SHOULD PHARMACOLOGICAL TREATMENT BE A CONDITION OF CERTAIN SEX OFFENDERS' PROBATION OR PAROLE ?

by Hon. Jeannine Turgeon*

Sexual assaults and sexual abuse of children is a horrific public health and criminal justice problem.[1] Trial judges face the daunting task of sentencing these child molesters and other deviant sex offenders. Our initial inclination may be lengthy incarceration. Many of these offenders, however, plead guilty to lesser offenses and thus receive relatively short sentences under Pennsylvania's Standard Sentencing Guidelines. Regardless of the length of their prison sentence, studies indicate many of these defendants will re-offend.[2]

The biomedical technology currently exists to help protect our communities from certain child molesters and other deviant sex offenders once they are released from prison. According to multitudinous studies, drug therapy is a highly promising treatment which reduces recidivism for certain paraphiliacs[3] - those persons compelled to commit sex crimes in order to realize a specific deviant sexual fantasy. Recognized paraphilias include pedophilia (sexual craving for children), exhibitionism, transvestitism, voyeurism, frotteurism, fetishism, sexual sadism, sexual masochism and other psycho-sexual disorders including some types of rape.[4]

* I want to thank Dr. Edward Balyk, Research Director at the Neuropsychiatric Center, N.J., and formerly with Adult Diagnostic & Treatment Center in Avenel, N.J., Dr. Gene Abel, Director of The Behavioral Medicine Institute of Atlanta, and Dr. Fred S. Berlin, Director of the National Institute for the Study, Prevention and Treatment of Sexual Trauma and Associate Professor at The Johns Hopkins University School of Medicine, for taking their valuable time to critique initial drafts of this article and contributing valuable comments. Also, thanks to my excellent law clerk, Ms. Jane Meyer, Esq., the burden of editing was greatly eased.

First tried more than twenty-five years ago, numerous studies in the United States and Europe have demonstrated the effectiveness of pharmacological treatment for these paraphiliacs.[5] Most sex offender programs today rely on a combination of psychological, cognitive-behavioral, conditioning and pharmacological treatment approaches.[6] In fact, many Pennsylvania psychologists who have devoted their entire professional lives treating sex offenders such as Anthony M. Pedone, M.S., believe that a sex offender treatment program that does NOT have a pharmacological component should NOT be considered a viable program.[7] Robert Gingrich, M.P.S.S.C.,[8] who has treated these offenders for nearly twenty years states:

> The use of medication in reducing the risk factors of compulsively deviant sexual behavior is an **essential** component in the treatment of paraphiliacs. **Unless the judicial system incorporates the medication factor at sentencing,** physicians and therapists will be greatly handicapped in their efforts to control this population. We should not expect a change in behavioral functioning from a schizophrenic or a person who suffers from bi-polar disorder without the use of medication. The same logic applies when we talk about the treatment of the paraphiliac.

A growing number of courts across the country are imposing it. California recently adopted a law mandating it for certain repeat sex offenders.[9]

We therefore should consider the option of conditioning these sex offenders' release from prison on receiving long-term pharmacological treatment in conjunction with other appropriate sex therapy.[10] A sentence imposed for the statutory maximum length of time, remaining eligible for release during the standard range, ensures their maximum, long-term supervision and treatment.

The medication reduces their compulsive deviant sexual urges by decreasing production and accelerating the metabolism of testosterone.[11] This reduces their sexual craving, thus relieving the paraphiliac of his compulsive and behavioral fantasies. By diminishing his compulsion to commit sex offenses, the offender becomes more amenable to traditional cognitive behavioral therapy.[12]

There are several categories of drugs currently available. Many sex treatment centers are using Serotonin Reuptake Inhibitors (SRIs) such as Prozac, Paxil, Luvox and Zoloft. Drs. Abel and Balyk report very minimal side effects from SRIs.[13] Another popular antiandrogen is Depo-Provera.[14] Depo-Provera, in limited cases, has caused minor side effects,[15] most of which resolve upon discontinuance of the drug.[16] Other medications

Legal Implications

A convicted sex offender, sentenced as proposed in this article, who fails to obtain pharmacological treatment remains incarcerated for the balance of his sentence. Imposing this condition therefore raises some complex medical, ethical and legal concerns, such as Informed Consent, the First and Eighth Amendments, and Right to Privacy. While not addressed here, these issues have been recently addressed in depth by legal scholars in numerous published law review articles.[28] The consensus of these legal scholars is that the offender must give his informed consent for this type of treatment, and therefore must be informed by his prescribing physician of the benefits and risks.

