

Don't Go There!:
The New Jessica Lunsford Law and Sex Offenders
Legal Question of The Week
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Aaahhh...Christmastime¹ is upon us once again. Every year at this time our thoughts turn to presents, and eggnog, and wreaths, and decorated trees, and sex offenders, and Santa Claus, and snowflakes, and...sex offenders?! Okay, so sex offenders and Christmas don't really go together, but here in the Legal Office, we are up to our armpits in registered sex offenders.² What I mean to say is that we are up to our armpits in new laws concerning sex offenders. And when there are new laws, there need to be new legal updates.

Four whole days ago on December 1, 2008, two main pieces of legislation went into effect which deal with the rights or lack thereof of registered sex offenders in our state. The first, called the Jessica Lunsford³ law, deals with locations where registered sex offenders may no longer go while the second regulates registered sex offenders and social networking internet sites, such as MySpace and Facebook.

New N.C. Gen. Stat. 14-208.18 makes it a Class H felony for certain⁴ registered sex offenders to enter certain premises or to be within 300 feet of certain other premises. Let's consider each of these in turn.

This particular new law applies only to certain registered sex offenders – those who had to register for committing an offense where the victim was under 16 years old at the time of the offense OR one of the following offenses: first or second degree rape or sexual offense, misdemeanor sexual battery, sexual activity by a substitute parent or custodian, sexual activity with a student by school personnel, or statutory rape or sex offense against a person who is 13, 14, or 15 years old.

¹ Or your winter holiday of choice. Sincerely, Mr. PC.

² And if they come up to my armpits, you know that they are completely covering Lt. Myers.

³ If you wish, of course, you may read the story of Jessica Lunsford online. I advise against it as it will disgust you and make your blood pressure skyrocket. Suffice it to say, she was a little girl who was victimized by a convicted sex offender.

⁴ “The first noel, the angels did say was to certain poor shepherds in fields where they lay.” See how this all ties in to Christmas? You could say I've wrapped it together nicely with a little bow on top. The word “noel,” by the way, refers to either Christmas or a Christmas carol. This song (which seems to contain hundreds of verses) remembers that Christ's birth was first announced to lowly shepherds instead of the rulers and rich people of the day.

These certain registered sex offenders are prohibited to enter two certain types of places. They may not enter onto the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds. They also may not be found at any place where minors gather for regularly scheduled educational, recreational, or social programs.

Finally, these certain registered sex offenders may not be found within 300 feet of “any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors.” Huh? This section is talking about places like the play area at the food court in Oak Hollow Mall.⁵ The mall is not intended primarily for minors, but the play area is, so these sex offenders have to stay at least 300 feet away from the play area. This would apply to arcades or day care areas as well.

Sounds simple, doesn't it? The above is what we refer to as the RULE. If life was made up of simple RULES, there would be no need for lawyers.⁶ So lawyers don't like RULES, they like EXCEPTIONS. Here are the exceptions to the above rule:

1. A registered sex offender who is the parent or guardian of a minor may take the minor to any location that can provide emergency medical care treatment if the minor is in need of emergency medical care. Note that he or she has to be the parent or guardian and it has to be an emergency for this exception to apply.
2. A registered sex offender who is the parent or guardian of a student enrolled in school may be present on school property if ALL of the following are true:
 - a. He or she is there to attend a conference related to the child's progress OR their presence has been requested by the principal or his designee for another reason related to the welfare or transportation of the child; AND
 - b. The sex offender notifies the school of both his or her registration status and presence at school (unless written permission obtained from superintendent or school board); AND
 - c. The sex offender is under the direct supervision of school personnel while on the property. There is no situation where the sex offender may be on school property without direct supervision.
3. A registered sex offender may enter voting places to vote but must enter, vote, and leave. No three hour tours, no sightseeing, no getting lost, and no going to the restroom. And if it's a school used as a polling place, he or she must notify the principal that he or she is a registered sex offender.
4. A registered sex offender that is required to attend school (between 7 and 16 years old) may be allowed to attend a school designed for “difficult” or “problem” children⁷ if permitted by the board of education.

⁵ Oak Hollow Mall's current advertising pitch: “Shop For Christmas At The Mall Where Every Day Is A Going-Out-Of-Business Sale.” This is another Christmas tie-in for those keeping score at home.

⁶ Stop cheering. Like a white Christmas, getting rid of lawyers is often dreamt of, but very rarely realized.

