

Civil Commitment for Sexual Predators

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In January of 1999, Florida became one of a handful of states with laws allowing the civil commitment of sex offenders after they had completed their prison sentences. Similar civil commitment statutes had already been passed in Kansas, Washington, Missouri, Iowa, Massachusetts, and Wisconsin - all with the intent of prolonging the confinement of inmates who had committed sex offenses.

This is the way these laws work. A person commits a sex offense, is tried and convicted, or pleads guilty. A sentence is given, say 7 years. The inmate serves his sentence and then is scheduled for release. But before he is released the state files a petition to have him committed to a mental institution. There is a procedure, an evaluation, various steps in a process in which psychologists, psychiatrists, prosecutors, judges, and juries decide whether to label the offender a sexual predator with a mental abnormality that makes him likely to commit a sex offense in the future.

If the offender is so labeled, off he goes to an institution where he can be confined for life unless he demonstrates that he has changed to such an extent that he will be no danger to the community.

Now, sex offenders are nobody's favorite group. Few people care about their rights. Even fewer will fight for them. But rights tend not to be confined to a particular group. The trampling of rights, even if it's those of sex offenders today, can easily mean somebody else's rights being trampled tomorrow. This is why civil rights must be jealously guarded.

Let's examine the legal objections to civil commitment statutes.

First, the statutes represent a sort of double jeopardy. The inmate has been punished by going to prison and serving his sentence. Then after he has "paid his debt to society" he is confronted with another, additional sentence - confinement, possibly for life. He is punished twice for the same crime. This is what the law calls double jeopardy.

Second, these statutes violate the constitutional prohibition against the enforcement of ex post facto laws. The prohibition against ex post facto laws is intended to keep the state from enforcing a law retroactively. But, inmates who committed their crimes and were sentenced to prison before these laws were passed are still being subjected to them when they are ready for release. When the offenders committed the crimes, they did not know about this new punishment, so it is a punishment thought up and implemented after the fact.

Third, the law does not punish the inmate for something he has done, but for something he might do. The social sciences have not been very effective at predicting future behavior, and to punish someone for what they might do is contrary to all our legal heritage.

Fourth, the argument is that the sex offenders are being committed for treatment not for punishment. But why, if these offenders need treatment, are they not given it in prison. Why wait until a man is ready to be released to begin his treatment? Why delay treatment for 7 years for someone who needs it?

Fifth, there is no treatment recognized as effective as a deterrent for repeat sex offenders, so what kind of treatment are they to receive after they are released from prison and committed to an institution? The fact of the matter is that these men will probably spend the rest of their lives institutionalized.

Sixth, the supporters of these bills argue that the repeat sex offenders cannot control their behavior, that their crimes are not volitional. This is the rationale for confinement and treatment. But, if the offender cannot control his behavior, why not put him in a mental institution in the first place. This is where other offenders (the criminally insane, for example) who are deemed not to be responsible for their behavior are put.

Even though there are these and many other arguments against the constitutionality of the civil commitment for sexual predator laws, the Supreme Court in *Kansas v. Hendricks* found that the Kansas sexual predator law was constitutional. The court reasoned that because the law was civil and not criminal it was not subject to the prohibitions against ex post facto laws, or the prohibition against double jeopardy. The court also found nothing wrong with commitment of an individual who was held to have a "mental abnormality" (a low standard) but not found to have a "mental illness (a higher standard)." The American Psychiatric Association has argued that a third to a half of those in prison will meet the criteria of having a personality disorder which can be considered a "mental abnormality."

Kansas v. Hendricks is a disturbing Supreme Court decision, but it has opened the door for more states to pass similar civil commitment legislation, and will undoubtedly create the environment in which many more states will follow suit.

Florida's civil commitment statute is already being questioned in the courts, and there have already been problems with housing what may wind up to be a great number of inmates in facilities which are said to be mental institutions, but are often converted correctional institutions. Florida Governor Jeb Bush proposed and then cancelled plans to put a facility for these sexual predators several blocks from a school in Chattahoochee, Florida. Where they will be located remains to be seen.

Nobody cares about these inmates. Nobody wants these inmates, and nobody seems to be paying attention to the dubious constitutionality of their commitment. Once again, the demonization of a class of people has clouded our judgement and distorted our policy. Dr. Johns has a Ph.D. from the Faculty of Law of the University of Edinburgh, Edinburgh, Scotland. She has written and published three books (see Amazon.com). You can contact her through her website cjjohns.com