Civil commitment is seen by many as an important way to deal with sexual offenders. However, these procedures often only apply to the “worst of the worst” offenders and a vast majority of sex offenders will not be eligible for civil commitment. This is because the civil commitment statutes require: (1) a conviction for a predicate offense; (2) current incarceration; and (3) a diagnosed mental condition coupled with an expert’s opinion regarding the offender’s future dangerousness. Furthermore, only 19 states have passed civil commitment statutes. Consequently, prosecutors and law enforcement officials must aggressively pursue other viable options to address these offenders. This article will review a number of approaches being developed and implemented nationwide.

The Problems and Possible Solutions

Prosecutors and allied professionals in the field know the difficulties inherent in prosecuting cases of child sexual abuse. Because of problems such as delayed disclosure, very often allegations do not surface until months, or even years, after the crimes are committed. This often leads to a myriad of problems, including an inability to prosecute because of the expiration of the statute of limitations. Several states, including Alaska, Maine and Rhode Island, have responded to this problem by passing legislation abolishing the statute of limitations on cases of felony child sexual abuse.1

Another approach relates to rules governing the admissibility of evidence in trials. In California, evidence of prior acts of abuse against a minor may be admitted at trial where there are current charges of sexual abuse against a minor.2 Michigan recently passed a similar bill, which is scheduled to become law in 2006.3 While critics argue that these laws will result in juries convicting based on past behavior alone, proponents point to the most recent Michael Jackson case as proof that jurors can be fair and follow the law.4 There, a jury heard past allegations regarding five other boys, and found him not guilty in the case before them.

While changes to the actual trial procedures against sex offenders have not been abundant, changes in sentencing procedures have. Most states have either proposed or actually passed legislation with regard to increased sentencing provisions. Probably the most well known of these is the Jessica Lunsford Act, which went into effect in Florida, on September 1, 2005.5 This law calls for a mandatory minimum of 25 years and the possibility of a life-time sentence for those convicted of sex crimes against a child under the age of 12.

Although initially hailed as a major weapon in the fight against sexual predators, those on the front lines are in disagreement over how effective these new enhanced sentencing provisions will actually be. In fact, some prosecutors believe these new laws might even have adverse consequences in certain cases. For example, with significant mandatory minimums, defendants are less likely to plead guilty, thereby forcing more children to testify in cases where they have already been terribly traumatized. In certain cases, children cannot or will not testify for a variety of reasons, and without the option of a plea bargain, these cases may be more likely to result in acquittal. Another unintended result may occur in cases where the perpetrator is a relative or otherwise known to the victim (which is the vast majority of sexual abuse cases.) In these situations, family members may be reluctant to file charges where they know that a 25-year sentence is involved. While the enhanced sentencing statutes are certainly valuable for cases involving the “worst of the worst,” there are certainly some unintended adverse consequences with which prosecutors will have to contend.

Although these new sentencing laws will put some offenders behind bars for lengthier periods, many offenders will still eventually spend a portion of their sentences in the community. There has been a great deal of legislative activity concerning the monitoring of sex offenders in the community. An important provision of the Jessica Lunsford Act concerns lifetime supervision of offenders once they are released from prison.6 One form of community supervision is through global tracking devices. This type of electronic monitoring uses satellite technology to follow the movements of sex offenders and is relatively inexpensive (estimates range from approximately seven to nine dollars a day). Iowa has passed legislation where the unauthorized removal of a monitor or disregard of a curfew will trigger a parole or probation violation.7 Alabama has provisions requiring offenders to pay or share the cost of the monitoring.8 Another initiative involves zoning restrictions for sex offenders within the community. Sixteen states now have buffer zones prohibiting registered sex offenders from living near places where children congregate. While proponents argue that such measures are necessary for public safety and child protection, critics argue that such laws will create a false sense of security. Since most children are...
moled by someone they know, opponents fear that these buffer zones will fail to protect the majority of children who are in danger of being sexually abused. A recent study also calls into question the effectiveness of these zones. In a study involving 135 sex offenders in Florida, researchers found that these offenders will circumvent restrictions if they are determined to re-offend, and noted that many sex offenders are more likely to travel to another neighborhood where they could seek victims without being recognized.

Other legislative initiatives have focused on offender registration and community notification. The first laws regarding registration and notification were passed in 1994 and today all 50 states have such legislation. Recently there have been increased efforts to improve the effectiveness of these programs. In certain jurisdictions, Web sites are now including more information about offenders (including physical descriptions and criminal histories, rather than only name, zip code and type of offender). Rhode Island recently amended its law to require the posting of the identity of all Level 2 and Level 3 sex offenders (previously it had been applied only to Level 3 offenders). While it is crucial for each state to keep track of the registered offenders within its borders, perhaps one of the biggest problems facing the nation is the number of unaccounted for sex offenders. Although all fifty states have responded to the federal mandate of registration and notification, there is no national guideline or database. Because of this lack of a uniform and coordinated system, once these offenders cross state lines they become virtually unaccounted for. According to recent statistics, of the 551,987 registered sex offenders around the country, 24 percent are failing to comply with the continuing registration requirements. In an effort to combat this problem, the Justice Department has recently created the “National Sex Offender Public Registry” as a national repository for the names of those sex offenders now listed on separate state registries throughout the country. This registry, located at www.nsopr.gov, is a cooperative effort between the state agencies responsible for maintaining their sex offender registries and the federal government. Currently there are records from 48 states, and the District of Columbia and Guam posted on the Web site, and it is expected that that the rest of the states will be included by the end of the year.

Another federal measure currently pending before Congress is the Children’s Safety Act. This bill seeks to improve the current sex offender registration program by increasing penalties for failure to comply with registration requirements, increasing information sharing among the states, increasing periods of time for registration and expanding the types of offenders covered to include juveniles who victimize children. It also increases the minimum and maximum sentences on specified sexual offenses against children and authorizes civil commitment at the federal level.

Conclusion
This past year has certainly seen a flurry of legislative activity with regard to those who commit sex crimes against our children. While the majority of cases that prosecutors handle on a daily basis will not involve the likes of the dangerous sexual predators such as John Couey and Joseph Duncan, the fact remains that these individuals exist. Even though they may be the exceptions rather than the norm, even one “Joseph Duncan” is enough of a threat to the safety of our children that we must remain vigilant in passing laws aimed at these types of offenders. However, we must also be cognizant of the fact that most cases of child sexual abuse involve perpetrators that are known to the child. These types of cases have very different dynamics and issues than the cases posed by “stranger danger.” Recognizing these differences, and the fact that a “one-size fits all” remedy is not the answer, must be incorporated into these laws if they are going to truly protect our children.

1 Susan Broderick, Senior Attorney, National Center for Prosecution of Child Abuse.
2 For an earlier analysis of this issue, see NCPCA Update, “Innovative Approaches to Dealing with Sexual Predators: Civil Commitment,” Volume 18, Number 3 (2005).
6 People v. Michael Jackson, Superior Court of the State of California, Case No. 1133663 (2004).
8 RJ
14 For more information on statistics, go to www.parents for meganslaw.com.
15 Oregon and South Dakota are the only two states not on the Web site.
17 In March of 2005, John Couey, a registered sex offender, confessed to killing 9 year-old Jessica Lunsford. In July of 2005, Joseph Duncan, also a registered sex offender, was charged with the kidnapping of 8 year-old Shanta Groene and the murder of her brother and other family members.