

## ALTERNATIVES TO INPATIENT CIVIL COMMITMENT OF SEX OFFENDERS

### BACKGROUND

States have enacted civil commitment of sexually violent predators laws as a means to limit the danger posed by certain sex offenders. Under this approach, sex offenders are confined to a treatment facility, typically following the completion of their prison terms, based on evidence that an "individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct." North Dakota Century Code (NDCC) Section 25-03.3-13. This commitment process uses a civil, rather than a criminal, process and allows an individual to be involuntarily hospitalized if, following a hearing, that individual is found to pose a risk of self-harm or harm to others. This approach permits the state to confine an individual until he or she no longer poses a danger to society.

In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the United States Supreme Court upheld a Kansas statute that allowed the involuntary civil commitment of a sex offender who, due to a "mental abnormality or personality disorder," is likely to engage in "predatory acts of sexual violence." In *Hendricks*, the respondent was a convicted sex offender whose pedophilia was considered to constitute the requisite "mental abnormality."

Five years later, the Court issued a second ruling that clarified that *Hendricks* does not require that the state prove that sex offenders are completely incapable of controlling themselves before the state may commit them. In *Kansas v. Crane*, 534 U.S. 407 (2002), the Court established that the state is only required to prove that it would be "difficult" for the person to control his or her dangerous behavior as a predicate to civil commitment.

As of 2006, 19 states have enacted civil commitment statutes for certain sex offenders. In the 1990s, 15 states, including North Dakota, passed sexual predator civil commitment statutes. Since 2000 four states have enacted civil commitment statutes. According to a May 21, 2006, *The New York Times* article, "Doing More Than Their Time," the reasons for the decrease in the number of new sexual predator civil commitment statutes are the prohibitive cost, lack of ability to control costs, better alternative uses of funds and resources, lack of release back into the community resulting in an ever-increasing number of individuals committed, and lack of demonstrated effectiveness.

According to the Washington State Institute for Public Policy, *Involuntary Commitment of Sexually Violent Predators: Comparing State Laws*, March 2005 (attached as an appendix) as of December 2004, 3,943 individuals had been confined under state

sexual predator civil commitment laws. Of that number, 427 have been conditionally released or discharged. According to this report, the cost of housing and treating an inpatient civilly committed individual for one day ranged from \$293 in California to \$137 in Massachusetts and Florida. This report indicated that the cost per day per committed individual in North Dakota was \$267.89 or \$97,780 per year.

### ALTERNATIVES TO INPATIENT CIVIL COMMITMENT OF SEXUAL PREDATORS Prison Treatment Programs and Recidivism

The 2004 Washington Legislature directed the Washington State Institute for Public Policy to conduct a comprehensive evaluation of the impact and effectiveness of current sex offender sentencing policies. One element of the evaluation was the effect of prison-based sex offender treatment programs on recidivism rates. The Washington State Department of Corrections, which has operated a prison-based sex offender treatment program since 1988, uses a combination of treatment techniques, including group therapy, psychoeducational classes, behavioral treatment, and family involvement. The conclusion of the study was that while the recidivism of the offenders who were unwilling to participate in sex offender treatment programs differed from those who volunteered to participate in the prison-based sex offender treatment program, the program, as a whole, did not significantly reduce the recidivism rates of its participants.

### Texas Civil Commitment Program

Texas is among the 19 states that have enacted sexual predator civil commitment statutes. The Texas statute, which was passed in 1999, calls for the involuntary commitment of those with a mental abnormality who are likely to engage in predatory acts of sexual violence. The Texas statute, however, established the first outpatient sexual predator civil commitment program in the United States. According to the Texas Department of Health Services, the annual cost range of the outpatient program is between \$30,000 and \$37,000 per client per year. The outpatient civil commitment program targets sexually violent predators being released from prison who pose a serious risk to community safety or are at high risk to reoffend. According to the Texas Department of Health Services, the success rate for offenders treated in an inpatient setting is about half of that for offenders treated in an outpatient setting. The Texas outpatient civil commitment program incorporates intensive outpatient sex offender treatment, monitoring with high-technology global

positioning satellite tracking, comprehensive case management, and Texas Department of Public Safety surveillance.

To date Texas is the only state that has implemented an outpatient sexual predator civil commitment program. In 2005, however, the North Dakota Legislative Assembly passed House Bill No. 1057. This bill, codified as NDCC Section 25-03.3-24, provides that following the commitment of a sexually dangerous individual, the executive director of the Department of Human Services may conduct a risk management assessment of the individual for the purpose of determining whether the individual may be treated safely in the community on an outpatient basis.

### **Indeterminate Sentencing of Sex Offenders**

Some state laws require judges to impose what are called "determinate" prison sentences. A determinate sentence is a fixed-term sentence pronounced by a judge. Defendants who receive determinate sentences know the maximum period of incarceration when they are sentenced, but may be released earlier because of parole or good-time credits. Other state laws require judges to give indeterminate sentences. Indeterminate sentences are those in which a legislature sets a minimum or maximum time of

incarceration but leaves the decision as to when to release an inmate to prison officials.

At least one state--Colorado--authorizes indeterminate, potentially lifelong sentences for sex offenders. Colorado Statutes Section 18-1.3-904 provides "[t]he district court having jurisdiction, may, subject to the requirements of this part 9, in lieu of the sentence otherwise provided by law, commit a sex offender to the custody of the department for an indeterminate term having a minimum of one day and a maximum of his or her natural life."

### **CONCLUSION**

Since 1990, 19 states, including North Dakota, have enacted laws authorizing the involuntary civil commitment of sexually violent predators. The constitutionality of this civil commitment process, with certain required procedural safeguards, has been upheld by the United States Supreme Court. The high cost of confining and treating those sexually violent predators for an indefinite period of time has led states to look for alternatives to civil commitment while still maintaining public safety. These alternatives include an outpatient civil commitment program and the use of indeterminate sentencing for certain sex offenders.

ATTACH:1