

# Virginia State Crime Commission

Living Restrictions on Sex Offenders  
&  
Review of "Romeo and Juliet" Laws

November 13, 2007

# Agenda



- HB 2404 and HB 2175
- Legal issues affecting residency restrictions:
  - Constitutional
  - State
- Policy issues
- “Romeo and Juliet” laws

# HB 2175

# HB 2404



- Both were introduced in the 2007 Session and sought additional restrictions on sex offenders.
- HB 2175 sought to prohibit sex offenders from loitering within 100 ft. of any place he knows or has reason to know is a day-care center, to include publicly operated recreation or community centers.
  - Currently, offenders are prohibited from loitering within 100 ft. of a school or day care center. § 18.2-370.2.
- HB 2404 sought to increase the distance sex offenders must live from schools and day care centers. The bill sought to increase the distance to 1000 feet.
  - The current restriction is 500 feet (§ 18.2-370.3).

# Constitutional Issues



- The most significant constitutional issue for any sex offender legislation is whether the restrictions violate the Ex Post Facto clause.
  - Courts will specifically determine if the legislature intended to make a criminal punishment or if there was a civil, non-punitive intention for the restrictions.
- There is no Ex Post Facto issue with the current restrictions in § 18.2-370.2 (loitering) or § 18.2-370.3 (residence restriction) since they are part of the punishment for committing the actual criminal act. They are not applied retroactively, so the statutes fall outside of Ex Post Facto analysis.
  - HB 2175 is consistent with the current statutory structure and has no Ex Post Facto issues.
  - HB 2404 is applied retroactively and might lead to an Ex Post Facto challenge.

# Constitutional Issues (cont.)

- There is also a possibility that future restrictions could violate the 8<sup>th</sup> Amendment prohibition against cruel and unusual punishment if the restrictions force offenders to move out of the state.
  - The Virginia Supreme Court has stated, in dicta, that punishment which forces individuals to leave the state would amount to banishment.

# Legal Issues Under VA Law



- Under Virginia law, there are no issues for extending the living restrictions for sex offenders, described in HB 2404.
- There are, however, problems with HB 2175.
  - Specifically, the bill uses “publicly operated recreation center” and “community center.” Neither term is defined in the Va. Code or by case law.
  - This could cause a great deal of confusion on what actually constitutes a “recreation” or “community” center, to the point that it could be considered unconstitutionally vague.
  - Each term is also further modified by the term “serving children” Again, this term is undefined by law and could lead to confusion.
  - Any future version of HB 2175 should include definitions for “community” and “recreation” center and “serving” children.

# Policy Issues



- Practical issues with increasing residency restrictions, however, are just now starting to surface:
- In Florida, 16 convicted sex offenders are living under a highway bridge, with state approval, because there was no other place for them to live.
- In California, sex offenders are avoiding the 2000 foot restrictions by declaring themselves homeless.
  - Since the law took effect in November of 2006, there has been a 27% increase in offenders reporting no permanent address.
- While there are various news reports of these practical problems with increased residency restrictions, there have been no comprehensive studies by any state to address these issues.

# "Romeo & Juliet"



- Under existing Virginia law, an individual convicted of crimes specified in Virginia Code § 9.1-902 must register as a sex offender.
  - Such crimes include § 18.2-63 (carnal knowledge), § 18.2-361 (sodomy), § 18.2-370 (indecent liberties) § 18.2-374.1:1 (production and distribution of child pornography)
- Under Virginia law, therefore, it is possible for a 18 year-old to be convicted of consensual sex with a 14 year-old or for an 18 year-old to be convicted of consensual sodomy with a 17 year-old. Both convictions require registration as a sex offender for a period of ten years.
  - Currently it is possible for a 17 year-old to take a nude picture of their girl/boy friend and be convicted of production of child pornography, which carries a designation of "violent sexual offender" and a lifetime registration requirement.



# "Romeo & Juliet"



- Some states have removed the sex offender registration requirement for individuals convicted of consensual sex crimes within specified age categories.
  - Florida, Georgia, and Kansas have all passed measures recently.
- Two methods have been implemented:
  - Provide a mechanism for relief from registration requirements upon a showing of specified criteria and under specified circumstances (Florida); or,
  - More broadly eliminate from the outset, as a registerable offense, crimes involving consensual sex between persons of specified ages (Georgia)

# "Romeo & Juliet"



- Georgia removed teenage consensual sexual conduct with regard to sodomy and statutory rape from among the offenses requiring registration:
  - if the victim is (1) at least 13 (14 for sodomy) but less than 16 years of age, and (2) the perpetrator is 18 years of age or younger and is no more than four years older than the victim.

# "Romeo & Juliet"

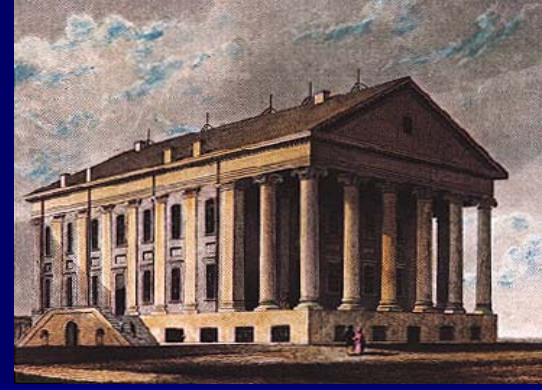


- Florida allows those convicted of very narrowly defined sexual criminal acts to be removed from the Florida sex offender registry if:
  - the victim was between the ages of 14 and 17;
  - the perpetrator was no more than 4 years older than the victim;
  - the sexual activity must have been consensual; and,
  - the perpetrator must have no other subsequent, criminal sexual convictions.

# **“Romeo & Juliet”**



- **If a “Romeo and Juliet” law in Virginia is desired, the Florida scheme is preferable because:**
  - **The Georgia method is significantly broader than the Florida scheme and it is automatic;**
  - **The Florida method is case-specific and would require an individual to petition the court, allowing more flexibility in each case if there are important facts that need to be considered.**



# Discussion