



JUVENILE PRACTICE POINTER: STAY OF MANDATORY SEX OFFENDER REGISTRATION

The Supreme Court recently reversed prior case law on a juvenile court's authority to stay mandatory sex offender registration. In *State v. Cesar G.*, 2004 WI 61, <http://www.courts.state.wi.us/html/sc/02/02-2106.htm>, the court held that under Wis. Stat. § 938.34(16), a juvenile judge has discretionary authority to stay the mandatory 15-year sex offender registration requirement.

The factors a court should consider are contained in Wis. Stat. §§ 938.34(15m)(c) and 301.45(1m)(e). Along with the seriousness of the offense itself, those factors are:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation;
2. The relationship between the juvenile and the victim of the violation;
3. Whether the violation resulted in bodily harm, as defined in § 939.22(4), to the victim;
4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions;
5. The probability that the juvenile will commit other violations in the future; and
6. Any other factor that the court determines may be relevant to the particular case.

We can all apply these factors to our particular cases. There are certain portions of the opinion which may not be obvious. First of all, it applies to all dispositional orders, not just orders for supervision. The argument can be made that staying sex offender registration for a person going to corrections will facilitate and encourage successful treatment. If he or she successfully completes treatment and aftercare, a court can allow the dispositional order to run out, which would include the stay of registration. The danger is when the child fails, the registration order can be imposed and the 15 years begins running from that date.

Creative individuals, such as Attorney Janice Balistreri of the SPD's Madison Trial office, have already realized that the ability to stay mandatory sex offender registration can be applied to other mandatory statutory requirements such as the loss of a driver's license.

There is also the question of the many children who are currently under orders requiring sex offender registration. There should be no question of retroactive application. The Supreme Court essentially said that the Juvenile Justice Code since its inception allowed judges that discretion. It was and is the intent of the legislature to allow juvenile court judges the discretion because in juvenile cases the most effective disposition for the particular juvenile is what is important.

In the appeal context, some of us who have active cases are filing postdisposition motions requesting a stay of the previously imposed order for registration. The same can be done by motions for a

revision in dispositional orders under Wis. Stat. § 938.363. Obviously, only some cases will meet some or all of the considerations set forth above and merit a motion.

On a practical note, I contacted the DOC sex offender registration official. I asked how we get our clients off of the registry after we get judges to reconsider their orders in light of *Cesar G*. She said the clerk of court, the supervising agent or the attorney can send a certified copy of the amended/ revised order to the Department of Corrections, SORP, P.O. Box 7925, Madison, WI 53707-7925. Since this is all so new, that person will then contact the DOC legal department. You should have the judge order not only a stay of reporting, but that the juvenile be removed from the registry.

Attorney Eileen Hirsch of the SPD's Madison Appellate Office, who litigated the *Cesar G* case, has some suggestions. Psychologists and ultimately judges have to be educated on the recent studies regarding recidivism in adolescents. The recent studies suggest that recidivism rates are below 10%. In fact, "statistics indicate a majority of juvenile sex offenders never are arrested again and those who receive specialized treatment may have even lower recidivism rates—one study indicates as low as 5%." *Docs Say Young Sex Offenders Can Be Redeemed*, Mareva Brown, Sacramento Bee (April 29, 2004).

I would also urge those of you who are interested in such research and want to find out the latest developments in light of *Cesar G* to come to the State Public Defender's Annual Criminal Defense Conference on October 7 and 8 at the Hyatt Hotel in Milwaukee where there will be a session addressing the questions and problems posed by the case.

Thank you to Michael Yovovich, Assistant State Public Defender in the SPD's Madison Appellate Office, for this issue's Juvenile Practice Pointer.

Helpful resources for lawyers and judges interested in learning more about juvenile sex offenders include:

- The website of the National Center on Sexual Behavior of Youth, <http://www.ncsby.org>, contains fact sheets at <http://www.ncsby.org/pages/publications.htm> that can be attached to motions for a stay of sex offender registration.
- The website of the Association for the Treatment of Sexual Abusers, <http://www.atsa.com>, contains the article "*The Effective Legal Management of Juvenile Sex Offenders*" at <http://www.atsa.com/ppjuvenile.html>.
- The article "*Application of Megan's Law to Juveniles*" by Lisa C. Trivits and N. Dickon Reppucci can be found at 57 *American Psychologist* 690.

Thank you to Eileen Hirsch, Assistant State Public Defender in the SPD's Madison Appellate Office, for providing these resources.