Illinois Brief*, at 6, Summer 2006, available at <http://www.aclu-il.org/news/brief/summer2006.pdf>; see also ACLU of Illinois: Frequently Asked Questions, available at <http://www.aclu-il.org/aboutus/faq.shtml> (regarding the reasons for attacking Illinois sex offender laws).
- 30 ACLU of Illinois: Frequently Asked Questions, available at <http://www.aclu-il.org/aboutus/faq.shtml>; see also 730 ILCS 150 (West 2009).
- 31 Antonio Munoz, *supra* note 17.
- 32 Brad Stone, *Report Calls Online Threats to Children Overblown*, N.Y. TIMES, Jan. 13, 2009, available at <http://www.nytimes.com/2009/01/14/technology/internet/14cyberweb.html>.
- 33 *Id.*
- 34 720 ILCS 5/11-25(a) (West 2009).
- 35 ACLU of Illinois, *The Illinois Brief*, *supra* note 29 at 6; see also ACLU of Illinois: Frequently Asked Questions, *supra* note 2 (regarding the reasons for attacking Illinois sex offender laws).

- 36 Emily Horowitz, *Growing Media and Legal Attention to Sex Offenders: More Safety or More Injustice?*, 2007 J. INST. JUST. INT'L STUD. 143, 152-53 (2007).
- 37 ACLU of Illinois: Frequently Asked Questions, *supra* note 2 (regarding the reasons for attacking Illinois sex offender laws).
- 38 ACLU of Illinois, *The Illinois Brief*, *supra* note 29 at 6; see also Shawndra Jones, *Setting Their Record Straight: Granting Wrongly Branded Individuals Relief from Sex Offender Registration*, 41 COLUM. J.L. & SOC. PROBS. 479, 480-81 (2008) (addressing the stigma associated with sex offenders).
- 39 See e.g., 720 ILCS 5/12-13 (West 2009) (Illinois codification for criminal sexual assault; the Illinois legislature did not require a mental state for culpability of certain offenses such as sexual assault of a minor).
- 40 Thomas J. Reed, *Reading Gaol Revisited: Admission of Uncharged Misconduct Evidence in Sex Offender Cases*, 21 AM. J. CRIM. L. 127, 200-202 (1993) (discussing *mens rea* issues that arise in sex offender cases and the misuse of "motive" in such cases).
- 41 There is no provision in 720 ILCS 5/11-25 (West 2009) that would bar the coupling of an indictment under the Internet Grooming Law with other sex offenses, giving rise to a potential for prosecutorial abuse.
- 42 See Linda Quigley, *The Intersection Between Domestic Violence and the Child Welfare System: The Role Courts Can Play in the Protection of Battered Mothers and Their Children*, 13 WM. & MARY J. WOMEN & L. 867, 874 (regarding unintended victims of domestic and sexual abuse crimes); see also 720 ILCS 5/12-13 (West 2009) (there is no requirement that a child is actually harmed or that an actual victim exists).
- 43 John Douard, *Sex Offender as Scapegoat: The Monstrous Other Within*, 53 N.Y.L. SCH. L. REV. 31, 44 (2008/2009) ("Undeniably, child sexual abuse is a stigmatizing crime . . . the value of stigmatizing the crime does not warrant stigmatizing the offenders through disgust, humiliation, isolation, and exclusion, because in doing so, we undermine efforts to understand and treat sex offenders.").
- 44 See J. Richard Broughton, "On Horror's Head Horror Accumulates": *A Reflective Comment on Capital Child Rape Legislation*, 39 DUQ. L. REV. 1, 32 (2000) (discussing harsher punishments, including death, that some jurisdictions permit in their legislation for sexual crimes committed against children).
- 45 Indeed, this would be supported by the prevailing view that harsher punishments are warranted for those sex offenders who target children. *Id.*
- 46 Antonio Munoz, *supra* note 17.
- 47 See Lisa Sandberg, *Sex Offender Registry Called Too Harsh*, HOUSTON CHRON., Feb. 17, 2008, available at http://www.cfcamerica.org/index.php?option=com_content&view=article&id=108:sex-offender-registry-called-too-harsh&catid=11:teens-children&Itemid=88 (addressing concerns that sex offender registry is unduly harsh and poses high costs for compliance and maintenance).
- 48 Jones, *supra* note 38 at 498.
- 49 ACLU of Illinois: Frequently Asked Questions, *supra* note 2.
- 50 See generally Alexander A. Reinert, *Eighth Amendment Gaps: Can Conditions of Confinement Litigation Benefit from Proportionality Theory?*, 36 FORDHAM URB. L.J. 53 (2009) (discussing proportionality concerns when punishing defendants, including in the context of sex offenders).