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## **ACLU-IA Challenges Sex Offender Banishment Law With Class Action Lawsuit**

by R. Ben Stone, ACLU-IA Executive Director  
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The American Civil Liberties Union of Iowa has filed a federal lawsuit on behalf of several "John Doe" plaintiffs challenging the constitutionality of Iowa's law banning former sex offenders from living within 2,000 feet of a school or day care facility. The suit is believed to be the first class action suit in the nation to take on a law of this type.

The law, which went into effect on July 1 of last year, has received notoriety in the national press as the first statewide restriction on where released sex offenders may live. It was known as Senate File 2197 in the 2002 Iowa General Assembly, and is now codified as Iowa Code Section 692A.2A.

"This law is both poorly conceived and illogical, for it places burdens on police that don't really enhance community safety," said Ben Stone, executive director of the ACLU-IA. "Herding former offenders into penal colonies may help get politicians re-elected, but it is a poor use of law enforcement dollars," he added. "And the unfortunate families who happen to live in the few areas where these former offenders can live aren't too thrilled about it either," Stone said.

According to the ACLU-IA, many mental health professionals believe forcing former sex offenders to live in close proximity to one another in isolated communities is counterproductive because it undermines counseling efforts essential to reducing recidivism.

The suit states that the residency prohibitions should be enjoined on several grounds including the right to travel, due process, the right against self incrimination, and the right to family association and privacy.

The suit also alleges that the law imposes a punishment that is cruel and unusual because the residency restriction amounts to "the functional equivalent [of] the old sanction of banishment..."

The suit is brought on behalf of three unnamed men: two from Johnson County and one from Scott County (who seeks to live in Clinton County). One of the men was convicted in another state for the crime of having consensual sex with a 15 year old girl when he was 18 years of age. Despite the fact that this kind of conduct isn't even a crime in Iowa, the residency restriction applies to him.

Another plaintiff is challenging the law because it forbids him from living with his future wife. The third plaintiff, who is employed and can afford a decent home, can't find a legal place to live even though he is working with his probation officer on the problem.

The federal complaint, filed in the Southern District of Iowa, alleges that the three men are representative of a class of affected people, and seeks class action certification. It is available on the ACLU-IA's website in the legal program's "brief's and stuff" section. Here is the URL: [http://www.iowaclu.org/pdf/residency\\_complaint.pdf](http://www.iowaclu.org/pdf/residency_complaint.pdf)

While Iowa appears to be the first state to enact a state law restricting the residency of former sex offenders, a few municipalities have enacted somewhat similar ordinances. In Albuquerque, a district court judge recently struck down an ordinance that, among other things, made it a crime for former sex offenders to be alone with any minor while in the city limits. A local ordinance in Colorado forbidding former sex offenders from living together in a family residence was struck down earlier this year on procedural grounds.

On April 29, 2003, a local judge in Washington County found the statute unconstitutional on several grounds. It has been reported that the attorney general's office plans to appeal that decision (State of Iowa v. Seering). The ACLU-IA will seek to file an amicus ("friend of the court") brief in that case if it is appealed.

The named defendant's in the suit are Tom Miller, Iowa Attorney General, Patrick White, Johnson County Attorney, and Michael Wolf, Clinton County Attorney. White and Wolf are sued as representative of the class of defendant County Attorneys.

Phil Mears of Iowa City, the lead attorney working with the ACLU-IA, can be reached at 319/351-4363. The complaint is at: [http://www.iowaclu.org/pdf/residency\\_complaint.pdf](http://www.iowaclu.org/pdf/residency_complaint.pdf)