

ALR 6th

Alert

Route to:

- _____
- _____
- _____
- _____
- _____
- _____

From the editor

To protect the rights of greater society, certain rights of sexual offenders must be limited. Application of the statutes enacted to limit those rights, through identification and control of those persons who are guilty of or who are pleading guilty to a sexual offense, however, is not without legal challenges. Exploring these challenges, [40 A.L.R.6th 419](#) considers the validity, construction, and application of statutory and municipal enactments and conditions of release banning sex offenders from parks, while an annotation in the upcoming [41 A.L.R.6th](#) will examine the court's duty to ensure that a sex offender is advised of sex offender registration consequences or other restrictions before he or she can properly enter a plea of guilty. Other significant annotations in these two volumes include what constitutes "actual malice" in radio defamation cases ([40 A.L.R.6th 231](#)) and retroactive application of state statutes in asbestos liability cases ([41 A.L.R.6th](#)).

Douglas S. Jurenko, Editor, and Jason B. Binimow, J.D.

Highlights

ATTORNEY OR ASSISTANCE OF ATTORNEY

Unauthorized Practice of Law

A violation of law does not, per se, constitute contempt of court. Only conduct which tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties is considered contemptuous. An attorney has a duty to maintain respect for the court and to conduct himself or herself properly. Any breach by an attorney of this duty to maintain the respect due to judicial officers constitutes a contempt. An attorney should not engage in conduct which offends the dignity of the court. An attorney may be found guilty of criminal contempt, for example, for making false statements to



a court for the purpose of deceiving the court, or for producing a carbon copy of a petition and falsely asserting that it is a true copy of the original, if the assertion is made with the intent to hinder the administration of justice. An attorney may commit a contempt of court: by misconduct

which tends to embarrass the administration of justice, by failing to attend a pretrial conference, by willfully neglecting his duty to attend the trial of a case when it is called, by failing to stand when ordered to do so, by appearing in court in an intoxicated condition, or by engaging in an altercation. One may also be found to have committed contempt of court by practicing law without being properly authorized to do so, or by holding oneself out as an attorney at law during a period in which one's right to practice as an attorney has been suspended. The issue arises as to whether the unauthorized practice of

law constitutes contemptuous conduct. This annotation collects and discusses the cases which have considered whether the unauthorized practice of law constituted contemptuous conduct. [40 A.L.R.6th 463](#)

AUTOMOBILES

Vehicular Event Data Recorders

Every vehicle with airbags has an airbag control module that monitors a developing crash and, based on the information received, decides whether to deploy the airbags. In addition, the module runs a diagnostic examination to make sure that its system is operating properly. The module also has a function that records data and, after a crash, stores some of that data in the EDR, which is a component of the airbag control module. For General Motors Corporation vehicles, this module is known as a sensing diagnostic module (SDM). For Ford Motor Company vehicles, this module is known as a restraint control module (RCM). In addition to recording such matters as the warning lamp status (which, when lighted indicates problems) and whether the driver's belt is buckled, an EDR captures information about the severity of a crash, known as the delta force or the change of speed, and the duration of the crash. Moreover, the EDR records and stores four matters for a five-second period before a crash event—the vehicle speed, the engine revolutions per minute (RPM), the brake switch status (whether the brake has been applied), and the throttle position. This annotation collects and discusses those cases in which courts have determined the admissibility of evidence taken from vehicular event data recorders (EDR), sensing diagnostic modules (SDM), or “black boxes.” [40 A.L.R.6th 595](#)

RADIO

Defamation by Radio—Malice

Under certain circumstances required by the First Amendment, a plaintiff bringing a defamation action must prove by clear and convincing evidence that the defamatory publication was made with actual malice. Actual malice is a term of art meaning knowledge of falsity or reckless disregard of truth or falsity. In the context of defamatory publications broadcast over the radio, courts have considered whether actual malice was shown, ruling under some circumstances that the evidence showed actual malice, or raised an inference of actual malice, but in other circumstances did not. This

annotation collects and discusses all of the cases which have considered whether actual malice was established in a defamation action against a radio defendant. [40 A.L.R.6th 231](#)

