



Iowa General Assembly

2003 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

TEMPORARY RESTRAINING ORDER - SEX OFFENDER RESIDENCY RESTRICTIONS

Filed by United States District Court For the Southern District of Iowa, Davenport Division
July 25, 2003

John Doe v. Tom Miller, J. Patrick White and Michael Wolf, as representatives of the class of all county attorneys in Iowa

Overview. During the 2002 legislative session the legislature passed and the Governor signed into law Senate File 2197, which placed residency restrictions on convicted sex offenders. The federal District Court for the Southern District of Iowa, issued a temporary restraining order preventing the Attorney General or the county attorneys from enforcing these residency restrictions until constitutional issues regarding Senate File 2197 are resolved.

Facts. Three plaintiffs on behalf and as representatives of sex offenders brought an action in federal court to prevent the defendants (Attorney General and county attorneys) from enforcing Senate File 2197. The new law prohibits a sex offender from establishing a residency within 2,000 feet of a school or child care facility.

Analysis. In determining whether a temporary restraining order should be ordered enjoining the defendants from enforcing the provisions of Senate File 2197, the federal court cited *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F. 2d 109 (8th Cir. 1981)(en banc). The *Dataphase* test for determining whether to issue a temporary restraining order involves four factors: (1) the threat of irreparable harm to the plaintiffs; (2) a balance between the harm to the plaintiffs and the injury any order will inflict on other parties to the litigation; (3) the probability the plaintiffs will succeed on the merits, and; (4) the public interest.

The court concluded the first *Dataphase* factor was met, stating that the plaintiffs may suffer irreparable harm from criminal prosecutions, continued incarceration, untenable living situations, economic loss, and forced vagrancy because some sex offenders could not find suitable housing in Iowa City or that suitable housing was limited to a very small area, and that there are no legal residences within the entire city of Carroll. In analyzing the second *Dataphase* factor, the court balanced the harm to the plaintiffs with the injury to other parties and concluded that the harm of criminal prosecution, continued incarceration, and forced vagrancy outweighs any injury to the county attorneys from enforcing the laws. Under the third *Dataphase* factor, the court stated that while litigation is in its infancy justice requires that the court preserve the status quo and issue the temporary restraining order until the constitutional issues can be determined. Under the fourth factor of the *Dataphase* test, the court acknowledged that public safety is undeniably in the public's interest, but the public has an even greater interest in preventing the violation of a party's constitutional rights.

Conclusion. The federal court issued a temporary restraining order preventing the Attorney General and the county attorneys from enforcing the 2,000 foot residency restrictions for sex offenders living near a school or child care facility. The temporary restraining order will be in effect statewide from July 25, 2003, until the court rules on plaintiff's motion for a preliminary injunction.

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