It is well-established that county supervised probation conditions can limit certain constitutional rights of convicted offenders.[29] Probation conditions are generally legally acceptable if they are reasonably related to the rehabilitation of the offender, protect the public, or deter future criminal acts by the offender.[30] Pharmacological treatment in conjunction with sex therapy meets these conditions. Nevertheless, there is not adequate scientific evidence at this point in time to guarantee a high likelihood of success when such treatment is imposed upon an unwilling individual.[31] Therefore, this author recommends the inclusion of this condition only with the offender's consent.

Logistics of Ordering Pharmacological Treatment

Upon conviction, guilty plea, or at sentencing, upon the offender's request to undergo this treatment, the judge orders a medical and psychological evaluation to determine whether he is an appropriate paraphiliac sex offender amenable to drug therapy, and if so, includes a provision conditioning his release on receiving pharmacological drug treatment in conjunction with traditional sex offender therapy.[32] This assessment is separate from the one required under the recently adopted Megan's Law.[33] If an evaluation and diagnosis cannot be made prior to sentencing, the judge may direct that one be obtained prior to or immediately upon his release. Once the offender has been diagnosed and has undergone a complete medical examination (to ensure that there are no medical complications), the offender enrolls in a sex treatment therapy program incorporating the pharmacological treatment. (A list of some sex offender programs appears in insert). The medication can be administered by any physician or health clinic.[34] If the offender violates the plan, the program notifies the county Probation Office or State Parole Board and the

are also used.[17] While the medical/scientific community continues to debate which drugs are most effective, the fact remains that an abundant number of studies have established there is substantially increased success by using pharmacological treatment for this sub-class of sex offenders when compared to psychotherapy alone.[18]

Reduction in Recidivism

The proven reduction of certain sex offenders' recidivism following pharmacological treatment in conjunction with traditional therapy is its most appealing attribute.[19] Dr. Fred S. Berlin, founder of the Sexual Disorder Clinic at Johns Hopkins University Medical Center, and Director of the National Institute for the Study, Prevention and Treatment of Sexual Trauma, has compiled quite a large body of data on this subject.[20] In 1991 he reported that among 626 men on the antiandrogen, Depo-Provera, fewer than 8% had committed a sex crime in the five years following the treatment.[21] Dr. Gene Abel, Director of the Behavioral Medicine Institute of Atlanta reached even better results.[22] In various studies using another antiandrogen, one group had a 0% recidivism for three years following; one group 28%; and another group, after correcting dosages and follow up, a 0% recidivism rate.[23] Dr. Edward Balyk at the Adult Diagnostic & Treatment Center in New Jersey had similar results using SRIs.[24]

It is important to note that all of the studies emphasize that use of these drugs is only a palliative treatment, not a cure, and should be used **only** in conjunction with other therapy to help the offender readjust to a new lifestyle.

While there are critics,[25] there are no other effective options to help protect the public from these offenders. They cannot be incarcerated for life, absent a crime such as murder. Castration, the only other effective way to decrease testosterone levels in males prior to the development of these antiandrogens, which I oppose, is almost uniformly opposed on humanitarian and constitutional grounds.[26]

Part of the problem in adopting this approach in the past has been that the public has thought the purpose of this treatment is chemical castration.[27] That is not true. The purpose is to reduce the offenders' compulsive sex drive, giving them better control of their deviant sexual interests. It has been proven to be highly effective in reducing their recidivism.

offender's probation or parole can be revoked.

FUNDING

Over the past several years, in my courtroom, approximately 30 sex offenders have agreed to this treatment but can't afford it. The two who are in this treatment, have not reoffended. The medication is expensive. We need funding to assist these offenders in their rehabilitation. Is it worth $200 a month to save children in our community from being sexually violated?

