



March 22, 2012

Members of the City Council  
City of Dover  
c/o City Clerk  
P.O. Box 475  
Dover, DE 19903

VIA EMAIL

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Dear Council Members:

We write to urge you to vote against proposed ordinance #2012-08 as amended. The American Civil Liberties of Delaware strongly opposes the adoption of this ordinance, which will actually undermine the safety of children in Dover and make them more vulnerable to harm.

The proposed ordinance would prohibit registered sex-offenders from living or working within 500 feet of a licensed daycare center and from other activities related to children. While it is intended to protect children from sexual predators, research shows that the ordinance would have the opposite effect. By limiting the housing and employment opportunities available to registered sex offenders who have been released from prison, it will drive more of them into the shadows and provide parents and the community with a false sense of security.

A memo addressing the issues of sex-offender residency restrictions prepared by another ACLU<sup>i</sup> affiliate provides details that are directly applicable to Dover and should be considered before you vote on the proposed ordinance:

Sex crimes are deplorable. They are often violent, and sometimes involve children. Victims suffer devastating, long-term psychological impacts. Communities, families, and individuals are understandably outraged by such crimes, and want to take all possible measures to protect children from the tragedy of sexual abuse. Residency restrictions are advanced by those who genuinely believe that they are an important measure to prevent children from becoming victims. The theory behind residency restrictions is that by keeping registered offenders from living near places where children gather, communities can prevent these former offenders from victimizing children.

This approach, however, rests on two pervasive misconceptions about registered offenders: one, that they re-offend at a rate that far exceeds that of any other kind of

offender; and two, that those who do re-offend choose victims who live near to them.

### **Residency Restrictions are Ineffective**

Residency restriction laws presume that former sex offenders will commit crimes again if they live close to children. However, all of the empirical research into the efficacy of residency restrictions has found that such restrictions do not reduce the risk of harm to children.

Residency restriction laws assume that children are most often sexually assaulted by strangers and in public places. However, 93% of sexual assault victims under the age of 17 are assaulted not by a stranger, but by a family member or an acquaintance. 70% of sexual assaults take place within the residence of the victim. Such laws may incorrectly lead communities to feel secure by overstating the threat posed by strangers. As a result, families may ignore the fact that children are most likely to be sexually assaulted by people they already know and in their own homes.

Preventing registered sex offenders from living near public places where children gather will not prevent assaults. Research has found that sex offenders are less likely to offend near their homes, and may travel up to three to five miles to access victims. A Colorado study found that sex offenders who committed crimes against children did not live within close proximity to schools or playgrounds, but were scattered randomly throughout the state.

Residency restriction laws like the proposed ordinance are overly broad because they are applied to registered sex offenders regardless of the crime and regardless of whether the crime involved children. Under the proposed ordinance, an adult, who while 17 years old engaged in consensual sex with another 17 year old and ended up in court because of it, could be prohibited from living or working within 500 feet of a daycare center, depending on how he or she were sentenced. (See 11 *Del. C.* §§ 768, 4121.) And someone who has completed his sentence for sexual assault of an adult woman would be prohibited from living or working within 500 feet of a daycare center. Many individuals on the registered sex offender list are not a threat to children; accordingly, there is no reason to limit them from living or working near a daycare center.

### **Residency Restrictions May Increase the Threat to Public Safety**

In actuality, residency restrictions may result in a decrease in community safety by destabilizing registered offenders. Residency restrictions can result in sex offenders living separately from their families, depriving them of an important source of stability. The restrictions push sex offenders to reside in more isolated areas, resulting in decreased access to employment opportunities and valuable social services. Residency restrictions can lead to isolation, economic and emotional stress, and instability, all of which are factors associated with recidivism and technical parole violations. One recently commissioned study on residency restrictions in Colorado concluded that “a tight web of supervision, treatment and

surveillance may be more important in maintaining community safety than where a sex offender resides.”

Unable to find an acceptable place to live, registered offenders may choose to stop reporting their locations and “go underground,” making it more difficult for law enforcement to keep track of sex offenders in their jurisdiction. Iowa found that it went from having 140 sex offenders who were not reporting their residencies to 400 “underground” registered offenders after enacting a strict residency restriction. Such a result contravenes the purposes of sex offender registry requirements, and limits law enforcement’s ability to monitor registered offenders.

### **Registered Sex Offenders Do Not Reoffend at a High Rate**

Residency restriction laws assume that registered sex offenders are responsible for most sexual crimes. In fact, 96% of people arrested for child molestation were first-time offenders. The most recent study by the Bureau of Justice Statistics found that just 3.3% of people convicted of violent sexual offenses against children were rearrested for a new sex crime within three years of their release (the time during which most re-arrests occur). One long-term study of 12,863 individuals convicted of committing sex crimes in New York found that just 2% of released inmates who served time for a sex offense were subsequently convicted of another sex crime. Recidivism rates among sex offenders are in fact much lower than recidivism rates among people convicted of other felonies. There is little evidence to support the conclusion that placing restrictions on where registered sex offenders live prevents future sexual violence.

All of the existing evidence from more than a decade of state experiments with this type of restriction on former sex offenders demonstrates that these restrictions do not work. They fail for several reasons: First, the rate of re-offending among sex offenders is in fact quite low. Second, residency restrictions are premised on the false notion that there is a relationship between where offenders live and where they offend. Third, courts are beginning to strike down residency restriction laws because they effectively leave former offenders with nowhere they can live. And finally, residency restrictions have the counterproductive consequence of driving registered offenders “underground” and ceasing to comply with reporting requirements, which may actually lead to a decrease in public safety.

### **The Proposed Ordinance is Inconsistent with Delaware Law**

The proposed ordinance would go farther than the Delaware General Assembly has seen fit to go. First, unlike Delaware state law, the proposal would create a geographical limitation on where registered sex offenders may work. Thus, it will take people who have served their court ordered prison sentence, and make it harder for them to find work. That will not benefit children or anyone else.

Second, when the state adopted the residency restriction that already applies in Dover, the General Assembly explicitly allowed people living within 500 feet of a school at the time the law was enacted to remain in their homes for as long as they

wanted to live there. (See 70 Del. Laws, chap. 279, § 3) In contrast, proposed ordinance #2012-08 would require them to move within one year.

Dover's possible adoption of a law to regulate a matter that is already governed by state law raises issues under the legal doctrine of preemption, under which local laws are often voided by the courts. In addition, as more and more courts recognize that a residency restriction is a punishment, applying this ordinance to people convicted prior to its enactment could well render it a violation of the *ex post facto* clause of the United States Constitution. Strict residency restrictions amount to wholesale banishment of registered offenders from communities—a permanent punishment that is a cruel and excessive response to the offender's crime.

The passage of ordinance #2012-08 will not promote safety by limiting where registered sex offenders can live. It will result in significant harms to registered offenders, and will likely have the counterproductive effect of increasing the likelihood of re-offense and reducing the level of safety for Dover children. For these reasons, we oppose the ordinance and urge members of the Dover City Council to vote against it.

Respectfully,



Kathleen MacRae  
Executive Director



Richard H. Morse  
Legal Director

Cc: Nicholas A. Rodriguez, Esq

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<sup>i</sup> <http://www.nyclu.org/content/legislative-memo-amending-correction-law-relation-residence-of-sex-offender>