A Psychiatrist's Reflections on Megan's Law and Sex Offenders in New Jersey

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Summary: The passage of Megan's law as it relates to sex offenders has raised a host of issues not clearly foreseen at the time of passage of the legislation. If the intent of the law, to protect society and to treat sex offender more effectively, is to be realized there will need to be a more scientific approach and greater coordination between all actors, the Department of Corrections, civil treatment facilities, the Courts and the Legislature.

1. Provisions should be made for any state operated treatment facility for sex offenders to be evaluated as to the efficacy of treatment and the matching of treatment modalities to offender characteristics. Such provisions were not made at the Adult Diagnostic and Treatment Center in New Jersey. The result is that after over 20 years of treating sex offenders this facility is unable to provide any data to inform the treatment of sex offenders within its own walls or elsewhere.

2. Under the current provisions of applicable laws in the State of New Jersey all sex offenders deemed to be repetitive and compulsive in their offense behaviors are committed to the ADTC. There is no provision for extruding any offender from the facility if once there they are found to be inappropriate for treatment programs there or

refuse to participate in treatment. The overall effect is to dilute the potential impact of the existing treatment programs and undermine the morale of treatment personnel. For example, the primary treatment modality is group psychotherapy focused on sexual behavior and psychological issues considered relevant to it. However, the population of sex offenders includes octogenarians who can't remember what day it is, the mentally retarded, and patients with severe psychotic disorders refractory to psychiatric treatment.

3. Once offenders approach their 'max. date' a determination has to be made as to whether they should be released or civilly committed because of their risk of reoffense. In New Jersey, the definition of 'mental illness' has been expanded to include people who are unable to control behavior and impulses such as inappropriate sexual behavior. This has created a disjunction between psychiatric and legal definitions of mental illness and this disjuncture is currently being attacked by offenders' attorneys in an attempt to overturn civil commitments. The outcome is uncertain at this point.

a) If sexual offenses are not generally included in the rubric of psychiatric disorders are psychiatrists the most appropriate professionals to commit civilly on the grounds of these offenses? The majority of the civil commitments from ADTC are for offenders without major psychiatric disorders.

b) If psychiatrists are chosen to do the civil commitments should they then be integrated into the treatment of sex offenders without psychiatric disorders so that they have extensive knowledge of the offender prior to doing an evaluation for civil commitment?

4. Although the legislature in New Jersey has provided for the civil commitment of sex offenders considered too dangerous for release at 'max. date' it has not provided for the capability to treat them in the institutions to which they are committed. The civil institutions to which they are committed are state psychiatric hospitals. However, these have no experience or capability for treating sex offenders because sexual offenses have not constituted a grounds for psychiatric commitment previously. Consequently, a situation has been created wherein sex offenders who have failed to respond adequately to sex offender specific treatment, typically applied over a period of years at ADTC, are then committed to institutions where such treatment is not available. This implies little prospect of improvement as a result of civil commitment and appears to several observers as little more than a subterfuge to incarcerate sex offenders in civil institutions when it is no longer legal to do so in a correctional one.

5. The process for granting sex offenders release on parole prior to max. date has been applied very conservatively so that very few sex offenders are so released. This may provide protection for society at large in the short-term but does little for providing long-term security. If the offender is released at max. date absolutely no monitoring or supervision is possible and several sex offenders relocate out of state, typically to rural areas. A less conservative approach to release on parole would allow for monitoring, supervision, and sex-offender specific treatment as conditions for remaining free on parole. This in turn would allow for the

accumulation and analysis of data concerning recidivism and compliance with treatment while on parole. This in turn would likely refine categories of risk for released sex offenders. Such an approach implies the access or provision of resources for scientific data collection and analysis and the feedback of results to relevant legislative, judicial, correctional, and mental health actors.

6. Currently sex offenders are treated in many respects as if they constitute a single category of aberrant behavior. At ADTC they are treated in the same groups and eligibility for parole requires a higher proportion of the stated sentence than it does for most other categories of offenders. Nonetheless, there are many differences among sex offenders and they most likely correlate with different levels of risk for recidivism. These differences include: pedophiles vs. raptophiles; incest offenders vs. non-incest offenders; single victim vs. multiple victim offenders; violent vs. non-violent offenders; sex offenders with significant non-sexual offense histories vs. offenders without significant non-sexual offense histories.

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