

Thursday, May 5, 2011

[Court: All Texas parolees must get sex-offender hearings](#)



5-5-2011 Texas:

State officials lost another court case Wednesday over the way Texas imposes sex-offender status on parolees who were not convicted of sex-related crimes.

This time it was the state's highest criminal court ruling that parole officials violated the due process rights of parolees labeled as sex offenders without being allowed to attend their parole hearings, present a defense or confront prosecution witnesses.

Several federal courts, reaching similar conclusions in rulings beginning in 2004, eventually required Texas to hold special hearings for affected parolees before sex-offender restrictions could continue.

Texas had sought to limit the number of parolees affected by the U.S. rulings, but the Texas Court of Criminal Appeals, ruling 8-0, rejected those arguments.

In effect, Wednesday's ruling means every parolee — and every inmate about to be paroled — who was not convicted of a sex-related crime must receive a hearing and be allowed to present a defense before sex-offender conditions can be applied to their parole, defense lawyer Scott Pawgan said. "This now applies to everyone, even though (parole officials) desperately tried to limit it," Pawgan said.

State officials could not say how many more parolees would qualify for the expanded hearings, or how much money the extra hearings would cost in a tight budget cycle. "We're still evaluating the ruling and will be meeting with representatives of the attorney general's office to determine what our next course of action will be," said Michelle Lyons, a Texas Department of Criminal Justice.

Wednesday's ruling revolved around the case of Jonathan Evans, who served five years of a 10-year sentence for reckless injury to a child after his 2-month-old daughters were hospitalized with broken legs and skull fractures.

Evans was paroled in 2006; 18 months later, he moved from Lubbock to El Paso, where his new parole officer moved to impose "special condition X" — sex-offender restrictions reserved for a

parolee determined to be "a threat to society by reason of his lack of sexual control."

Evans had to attend sex-offender treatment programs and could not approach within 500 feet of schools, day cares or playgrounds. He lost his job and was eventually returned to prison for violating various parole conditions, including viewing pornographic images.

Evans sued, saying his constitutional rights were violated because special condition X was imposed during a hearing he was not allowed to attend.

The 5th U.S. Circuit Court of Appeals, Evans argued, banned that practice in its 2010 ruling on Raul Meza. Meza is an Austin man who killed 8-year-old Kendra Page in 1982 and was later paroled and placed on sex-offender conditions.

State officials argued that the Meza ruling did not apply to Evans, or any inmate paroled since 1996, because Texas had since changed its parole structure.

But the Court of Criminal Appeals, in an opinion written by Justice Cathy Cochran, dismissed the state argument, saying due process rights apply to all parolees. The court also ordered Evans be released from prison and his sex-offender conditions removed. [..Source..](#) by Chuck Lindell