SEX AND SEXUAL MATTERS

Sex Offender—Park Prohibition

A number of states have enacted statutes relating to sexually dangerous persons, or persons with psychopathic personality disorders, which are designed to cope with sex offenders who, because of a psychopathic condition, commit or have a tendency to commit sex offenses. The purpose of such statutes is twofold: to protect the public by sequestering a sexually dangerous person until such a time as the individual is recovered and released, and to subject sexually dangerous persons to treatment such that the individual may recover from the propensity to commit sexual offenses and be rehabilitated. Such statutes reflect the legislature's determination of the importance of identifying and controlling persons whose history and mental state render them sexually violent predators. Some states have enacted mandatory sex-offender registration laws requiring individuals convicted of sex offenses to register with local law-enforcement agencies upon release from confinement or upon moving. Pursuant to its police power, a municipality has the power to restrict or prohibit the exercise of a legitimate trade when it is necessary for the protection of public morals. A municipality's power to regulate business includes the authority to prescribe reasonable rules, regulations, and conditions under which business may be conducted or permitted; a city is not required to wait for sexually-oriented businesses to locate within its boundaries, depress property values, increase crime, and spread sexually transmitted diseases before it can regulate those types of businesses. A municipal ordinance which proscribes conduct which is unnecessarily offensive to the visual sensibilities, or offensive to the sense of hearing or smell of the average person, is a valid regulation under the police power. However, such ordinances must not be so broad in their scope that they infringe upon constitutionally protected activity or conduct. The issue arises as to the validity, construction, and application of municipal enactments banning sex offenders from parks. This annotation collects and discusses the cases which have considered the validity, construction, and application of statutory and municipal enactments and conditions of release banning sex offenders from parks. [40 A.L.R.6th 419](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 41 A.L.R.6th in February 2009. Some of the annotations listed may be rescheduled.



ASBESTOS

Retroactive Application of Statutes

Statutes should be construed liberally in order to save them from constitutional infirmity. Nonetheless, while a court will liberally construe a legislative enactment with a predilection for its constitutionality, and will seek by every legitimate means to put an interpretation on the law that will confirm its constitutionality, there

are well-defined limits to the court's power in that regard. Courts normally should give retroactively applied legislation the same deference as legislation applied prospectively. However, a retroactive operation need not be given to a statute which by its terms may be made to apply to past as well as to future matters, where such retroactive effect would make the statute unconstitutional. One modern definition of a "retrospective law," often cited, is that "every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already passed, is a retrospective statute." Legislation is considered retroactive if its application determines the legal significance of acts or events that occurred prior to the statute's effective date. A statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. Instead, a court must ask whether the new provision attaches new legal consequences to events completed before its enactment. With respect to determining the retroactivity of legislation, elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly. The issue arises as to the potential retroactive application of state statutes concerning asbestos liability. This annotation will collect and discuss all of the cases which have considered the retroactive application of state statutes in an asbestos liability setting. **41 A.L.R.6th**

CRIMINAL LAW

Offender Registration—Advisement

Those who are convicted of crimes against society lose a measure of constitutional protection. However, a conviction does not, on its own, terminate the defendant's constitutional rights, and an incarcerated individual retains rights not inconsistent with the legitimate penological objectives of the corrections system. Statutes or municipal ordinances sometimes require persons previously convicted of a crime to register with designated officials. It is unconstitutional to punish under such an ordinance a person whose default was completely innocent in that he or she was unaware of the requirement and there were no circumstances to put the person on inquiry. Criminal registration statutes have withstood challenges based on allegations that they deny equal protection of the laws, or due process, and that they violate constitutional

prohibitions against bills of attainder, ex post facto laws, and cruel and unusual punishment. Moreover, the fact that the defendant is represented by counsel at the time he or she offers a plea of guilty does not necessarily relieve the court of the duty of ascertaining that the defendant is informed of the consequences of the plea, and of advising the defendant of such consequences if he or she is not so informed. In order for a guilty plea to be voluntarily and intelligently entered, the defendant must be advised about the consequences of a guilty plea. The issue arises as to a court's duty to advise sex offenders as to sex offender registration consequences or other restrictions arising from a plea of guilty, or to determine that the offender is advised thereof. This annotation will collect and discuss the cases which have considered a court's duty to advise sex offenders as to sex offender registration consequences or other restrictions arising from a plea of guilty, or to determine that the offender is advised thereof. **41 A.L.R.6th**

DUE PROCESS

Stigma-Plus Claims

A so-called "stigma-plus" claim is often brought by an educator or student alleging that a defamatory statement in connection with an adverse employment or supervisory action, such as termination or discipline, implicates a Fourteenth Amendment due process "liberty" interest, thus requiring a name-clearing hearing. This annotation will collect and discuss all of the cases in which a court has considered the application of the stigma-plus standard for due process claims in the education context. **41 A.L.R.6th**

TWENTY-FIRST AMENDMENT

Interplay Between 21st Amendment and Sherman Act

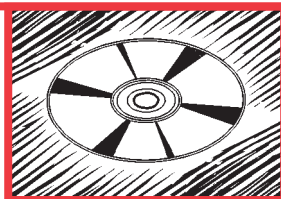
The 21st Amendment of the United States Constitution gives a state the power to control the transportation or importation of intoxicating liquors into the state, and thereby poses a potential conflict with the Sherman Antitrust Act, which generally prohibits restraints of trade. This annotation will collect and analyze federal and state court cases discussing the interplay between the 21st Amendment and the Sherman Act and the manner in which conflicting interests thereunder are to be resolved. **41 A.L.R.6th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 40 A.L.R.6th or scheduled for publication in 41 A.L.R.6th. Some of the annotations listed may be rescheduled.

