

sexual predators, which was upheld as constitutional by the U.S. Supreme Court in *Kansas v. Hendricks*. Furthermore, because the TSVPA was to be applied to individuals based on future dangerousness and to individuals not seen as culpable for their crimes (e.g., NGRI acquittees), the court determined that the TSVPA was not intended to function as a deterrent or as retribution and did not require a culpable mental state. In addition, the TSVPA was determined to be serving legitimate state functions other than punishment, such as the use of police power to protect the public and *parens patriae* power to provide care for its citizens. Although the Texas statute provides for criminal sanctions for violation of the conditions of commitment, this was not adequate, in the court's view, to make the statute punitive or excessive, as it was outweighed by the allowance for outpatient commitment rather than commitment to a secure facility (making it less restrictive than statutes in other states).

Having determined that commitment under the TSVPA is a civil rather than a criminal matter, the court noted that lack of competence has not historically been a bar to civil commitment. The court recognized established precedent that civil commitment, by nature, involved individuals who had mental illness and due to that mental illness were a danger to themselves or others. As such, it stood to reason that a subset of individuals who were to be civilly committed might not have the requisite abilities to demonstrate a factual or rational understanding of proceedings or work with an attorney. Therefore, the court ruled that Mr. Fisher was not entitled to a competency hearing. However, because the court noted that violation of the commitment could result in criminal sanctions, a defendant charged with violation of the conditions imposed under the TSVPA was to receive all the rights afforded to criminal defendants, including the right to be competent to stand trial. The court noted that if indeed Mr. Fisher's mental state, as he claimed, would prevent him from being able to understand or comply with the order, he could raise this as a defense, were he to be subsequently criminally charged with violation of the conditions of commitment.

Discussion

The petitioner in this case challenged his commitment as a sexually violent predator, stating that the procedure was criminal and that he had a constitu-

tional right to be competent to stand trial for a criminal proceeding. Relying on the reasoning in *Kansas v. Hendricks*, the court established firmly that the sexually violent predator commitment was a civil, not a criminal, proceeding. As such, the court clearly stated competence to understand the proceedings was not a prerequisite for the commitment hearing. However, because violation of the commitment terms could result in criminal charges, the court held that the full range of rights afforded to criminal defendants should be available to individuals charged with violating the terms of their sexually violent predator commitments. This case provides persuasive precedent to other jurisdictions in its holding that sexually violent predator commitments are civil. It furthermore extends the findings of *Kansas v. Hendricks* to outpatient commitment of sexually violent predators.

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Residency Restrictions for Convicted Sex Offenders

State Law Imposing Residency Restrictions for Convicted Sex Offenders Is Not Unconstitutional, Given Their Presumed Dangerousness

In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), the Eighth Circuit Court of Appeals considered the claim of the Iowa Attorney General, who challenged the judgment of the United States District Court for the Southern District of Iowa in its holding Iowa Code § 692A.2A, which imposes residency restrictions on certain sex offenders, unconstitutional.

Facts of the Case

In 2002, the Iowa state government created a law (Iowa Code § 692A.2A) that prohibits a person convicted of certain sex offenses involving minors from

residing within 2000 feet of a school or registered child care facility. This legislation was enacted in an effort to protect children from the risk that convicted sex offenders may re-offend in places close to their residences. A class of sex offenders filed suit, contending that the statute was unconstitutional and amounted to *ex post facto* punishment. The plaintiffs, in this case a group of sex offenders with convictions that predated the Iowa law's effective date, presented evidence that the residency restrictions excluded them from the majority of available housing in many areas of the state. The plaintiffs (each identified as "John Doe") asserted that the statute infringed on their fundamental rights, and violated substantive and procedural due process. The plaintiffs also maintained that forcing offenders to report their addresses violated their right against self-incrimination.

The district court declared the statute unconstitutional on several grounds. It found the statute an unconstitutional *ex post facto* law with respect to offenders who had committed offenses prior to July 1, 2002. The district court declared that the statute violated the plaintiffs' rights to avoid self-incrimination, as it required offenders to report their addresses even if those addresses were not in compliance with § 692A.2A. It also found that the law violated the plaintiffs' rights under the doctrine of substantive due process, because it infringed on rights to travel and rights to choose how to conduct "family affairs" (*Doe*, 405 F.3d, p 708). The district court rejected the plaintiff's arguments that the law imposed cruel and unusual punishment in violation of the Eighth Amendment, though it opined that the law was in fact punitive in nature. Having found the statute unconstitutional, the district court issued a permanent injunction against its enforcement. The Iowa Attorney General appealed the decision, and the case was heard by the United States Court of Appeals for the Eighth Circuit.