CONCLUSION

Deviant sex crimes are a public health and a criminal justice problem. The criminal justice system and the scientific and medical communities must work together to address this issue. The traditional approach has not worked; therefore we must expand our paradigms and explore new solutions. In the case of certain sex offenders, a jail sentence followed by long term probation or parole, conditioned on pharmacological treatment in conjunction with cognitive behavioral therapy, meets all the goals of sentencing: punishment of the defendant, deterrence, public safety and rehabilitation. The offender benefits.[35] Most importantly, many children and other victims may be saved from additional heinous sexual assaults.

I respectfully suggest that the best interests of our children, the likely victims, and society as a whole[36] may be well served by incorporating this latest biomedical treatment in our criminal justice system today.

NOTES

[1] Studies indicate 6% to 62% of adult females, and 3% to 31% of adult males were molested as children. (cites omitted). Abel, Gene; Lawry, S.S.; Karlsman, E.M.; Osborn, C.A.; Gillespie, C.F.. *Screening Tests for Pedophilia*, Criminal Justice and Behavior, Sage Publications, Vol.21 No. 1, March 1994 (115-131).

195,000 victims or almost 350 victims per offender. Recidivism statistics grossly under-represent the number of new sex crimes actually committed because the majority of these incidents go unreported. Peter Finn, *Do Sex Offender Treatment Programs Work?*, 78 JUDICATURE 5, 250, note 2 (1995) (*citing* Abel and Rouleau, *The Nature and Extent of Sexual Assault, in* HANDBOOK OF SEXUAL ASSAULT: ISSUES, THEORIES, AND TREATMENT OF THE OFFENDER 9 - 21 (W. Marshall, D. Laws and H. Barbaree eds., New York: Plenum Press 1990)).

[3] Paraphilias are sex disorders characterized by "recurrent intense sex urges and sexually arousing fantasies generally involving either 1) non-human objects; 2) the suffering or humiliation of oneself or ones partner; or 3) children or other non-consenting persons." Edward Fitzgerald, *Chemical Castration: MPA Treatment of the Sexual Offender*, 18 AM. J. CRIM. L. 1, note 9 (*citing* AMERICAN PSYCHIATRIC ASSOCIATION DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 279 (3d. ed. 1987)). Fitzgerald notes that paraphilia, like psychomotor epilepsy, among other conditions, is arguably a legal defense as a physiological and psychological condition which causes the individual to act under diminished capacity. Further, in some states a paraphiliac can be committed to a mental institution as a "sexual psychopath." Fitzgerald at 55-57.

Generally, sex offenders can be divided into four types. Type I denies the commission of the crime or the criminal nature of the act. Type II confesses to the commission of the crime, but places the blame for the crime on non-sexual or non-personal forces such as alcohol, drugs or stress. Type III is the violent criminal motivated by non-sexual gain, such as anger, power, or violence. Type IV is the paraphiliac who exhibits a pattern or its actualization, erection and ejaculation, characterized by a specific fantasy or its actualization. Fitzgerald, *supra,* at 4.

The first three types are generally acting out criminal impulses whose offenders feel no remorse or guilt. However, Type IV feels remorse or guilt but is unable to control his behavior and thus believed more likely to respond to antiandrogenic treatment and counseling. Typically child molesters desperately want to be rid of their fantasies with children. Kimberly A. Peters, *Comment: Chemical Castration: An Alternative to Incarceration*, 31 DUQ. L. REV. 307, 313 (1993) (*citing*, Fred S. Berlin, *The Paraphilias and Depo-Provera: Some Medical, Ethical & Legal Considerations,* 17 BULL. AM. ACAD. PSYCHIATRY L. 233 (1989)).

Dr. Edward D. Balyk, Ph.D., a clinical psychologist, who worked with sex offenders for nine years at the Adult Diagnostic Treatment Center, has concluded certain paraphiliacs are pathological, obsessive compulsive disorders. F.S. Berlin & C.F. Meineke, *Treatment of Sex Offenders With Antiandrogenic Medication: Conceptualization, Review of Treatment Modalities, and Preliminary Findings*, AM. J. PSYCHIATRY 601(May 1981); Edward D. Balyk, Ph.D., *Obsessive-Compulsive Paraphilias Viewed as a Sub Type (OCD) Spectrum Disorder: A Hypothetical Bio-Socia Model*, 12 CANADIAN INT'L J. ORTHOMOLECULAR MED No. 1. (March 1997). Dr. Balyk also has completed a soon to be published book, PEDOPHILIA, THE SOCIAL AND MEDICAL ISSUES. That author has cataloged some thirty different paraphilias.

