

TESTIMONY REGARDING 2015 HOUSE CONCURRENT RESOLUTION 3012
Interim Judiciary Committee
September 17, 2015

Chairman Hogue and distinguished members of the Committee:

My name is Justin Vinje. I am an attorney in private practice in Bismarck, and I am the past president of the North Dakota Association of Criminal Defense Lawyers. Chairman Hogue kindly invited our organization to share our thoughts regarding section 12.1-32-15, N.D.C.C., the offender registration statute.

We see this as an opportunity to make a number of positive changes to the statute. The way it currently works, we are casting the offender registration net too broadly, with the consequence that too many of our citizens have to register as sex offenders. The overall effect is that law enforcement has to monitor a larger pool of individuals, raising enforcement costs and hampering its ability to respond rapidly during a crisis.

JUDICIAL DISCRETION IS A GOOD THING

Where do we begin? Judges currently have the ability to decide whether someone has to register in certain misdemeanor sex cases. This needs to be expanded slightly. We would ask that judges be allowed to exercise discretion on registration in all cases involving violations of section 12.1-20-05, N.D.C.C., which involve Corruption of a Minor.

Currently, the law only allows a judge to decide the registration issue when the people who had sex are three years in age apart or less. There is some irony here. The criminal law pertaining to sex offenses also states that a person in a consensual-sex case is guilty of an offense “only if the actor is at least three years older than the minor.” N.D.C.C. § 12.1-20-01(3).

This means that the only people a judge may keep from registering may not be guilty of a crime anyway. But if the actor is three years and one day older than the other person, the actor is guilty of an offense and must register. At that point, neither the judge nor the attorneys have any say in the matter—the actor must register.

In reality, what happens at this point? In appropriate cases, the actor is charged with something else—Contributing to the Delinquency of a Minor—which does not require registration. When the people who work with these cases in the courtroom on an everyday basis are forced to charge a different crime in order to achieve a just outcome, something is wrong. How do we fix this? Judges are smart people, let them use their discretion.

REGISTRATION IS NOT ALWAYS EASY

To put it bluntly, I have found that the offender registration laws hit the poorest and least intelligent of us the hardest. I once represented a fellow in Morton County on a Failure to Register. He had been serving a jail sentence in Morton County, and he was required to register

upon his release. So, he registered with the Morton County Sheriff prior to getting out of jail. He then lived in the City of Mandan. He was arrested shortly thereafter for Failure to Register.

What was the problem? It is almost a riddle. The registration law requires people living in a city to register with the local police, and it requires people who live in the county to register with their local sheriff. He failed to update his registry with the Mandan Police Department. He sat more than ninety days in jail while I worked to get his charge dismissed.

If you think that is bad, homeless people have it worse. A homeless person must register with local law enforcement every three days. It stands to reason that a homeless person may have pressing day-to-day concerns that are in competition with the need to register.

So what ends up happening? The registration law calls for a ninety-day minimum sentence, and jailing people costs a lot of money. The Failure to Register charge often gets changed to Disobedience of a Judicial Order, which does not carry a mandatory minimum sentence. This is a signal. Something is broken. Judges should have the discretion to decide the length of the sentence.

PUTTING PEOPLE ON NOTICE

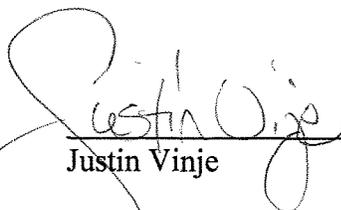
The Courts have come a long way toward putting defendants on notice that they may be required to register as sex offenders or offenders against children. Some people still slip through the cracks. Let's consider the case of a parent who uses too much physical force to discipline his or her child and pleads guilty to Child Abuse. That person may come out of the court system not realizing that he or she must register, but will soon find out.

We do not condone child abuse, but that is a different evil than sex offenses. Currently, there is no distinction, for purposes of registration, between child abuse and sex offenses. We as a society should be less worried about tracking a parent who took a belt to his or her own child than one who sexually abused a child. There should be a distinction.

CONCLUSION

As defense attorneys, we are just as concerned with justice as our fellow prosecutors and hard-working law enforcement officers. We are willing to work hand in hand toward the advancement of our laws, and we see a great opportunity here.

Respectfully Submitted,


Justin Vinje