Ruling and Reasoning

The Eighth Circuit reversed the decision of the lower court. The court of appeals held that the Iowa statute imposing residency restrictions on persons convicted of sex offenses involving minors was not unconstitutional. The court ruled that the United States Constitution did not prevent Iowa from regulating the residency of sex offenders as directed under Iowa statute, to protect the health and safety of its citizens.

The plaintiffs contended that the Iowa law violated procedural due process, in that it did not provide an individualized determination of dangerousness for those persons affected by the statute. They argued that persons covered by the statute were thus deprived of an "opportunity to be heard" (*Doe*, 405 F.3d, p 709). The Eighth Circuit did not support this contention and found that the residency restriction did not violate procedural due process, given that it applied to all offenders who had been convicted of certain crimes against minors and regardless of what estimates of future dangerousness may be proven in individual hearings.

A further assertion of the plaintiffs was that the residency restrictions amounted to violation of substantive due process. The plaintiffs argued that the restriction violated the fundamental rights of certain individuals to live and travel where they choose and to have privacy and choice in family matters. They claimed that the 2000-foot restriction was an arbitrary limitation not based on scientific data. The Eighth Circuit rejected these assertions. The court held that the Iowa statute does not directly regulate family relationships or prevent family members from residing with a sex offender in a residence that complies with the statute. The court held that the effects of the statute in discouraging travel to and within Iowa did not amount to violation of a fundamental right. It upheld the authority of the Iowa state legislature to exclude sex offenders from residing within 2000 feet of a school or child care facility. The court supported the authority of the state legislature to create such a measure to protect its citizens "where precise statistical data are unavailable," in light of the fact that the restriction advances the state's interest in protecting children (*Doe*, 405 F.3d, p 714).

The Eighth Circuit disagreed that the Iowa statute represented a violation of the self-incrimination clause of the Fifth Amendment. The court held that the residency restriction did not compel a sex offender to provide any information that might be used in a criminal case. The plaintiffs did not specifically challenge the portion of the statute that requires sex offenders to register their addresses with the county sheriff. The court opined that a challenge to the registration requirements would be premature, as there was no record that registration information provided by an offender had been used to further a criminal prosecution.

The Eighth Circuit did not accept the argument of the plaintiffs that the Iowa statute represented an *ex post facto* law that imposed retroactive punishment. The court found that the plaintiff class of sex offenders did not establish that the punitive effects of the Iowa statute overrode the state legislature's intent to enact a non-punitive, civil regulation to protect the safety of its citizens. The court outlined how civil laws might, in some instances, be so punitive in purpose or effect as to negate non-punitive intent. In the case of Iowa Code § 629.A.2A, the court weighed whether the law promotes traditional purposes of punishment and imposes affirmative disability or restraint and whether it is excessive in respect to its purpose. The court refuted the assertion of the plaintiffs that the Iowa law represented "banishment" of sex offenders from certain areas, citing the fact that the law restricted only where offenders may reside. The court agreed that the Iowa law imposes an element of restraint on convicted sex offenders, but found this justified in that the law is connected to a non-punitive purpose. It recognized the complexity in identifying a specific distance for the residency restriction around schools. However, it did not find that the 2000-foot residence restrictions imposed on sex offenders were excessive, given the law's intent to protect children.

Dissent

Circuit Judge Melloy articulated a dissent in part, opining that the restrictions imposed by the law are excessive, in that they impose a burden on all convicted offenders, without regard to their type of crime, type of victim, or risk of re-offending. Judge Melloy asserted that the affirmative disability imposed by the statute is substantial, especially where there is no time limit to the restrictions. The dissenting opinion concluded that the residency restriction is a punitive measure and that the Iowa statute is an unconstitutional *ex post facto* law.

Discussion

This case highlights the delicate balance involved in protecting the community from sex offender recidivism without violating the rights of individuals. Several states (at least 12) have now enacted residency restrictions in areas around schools, and at least one has enacted residency and work restrictions in the areas around schools and daycare centers. With the expansion of legal statutes that limit the rights of offenders, further challenges to the laws should be

expected. In *Doe v. Miller*, the Eighth Circuit ultimately upheld the power of states to enact legislation that restricts the liberty of certain sex offenders for the protection of the community. The court accepted the presumption of the Iowa statute that sex offenders, as a class, pose a serious risk of re-offending. In many ways similar to the Supreme Court's holding in *Kansas v. Hendricks* (521 U.S. 346 (1997)), the Eight Circuit recognized the legitimate interest of the states in making laws that are intended to reduce the likelihood of sex offender recidivism.

Where the goals of the laws have been deemed as protection of society, as opposed to punishment, the higher courts in these cases have not supported the challenges that sex offender legislation violates due process rights or the constitutional ban on *ex post facto* punishment.