[4] Fitzgerald, *supra*, at 5.

[5] *See generally*, Daniel L. Icenogle, M.D., J.D., *Sentencing Male Offenders to the use of Biological Treatments - A Constitutional Analysis*, 15 J. LEGAL MED. 279, 285-87 (1994); Berlin, *supra*, *The Paraphilias and Depo-Provera* at 235; Fitzgerald, *supra*, at 9 *(citing* P. Walker, W. Meyer, L. Emory, & A. Rubin, *Antiandrogenic Treatment Of The Paraphilias, in* GUIDELINES FOR THE USE OF PSYCHOTROPIC DRUGS 427-443 (H. Stancer, P. Garfinkel, & V. Rakoff eds., 1984)); F.S. Berlin, *Sex Offenders: A Biomedical Perspective and a Status Report in Biomedical Treatment, in* THE SEXUAL AGGRESSORS 83 (J. Greer & I. Stuart eds., (1983); Peters, *supra,* at 310 (1993); Spodak, Falck and Rappeport, *The Hormonal Treatment of Paraphiliac with Depo-Provera*, 5 CRIM. JUST. & BEHAV. 304 (1978); Bradford, *Organic Treatments for the Male Sexual Offender*, 3 BEHAV. SCI. & L. 355, 360-65 (1985); Grossman, *Research Directions in the Evaluation and Treatment of Sex Offenders: An Analysis*, 3 BEHAV. SCI. & L. 421, 435 (1985); and Balyk, *supra. See also*, Douglas J. Besharov, *Sex Offenders: Is Castration an Acceptable Punishment?,* A.B.A.J. 42 (July 1992). See also articles in Endnote 23.

[6] Finn, *supra*, at 250.

[7]Letter from Anthony M. Pedone, M.S., PSY Services, 789 Park Ave., Meadville, PA 16335 (Dec. 12, 1996).

[8] Gingrich, is currently Director of Gingrich Specialized Service Program, and a community-based sex offender treatment program in York, Lancaster, Dauphin, and Berks Counties. He has treated victims and perpetrators of sex offenses for nearly 20 years as Asst. Dir. of a Children & Youth agency, in prison system programs and private practice. He has trained with Dr. Balyk (cited herein), Dr. Arndt and Patrick Carnes, Ph.D. (Author of "Out of the Shadows")

[9] Shari Roan, *No Concession Chemical Castration Medicine,* L.A. TIMES, Sept. 26, 1996, __. In light of California's recent mandatory chemical hormone treatment for repeat sex offenders, the Texas legislature is expected to pass legislation eprmitting voluntary surgical castration (passed overwhelming in the Senate in 1995). Laura A. Stromber, *Bill Proposes Voluntary Castration for Inmates,*_____. (December 1996)

[10] Over the past several years I have sentenced approximately thirty sex offenders to therapy with drug treatment, most with defendants' consents. The orders generally direct the defendant to acquire a psychiatric and medical evaluation for Depo-Provera or similar pharmacologic treatments in conjunction with traditional therapy. These orders were issued only to male defendants because the research does not address the effectiveness or pharmacologic treatment for female paraphiliac sex offenders. Transcripts of the sentencings are forwarded to the County Probation Office or State Parole Board. Only recently has our Probation Office located a sex offenders program in central Pennsylvania which incorporates pharmacologic treatment.

[11] Fitzgerald, *supra,* at 6 (*citing* Walker and Money, *Treatment Guidelines: Antiandrogen and Counseling Paraphiliac Sex Offenders,* 13 J. SEX & MARITAL THERAPY 219, 221 (1987)); Peters, *supra,* at 310.

