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Criminals, advocates say Texas parole restrictions unfair to low-level offenders

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It's called Condition X: tough restrictions on the way some criminals, mostly paroled sex offenders, must live once they're out of prison.

Condition X determines the minutiae of their daily lives – whether they can visit a school or attend church; whether they can live with their families or in an apartment with a swimming pool; whether they can access the Internet, work at a convenience store, even whom they can date or marry.

But a growing number of offenders are fighting back against the strict limits, which they say are most often imposed without a fair hearing, and treat low-level offenders and violent predators alike.

"I'm not at war trying to defend sex offenders," said attorney Bill Habern, who has scored several incremental victories in court against how Condition X is imposed. "I'm at war trying to protect our Constitution."

The current system is unfair to low-level offenders such as young people who had consensual sex with minors, said Mary Sue Molnar, co-founder of Texas Voices, a new organization devoted to changing sex offender laws.

Ms. Molnar's son was 22 when he had sex with his 16-year-old girlfriend. He received deferred adjudication but was sent to prison several months later when he was caught with drugs and alcohol. She worries how he'll cope with the Condition X restrictions he'll face upon release.

"You're looking at a young man who, because the place of employment is listed on the [public] registration, cannot find or keep a job – which is one of his probation or parole conditions.

"Where is he supposed to live? You're looking at a man who cannot come up with the money for the order to pay probation fees, treatment fees, polygraph."

Matter of due process

Ms. Molnar and others say they're not championing pedophiles or rapists. But when someone has consensual sex with an older teen, "it is not as serious a crime as someone who has fondled a 6-year-old," she said.

That distinction is one reason Mr. Habern and attorney Richard Gladden are determined to force state officials to give parolees more due process.

And though their efforts mostly have been rebuffed by state judges, they're gaining some traction in federal courts:

- In 2004, the U.S. Fifth Circuit Court of Appeals ruled that "Condition X" can't be imposed on parolees who haven't been convicted of a sex offense, without an "appropriate hearing."
- In 2006, the Texas parole board quit automatically denying sex offenders access to their own children, after a lawsuit claimed the board did not give a parolee notice or a hearing.
- Earlier this year, federal Judge Sam Sparks in Austin expressed "grave concerns over the fundamental fairness" of such parole board hearings and commented that the Texas attorney general's office, which represents state agencies, "has apparently failed to take such constitutional challenges seriously."

Assistant Attorney General David Morales said his office "takes all constitutional challenges seriously."

Condition X is imposed on almost all paroled sex offenders, from those who had consensual sex with an underage teen to violent pedophiles. In some instances, sex offender conditions are even imposed on offenders who don't have a conviction for a sex crime, but whose offense included a sexual aspect. According to the Texas Department of Criminal Justice, about 90 percent of paroled sex offenders have Condition X imposed on them.

Majority vote

It doesn't take much to require the sweeping restrictions of Condition X – just a majority vote of a three-person panel from the Texas Board of Pardons and Paroles. No face-to-face hearing is held before the vote. Instead, each member individually reviews a "parole packet" with information from an institutional parole officer and prison officials, and any supporting material from the inmate's friends and family.

The system gives "someone who is getting out on parole with sex offense stuff less due process than someone who is having their driver's license suspended," said Mr. Gladden, whose business card bears a picture of the Revolutionary War-era "Don't Tread on Me" flag.

Mr. Gladden and Mr. Habern are challenging that procedure in Judge Sparks' court.

When board members consider putting a convict under Condition X, the inmate doesn't know what evidence is presented against him and has no opportunity to respond. He can't even be sure panel members have read his file, Judge Sparks noted.

A parole division employee testified in one case that board members spend an average of 10 to 30 minutes reviewing materials in each case.

"It would certainly appear that if the voting members actually reviewed the files, the ... [process] would take substantially longer than 30 minutes," the judge wrote.

Parole board member Jose Aliseda, who is a lawyer and former county judge, said the recent court cases "have caused us to examine our policy," and the board is trying "to make sure our policies meet constitutional muster." But he said he's "sufficiently comfortable" with the current process.

In a recent 5-4 decision in one case, the Texas Court of Criminal Appeals found the system acceptable.

Going case-by-case

But Mr. Habern intends to keep chipping away, hoping eventually to "force the parole board to examine each individual situation" about what restrictions are needed, rather than impose blanket restrictions on all offenders.

Mr. Gladden agreed.

"In Texas, before your driver's license can be suspended, you have a right to an in-person hearing," he said. "You have a right to know on what grounds they're going to suspend. You have a right to be heard as to why your license should not be suspended. And you have a right to appeal from that determination.

"And it seems to me that ... you start saying, 'What's more important – my driver's license or not being able to live with my kids?' "

Ms. Molnar, of Texas Voices, which has about a thousand members and supporters, said the system is not set up for offenders "to reintegrate into society and be productive members of society. It's set up for them to be roadblocked at every single turn."

Parole board member Aliseda acknowledges that the restrictions make life difficult, but "I see success stories all the time," he said. "It's not impossible and it's especially not impossible after an offender has established the trust."

Torie Camp, deputy director of the Texas Association Against Sexual Assault, a victim's advocacy group, said the restriction issue is difficult for everyone.

"I can easily see how being a parole board member, you would want to err on the side of caution," she said. "They want to do their very best to keep the community safe."

Balancing the offender's constitutional rights with public safety is hard, she said. But painting all sex offenders with a broad brush "does a disservice to victims of sexual assault," she said, because the restrictions become meaningless.

Like Mr. Habern, she advocates a more individualized approach instead of the restrictions routinely recommended by the parole division and imposed by the parole board.

"For our own community safety, we actually have to look at reasonable and fair treatment for sex offenders when they're coming back into our communities, so they can reintegrate," Ms. Camp said.

Those concerned about the process blame the parole division and the Legislature, which crafted the sweeping laws, for the problem, not the parole board.

"The parole division does not exercise discerning judgment," said parole attorney Gary Cohen. Mr. Cohen said he has no doubt the parole division "deliberately sat down to fashion the most minimal cursory review that they possibly could."

Officials with the parole division declined to comment, citing pending litigation.

Mr. Cohen has little faith that politicians will rush to protect the constitutional rights of sex offenders.

"It's not a politically favorable position for them," he said.

Michele Deitch, who teaches criminal justice policy at the University of Texas LBJ School of Public Affairs, said that eventually, the courts will have to address the issue of how to balance public safety with restricting individual freedoms.

The issue of restrictions is "affecting more and more people," she said, and the inability to live a certain way is more than an inconvenience.

"It's very clear there's an open question. ... Clearly there's deprivation going on there that needs some kind of due process protection," Ms. Deitch said.

By the numbers

3,789

Texas parolees supervised as sex offenders

3,391

Texas parolees subject to Condition X, the tough restrictions on the way many criminals must live once they're out of prison

89.5%

Percentage of sex offender parolees subject to Condition X