The *Doe v. Miller* case is interesting to psychiatrists and other mental health professionals in how it deals with the potential clinical and scientific issues raised by sex offender legislation. The case devotes very little attention to current clinical perspectives and scientific data on sex-offending behaviors. Expert testimony was entered in the original case by a probation officer and two psychologists. However, this did not address the role of clinical disorders in certain sex-offending behaviors. No scientific data were entered regarding how the treatment of certain clinical disorders might affect the risks for sexual recidivism. The case makes no mention of *amicus* briefs prepared by professional organizations. It is ultimately the dissenting opinion in *Doe v. Miller* that highlights the potential problems associated with applying the Iowa law to all convicted offenders, regardless of their history and risk of re-offending. The dissent faults the Iowa law for viewing all sex offenders as at equal risk for recidivism and for not recognizing the potential heterogeneity of sex offenders and offenses. Mental health professionals could serve an important role in informing the courts about clinical disorders that may be associated with sex offending behaviors and recidivism, in the advancement of legal fairness.

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The Abridged *M’Naghten* Standard and the Consideration of Mental-Disorder Evidence in Relation to *Mens Rea*

Arizona’s Abbreviated Insanity Defense Statute Is Constitutionally Permissible, and Arizona’s Case Law Prohibiting Consideration of Mental-Disorder Evidence in Challenging *Mens Rea* Remains in Effect

In *State v. Clark*, No. 03-0985 (Ariz. Ct. App. January 25, 2005), the Arizona Court of Appeals affirmed the conviction and sentencing of Eric Clark, thereby upholding the constitutionality of Arizona’s insanity law, with its truncated *M’Naghten* standard. The court of appeals also upheld the trial court’s reading and application of *State v. Mott*, 931 P.2d 1046, 1051 (Ariz. 1997), effectively creating a blanket prohibition against the consideration of mental disease or defect evidence to negate *mens rea* elements of the crime charged. The Arizona Supreme Court denied discretionary review, and writ of *certiorari* to the United States Supreme Court has subsequently been granted. The American Psychiatric Association, the American Psychological Association, and the American Academy of Psychiatry and the Law joined in submitting an *amicus curiae* brief in support of the petitioner, Eric Michael Clark. The United States Supreme Court, in a six–three decision, ultimately affirmed, failing to find any due process flaw in either Arizona’s case law or its insanity defense statute.

Facts of the Case

Eric Clark shot and killed Flagstaff Police Officer Jeffrey Moritz on June 21, 2000. Eric was 17 years

old at the time of the shooting, and he was charged with first-degree murder. Mr. Clark was reportedly a healthy and well-adjusted young man until approximately a year and a half before the shooting, when he began to develop the symptoms of a major mental illness, including mood swings and episodes wherein he would scream or whisper gibberish. Mr. Clark eventually began to believe that he was being poisoned and that the earth was being invaded by aliens. Mr. Clark’s parents spent the months leading up to the shooting desperately trying to have him committed and treated, and they had called at least five facilities during the two days before the shooting searching for a way to get Mr. Clark treated. Tragically, these efforts were unsuccessful, and Mr. Clark shot and killed Officer Moritz in the early morning of June 21, 2000. The officer had been dispatched to a residential neighborhood on complaints of a vehicle circling the block and playing loud music. He was in his police uniform and was driving a marked patrol car when he located the vehicle, driven by Eric Clark, and stopped it. Nearly one minute after Officer Moritz exited his squad car, there was an exchange of gun shots, and Officer Moritz was mortally wounded.

Several elements of Arizona’s case and legislative law crucially affect the unfolding of this case. In 1994, the Arizona legislature altered the language of its insanity defense, abandoning its more traditional *M’Naghten* standard, to “guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong” (Ariz. Rev. Stat. § 13-502(A) (1994)). In addition, the legislature defined the crime of first-degree murder as “intentionally or knowingly killing a law enforcement officer who is in the line of duty” (Ariz. Rev. Stat. § 13-1105(A) (1994)). Relevant case law derives from the Arizona Supreme Court decision in *Mott* which held that “Arizona does not allow evidence of a defendant’s mental disorder short of insanity to negate the *mens rea* elements of a crime” (*State v. Mott*, 931 P.2d, p 1051).

At trial, there were several undisputed facts: Eric Clark was the driver of the vehicle, Mr. Clark shot Officer Moritz, and Mr. Clark suffered from chronic paranoid schizophrenia and had been actively psychotic. Although the prosecution was able to use Mr. Clark’s behavior to establish circumstantial evidence of the required *mens rea* element of first-degree mur-