[12] *Id.* Numerous studies have established that there are many benefits from this pharmacologic treatment, especially when compared to psychotherapy alone. Fitzgerald states: "The more traditional psychiatric approaches to treating paraphilia, such a psychotherapy, behavior modification, surgery, institutionalization, and anti-psychotic or anti-depressant drugs, have shown only limited results. [citations omitted] Recent research indicates that other pharmacologic products have a paraphiliac suppression effect. These include carbamazepine (Tegretol), buspirone hydrochloride (BuSpar) and lithium carbonate." *Id.* at 19. This treatment enhances the therapy in the following ways: 1) Patients become optimistic and hopeful that, indeed, control of their paraphilia is possible. Many were previously extremely pessimistic and hopeless and they did not think they could be helped. 2) Victims are not being harmed while therapy proceeds. 3) Behaviors such as rape and pedophilia become treatable on an outpatient basis, which is less costly than inpatient treatment or incarceration. 4) Issues concerning a clinician's duty to violate confidentiality are diminished because the illegal behavior stops early. 5) Concurrent psychotherapies may proceed without the patient dealing with the discouraging problem of weekly or even daily recidivism which causes him to ignore the small gains of weekly psychotherapy. 6) Clinicians are encouraged by the rapid and apparent success of treatment compared to more traditional therapies whose effects are less certain. *Id. at* 9, note 49 (*citing* Walker, Meyer, et al., *supra,* at 433).

[13] Audiotaped Letter from Dr. Gene Abel (Nov. 1, 1996); Letter from Balyk, *supra.*

[14] A commonly used hormonal drug therapy is medroxyprogesterone acetate (MPA) a synthetic progesterone (a class of female hormones), sold by the Upjohn Company under the trade name Depo-Provera.

[15] These side effects include weight gain, cold sweats, nightmares, muscle weakness, fatigue. Icenogle, *supra,* at 283, note 53, Peters, *supra,* at 311 (*cites omitted*) (*citing* Berlin, *Sex Offenders, supra,* at 107, note 10). Patients who are undergoing treatment have reported a minimal diminution of having erections when prompted by a partner or researcher. Fitzgerald, *supra,* at 7. In some cases it has caused embolisms. Abel, *supra*; Balyk, *supra.* The long term effects are unknown. Fitzgerald, *supra,* at 17-25.

[16] Icenogle, *supra,* at 285 (*citing* Lehne, *supra* at 522, note 46).

[17] There are four antiandrogens, the second class of similar medications (two-cyproterone, flutamide, cyproterone acetate (CPA) and chlormadinone acetate). There is also a gonadotrophen releasing hormone.

Five of the six men with severe paraphilia treated with long-lasting gonadotrophin hormone - releasing hormone agonists (GnRHa), ended their deviant sexual behavior and markedly ended their deviant sexual behavior for seven month to three years. Thibaut, F.; Cordier, B.; Kunh, JM, *Effect of Long-lasting Gonadotrophin Hormone-releaseing Hormone Agonist in Six Cases of Male Paraphilial, 87 Acta. Psychiatr. Scand. 445 (June 1993).* Research continues into other medications. Icenogle, *supra*, at 283-86 (*cites omitted*). Because of some patient resistance to taking Depo-Provera, some programs prescribe fluoxetine (Prozac) or lithium. Finn, *supra*, at 251. An example of the effects of depo provera was portrayed in an interview of two sex criminals on the television news show 20/20. One paraphiliac testified that its use "stopped all the fantasies. It stopped the sexual drive [cold]." *20/20: Interview with Sex Offenders*, (ABC television broadcast, November 18, 1994).

Both Drs. Balyk and Abel highly recommend Serotonergic Reuptake Inhibitors such as Fluvoxamine and a trycylic, clomipramine hydrochloride, which has no side effects. Balyk, *supra*, at __; Audiotaped Letter from Dr. Gene Abel (Nov. 1, 1996).

In another study, a patient with multiple paraphilics who had little effect from treatment for several years with sex drive reducing agents, CPA and MPA, was ten treated with long-acting levprolide acetate, an LHRH agonist, had marked decrease in all reported sexual thoughts and activities, with no significant side effects. Dickey, *The Management of a Case of Treatment - Resistant Paraphilia with a Long-acting LHRH Agonist"*, 37 Canada Journal of Psychiatry 567 (October 1992).

[18] Letter from Dr. Fred S. Berlin (Dec. 4, 1996). See also other studies cited herein.