ASBESTOS

Retroactive Application of State Statutes Concerning Asbestos Liability, **41 A.L.R.6th**



ATTORNEY AND CLIENT

Unauthorized Practice of Law as Contempt, **40 A.L.R.6th 463**

Legal Malpractice in Connection with Attorney's Withdrawal as Counsel—Criminal and Business-Related Cases, **41 A.L.R.6th**

BIRTH CONTROL

Propriety of Pharmacy and Pharmacist's Refusal to Fill Prescription for Contraceptives, **41 A.L.R.6th**

COMPUTERS

Conversion of Electronic Data, Including Domain Names, [40 A.L.R.6th 295](#)

Validity of State and Local Taxation and Regulation of Voice Over Internet Protocol (VoIP) Service, [41 A.L.R.6th](#)

CONSTITUTIONAL LAW

Actions by or Against Individuals or Groups Protesting or Picketing at Funerals, [40 A.L.R.6th 375](#)

Validity, Construction, and Application of Statutory and Municipal Enactments and Conditions of Release Prohibiting Sex Offenders from Parks, [40 A.L.R.6th 419](#)

Application of Stigma-Plus Due Process Claims to Education Context, [41 A.L.R.6th](#)

CRIMINAL LAW

Restrictions on Disclosure of Contents of Complaint Alleging Sexual Offense Under Common Law “Fresh Complaint” Doctrine—Post-1950 Cases, [40 A.L.R.6th 1](#)

Admissibility of Computer Forensic Testimony, [40 A.L.R.6th 355](#)

Court’s Duty to Advise Sex Offender as to Sex Offender Registration Consequences or Other Restrictions Arising from Plea of Guilty, or to Determine that Offender Is Advised Thereof, [41 A.L.R.6th](#)

Propriety of Use of Multiple Juries at Joint Trial of Multiple Defendants in State Criminal Prosecution, [41 A.L.R.6th](#)

DAMAGES

Retroactive Application of State Statutes Concerning Asbestos Liability, [41 A.L.R.6th](#)

ELECTIONS AND VOTING

Validity, Construction, and Application of State Statutes Regulating or Proscribing Payment in Connection with Gathering Signatures on Nominating Petitions for Public Office or Initiative Petitions, [40 A.L.R.6th 317](#)

EVIDENCE

Admissibility of Evidence Taken from Vehicular Event Data Recorders (EDR), Sensing Diagnostic Modules (SDM), or “Black Boxes,” [40 A.L.R.6th 595](#)

FUNERALS AND FUNERAL DIRECTORS

Actions by or Against Individuals or Groups Protesting or Picketing at Funerals, [40 A.L.R.6th 375](#)

INSURANCE AND INSURANCE COMPANIES

Automobile Liability Insurance Policy Exclusion as Applied to Loss or Injury Resulting from Insured’s Flight from Police, [41 A.L.R.6th](#)

INTOXICATING LIQUORS

Interplay Between 21st Amendment and Sherman Act Concerning State Regulation of Intoxicating Liquors, [41 A.L.R.6th](#)

JURY AND JURY TRIAL

Propriety of Use of Multiple Juries at Joint Trial of Multiple Defendants in State Criminal Prosecution, [41 A.L.R.6th](#)

LIBEL AND SLANDER

Defamation by Radio—Actual Malice, [40 A.L.R.6th 231](#)

RAPE

Restrictions on Disclosure of Contents of Complaint Alleging Sexual Offense Under Common Law “Fresh Complaint” Doctrine—Post-1950 Cases, [40 A.L.R.6th 1](#)

REGISTRATION

Court’s Duty to Advise Sex Offender as to Sex Offender Registration Consequences or Other Restrictions Arising from Plea of Guilty, or to Determine that Offender Is Advised Thereof, [41 A.L.R.6th](#)

RELIGION AND RELIGIOUS SOCIETIES

Propriety of Pharmacy and Pharmacist’s Refusal to Fill Prescription for Contraceptives, [41 A.L.R.6th](#)

TELECOMMUNICATIONS

Validity of State and Local Taxation and Regulation of Voice Over Internet Protocol (VoIP) Service, [41 A.L.R.6th](#)

TWENTY-FIRST AMENDMENT

Interplay Between 21st Amendment and Sherman Act Concerning State Regulation of Intoxicating Liquors, [41 A.L.R.6th](#)

WORKERS’ COMPENSATION

Validity, Construction, and Application of Statutory Provisions Exempting or Otherwise Restricting Farm and Agricultural Workers from Worker’s Compensation Coverage, [40 A.L.R.6th 99](#)

Right to Compensation Under State Workers’ Compensation Statute for Injuries Sustained During or as the Result of Horseplay, Joking, Fooling, or the Like, [41 A.L.R.6th](#)

Have questions or need help? Please call customer support at 1-800-225-7488, or e-mail at ALRLCS-Rochester@thomson.com.



This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.