Innovative Approaches to Dealing with Sexual Predators: Civil Commitment

By Susan Broderick

The rape and murder of Jessica Lunsford shocked and enraged the entire country. It also served as an impetus for the enactment of new legislation to more effectively deal with sexual predators. Florida recently passed the “Jessica Lunsford Act,” which provides a minimum of 25 years in prison for certain violent sex offenders who prey on children under 12, and, if they are released from prison, lifetime tracking by global positioning satellite.

This is not the first time that a horrific crime against a child has led to dramatic changes in the way we deal with sexual predators. The vicious and brutal 1994 murder of seven-year-old Megan Kanka sparked national attention and led to the enactment of nationwide community notification laws designed to protect the public against violent sexual offenders. Her killer was a twice-convicted sex offender who had moved next door to Megan and her family. The Kanka family fought to have local communities warned about sex offenders in the area. In 1994, the New Jersey legislature passed “Megan’s Law,” and in 1996, the U.S. Congress passed Megan’s Law as an amendment to the Jacob Wetterling Crimes Against Children Act. It required every state to develop some type of procedure to notify residents when sex offenders move into their communities. Although the procedures vary among jurisdictions, all 50 states currently have laws authorizing local law enforcement agencies to make community notifications of registered sex offenders.

The efforts have not stopped there. Across the country, legislation has been introduced calling for increased sentences, mandatory tracking devices and lifelong registration for all sexual offenders. Other measures give prosecutors more time to bring charges of child sexual abuse, require sex offenders to give their e-mail addresses and screen names to the state police, require residential leases and purchase agreements for condominiums or housing cooperatives to explain how to get information about registered sex offenders and prohibit sex offenders from operating a business where children are photographed or where such photographs are sold.

Civil Commitment Statutes

Perhaps one of the most controversial measures has been the enactment of legislation calling for the civil commitment of sexual predators. These statutes provide for the civil confinement of selected individuals who are judged by mental health experts to be likely to re-offend. Although the statutes vary across the country, they are applied to those who are about to be released from prison. The general criteria for detention are usually a) a history of sexual violence, b) a current mental disorder or abnormality, and c) the likelihood of the commission of future sexual crimes. The civil commitment follows a jury trial in which a jury finds that the individual is likely to engage in acts of sexual violence in the future. A common feature among the jurisdictions is the requirement that mental health professionals evaluate the degree of sexual offense risk in the individual.

While some states have just recently begun implementing this aggressive approach to dealing with these offenders, other states have had such laws on the books for several years. In fact, the procedure for civilly confining violent sexual predators has its roots in another horrific case of child abuse. In the late 1980s, Earl Shinriner, a convicted rapist and murderer, bragged to inmates and staff at a Washington State prison that he fantasized about torturing and killing young boys. When he was released, he did exactly that – he kidnapped, raped and mutilated a 7-year-old boy. The public outrage led to the establishment of the Governor’s Task Force on Community Protection and led to the passage of the Community Protection Act. The Act provided for increased penalties and stricter post release supervision of certain sexual offenders. It also contained a statute allowing for the indefinite civil commitment of repeat sexual offenders judged by mental health experts to be likely to re-offend.

In 1994, the state of Kansas, in response to growing public alarm over its high recidivism rates of sexual offenders, passed the Sexually Violent Predator Act, which was modeled after the Washington law. The law established procedures for the civil commitment of persons who, due to a “mental abnormality” or “personality disorder,” are likely to engage in “predatory acts of sexual violence.” The statute allowed for the confinement and treatment of offenders in secure mental health facilities after the offenders finished serving their criminal sentences. The statute was based in part on a finding that the prognosis for rehabilitation of these offenders was very poor, leading to very high recidivism rates. Another factor was an acknowledgement that existing procedures of involuntary commitment were inadequate to deal with the problem. The enactment of the Sexually Violent Predator Act was seen as a necessary measure to protect the public while simultaneously treating the offender.

In 1997, the United States Supreme Court upheld the constitutionality of the Kansas law in Kansas v. Hendricks. The Court ruled that, since the law’s commitment procedures adhered to due process requirements, and because they are civil rather than criminal in nature, the law does not violate double jeopardy or ex post facto principles. In 2001, the Supreme Court revisited the issue of civil commitment in

Update

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Kansas v. Crane. Legal and evidentiary factors are often at odds in the investigation and prosecution of sex abuse. In Kansas v. Crane, the court held that a defendant who has been convicted of a sex offense cannot be held in custody for a new crime in the absence of evidence of dangerousness. The court also held that the state must prove by clear and convincing evidence that the defendant is likely to reoffend.

The growing momentum toward enacting this legislation is not without its opponents. The National Association of State Mental Health Program Directors believes that some statutes could have severe and negative consequences for people with mental illnesses and for the public mental health system. Others argue that these procedures unfairly single out one class of offenders and are basically a form of "preventive detention" masquerading as treatment. Still other critics charge that these laws are an unfair infringement on the civil liberties of individuals who have already completed their criminal sentence.

At the same time, there are certain legitimate rationales for these laws. Many experts in the field of sexual and mental disorders warn that convicted sex offenders are often pathological sexual predators. According to Louis B. Slesinger, a forensic psychologist specializing in criminal behaviour and sex crimes at John Jay College of Criminal Justice in New York, certain sexual offenders have compulsive sexual arousal patterns that cannot be changed through therapy or treatment and are almost impossible to cure. As previously noted, research has revealed that the recidivism rates for these types of offenders are alarmingly high. Over the years, research has revealed that sex offenders were about four times more likely than non-sex offenders to be arrested for another sex crime after their discharge from prison. According to a recent report from the New York State Department of Correctional Services, from 1986 through 1995, approximately 45% of sex offenders who were released from New York prisons in 1986 were returned to prison for a violation of parole or for committing a new crime.

Conclusion

The research confirms that the problem of sexual offenders is a serious one, and that states have a genuine responsibility to protect the public from this unique breed of offenders. While certainly controversial, civil commitment statutes allow states to protect the public while at the same time addressing the unique mental health issues of these types of offenders. The acknowledgement that there are certain individuals who pose so great a threat to our children that they require civil commitment is not a hysterical or emotional response to certain high profile cases. When appropriately applied and monitored, it is good, sound policy.

1 This article is the first in a series which will look at innovative approaches being taken across the country to deal with these types of offenders.

2 Senior Attorney, National Center for Prosecution of Child Abuse.


5 For more information on access to state and national sex offender databases, visit www.livesecure.org.


9 Kan Stat Ann. SS9-29a01 et seq.


17 Id.

18 Telephone interview with Louis B. Slesinger, professor at John Jay College of Criminal Justice in New York, specializing in criminal behavior and sex crimes, May 2005.


20 "Profile and Follow-Up of Sex Offenders Released in 1986," New York State Dept. of Correctional Services. (Report available through NYS Dept. of Correctional Services at http://www.doc.state.ny.us/Research/annotat2.html).