5. A juvenile registered sex offender may be present at one of these places if he or she is at the location to receive medical treatment or mental health services AND remains under the direct supervision of an employee of the treating institution at all times.

That covers the new restrictions on where a sex offender cannot go. There is currently an ordinance being considered by the city council which would make it unlawful for a registered sex offender to be in a public park.⁸ This ordinance has NOT passed yet, but I expect it to shortly. The enforcement problem with all of these laws is of course that you can't tell who is a registered sex offender just by looking at them. Unless you have prior knowledge about a particular person, you will probably only be able to charge this when you have had another reason to come into contact with the individual and determine who he is and his status as a sex offender. And please remember that not all sex offenders are covered by these restrictions, unlike our next new law.

New N.C. Gen. Stat. 14-202.5 also became effective four days ago on December 1st. It makes it a Class I felony for any registered sex offender⁹ to access a "commercial social networking Web site" where the offender knows minors may become members or create or maintain personal web pages.

For a site to meet the requirements of a "commercial social networking Web site," it has to meet four requirements:

1. Be operated by a person who derives revenue from the site, AND
2. Facilitate the social introduction between two or more persons, AND
3. Allow users to create Web pages or personal profiles that contain information, AND
4. Provide users or visitors the ability to communicate with other users.

Finally, the statute specifically excludes from the definition of "commercial social networking Web site" those sites that provide only one of the following services: photo sharing, email, instant messaging, chat room, or message boards. Also excluded are sites that have as their primary purpose the transaction of goods and services between its members or visitors.¹⁰

So if any detectives want a chance to play around on the computer,¹¹ here's what you do. Get a list of every registered sex offender in High Point. Go to Facebook and do a search for each name. Lather, rinse, and repeat for MySpace and every other social

⁷ This is not referring to Central and Andrews – they have their difficult and problem children without any design at all.

⁸ Wouldn't it just be simpler to repeal all of these laws that tell us where a sex offender can't go and pass one that says where they can go? Here's my draft: "Sex offenders may only go to and be found in prison under any circumstances." I didn't even put any exceptions in there.

⁹ This one applies to all registered sex offenders, not just certain ones.

¹⁰ So you can't "friend" a sex offender on Facebook, but you can buy some junk for Christmas presents from one on Ebay. Is this a great state or what?

¹¹ Like you really need an excuse.

networking site you can think of where minors are allowed to sign up and see if it meets the definition for “commercial social networking Web site.” For every person that you find who is a registered sex offender, go to the magistrate’s office and swear out an arrest warrant for this charge. Determine if you have probable cause to obtain a search warrant for their computer(s), since they are using them as instrumentalities of a crime. Notify the sheriff’s office of the address where they are living, as they might be able to charge them with a registration offense on top of everything else. This should keep you busy for the next several years, at least.¹²

And that wraps up our look at two sex offender laws effective December 1, 2008. You may also be interested to know that effective December 1, it is unlawful for a registered sex offender to obtain a legal name change, regardless of where they are or what computer sites they visit.¹³

So for those that keep track of those things, I have managed to make five Christmas references in a four page paper on sex offenders. Not bad, but if you think you can do better, you should purchase the newly released home version of “The Legal Question of the Week” – the game where everyone pulls a mundane legal topic out of a hat and tries to make as many jokes as possible about it. Released just in time for Christmas, this game for the whole family will give you hours of entertainment! Only \$99.95 with free shipping. Merry Christmas!

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¹² In fact, if you are really a go-getter, you can search for registered sex offenders all over the country and charge them in High Point due to the statute explicitly (no pun intended) granting jurisdiction to our fine state if the transmission that constitutes the offense is received in this state. But do we really want to round up all of the registered sex offenders in the state and country and bring them or extradite them to High Point? Answer: No, we most certainly do not. Anyway, this would raise some interesting legal issues that I would rather not have to research.

¹³ In other words, this would prevent someone who is a registered sex offender from changing their name to Obi-Wan Kenobi. That may seem odd, but when I was a prosecutor in Durham, the fourth Star Wars movie (which was actually the first movie, but was released fourth, etc) was due to come out and we actually had a lady legally change her name to Obi-Wan Kenobi. She wasn’t a sex offender, but she was a teacher. You can read about it here -

http://findarticles.com/p/articles/mi_qn4179/is_19990504/ai_n11723870

Only in Durham....