[19] See Endnotes 18,

[20] The Clinic, now called The National Institute for the Study, Prevention and Treatment of Trauma, is located at 104 East Biddle Street, Baltimore MD, 21202. Dr. Berlin has published extensively on this subject, including the following works not otherwise cited in this article: F.S. Berlin, H.M. Malin, & S. Dean, *Effects of Statutes Requiring Psychiatrists to Report Suspected Sexual Abuse of Children*, 148 AM. J. PSYCHIATRY 449 (1991); F.S. Berlin, H.M. Malin, & S. Dean, *Media Distortion of the Public's Perception of Recidivism and Psychiatric* Rehabilitation, 148 AM. J. PSYCHIATRY 1572 (1991); F.S. Berlin, E. Krout, *Pedophilia: Diagnostic Concepts, Treatment, and Ethical Considerations*, AM. J. FORENSIC PSYCHIATRY 7, 13 (1991); G.R. Gaffney, S.F. Lurie, F.S. Berlin, *Is the there Familial Transmission of Pedophilia?*, 172 J. NERVOUS & MENTAL DISEASE 546 (1984); G.R. Gaffney, F.S. Berlin, *Is there Hypothalamic-pituitary-gonadal Dysfunction in Pedophilia?*, 145 J. NERVOUS & MENTAL DISEASE 657 (1984); J.J. Frost, H.S. Mayberg, F.S. Berlin, et al., *Alteration in Brain Opiate Receptor Binding in Man Following Arousal Using C-11 Carfentinil and Positron Emission Tomography*, 27 J. NUCLEAR MEDICINE1027 (1986); F.S. Berlin, *Issues in the Exploration of Biological Factors Contributing to the Etiology of the "Sex Offender" Plus Some Ethical Considerations*, 528 ANNALS N.Y. ACAD. SCIENCES183 (1988); F.S. Berlin & H.M. Malin, *Rape: A Presumption of Guilt? A Presumption of Severe Punishment if Guilty?*, J. EXPERT WITNESS, TRIAL ATTORNEY & TRIAL JUDGE, 5, 7 (1990); F.S. Berlin, *Pedophilia*, 19 MED. ASPECTS HUMAN SEXUALITY 8, 79 (1985); and F.S. Berlin and F.W. Schaerf, *Laboratory Assessment of the Paraphilias and Their Treatment with Antiandrogenic Medication, in* HANDBOOK OF PSYCHIATRIC DIAGNOSTIC PROCEDURES, VOL. 2 (R.C.W. Hall and T.P. Beresford eds., 1985).

[21] Icenogle, *supra*, at 285, note 58 (*citing* F.S. Berlin, W.P. Hunt, H.M. Malin, A. Dyer, G.K. Lehne & S. Dean, *A Five Year Plus Follow-up Survey of Criminal Recidivism Within a Treated Cohort of 406 Pedophiles, 111 Exhibitionists and 109 Sexual Aggressives: Issues and Outcomes*, 12 AM. J. FORENSIC PSYCHIATRY No. 3, 5, 10 (1991)). Letter from Fred S. Berlin, B.S., M.A., M.D., Ph.D. (Dec. 4, 1996).

[22] Dr. Abel, of the Behavioral Institute of Atlanta, a leading American authority on sexual violence, has developed the "Abel Assessment for Sexual Interest™ " for evaluators to make objective evaluations of dangerousness, triage their treatment and strengthen strategies to decrease the likelihood of the offender recommitting sex crimes in the community. *See*, G.G. Abel, S.S. Lawry, E. Karlstrom, C.A. Osborn, C.F. Gillespie, *Screening Tests for Pedophilia*, CRIM. JUST. & BEHAVIOR 115, 127 (March 1994). To acquire a list of Pennsylvania locations for the Abel screening and treatment process, correspond to: Abel Screening, Inc., Suite T-30, 3280 Howell Mill Road,

N.W., Atlanta GA 30327-4101 or phone 1-800-806-ABEL.

Other studies confirm these impressive results: *Icenogle, supra,* at 285, notes 61-62 (*citing* Lehne, *Treatment of Sex Offenders with Medroxyprogesterone Acetate, in* 6 HANDBOOK OF SEXOLOGY: THE PHARMACOLOGY AND ENDOCRINOLOGY OF SEXUAL FUNCTION 516, 517 (1988))(only one of twenty-five patients treated with MPA committed an act of paraphilia while under treatment); Kravitz, Haywood, Kelly, Wahlstrom, Liles & Cavanaugh, *Medroxyprogesterone Treatment for Paraphiliacs*, 23 BULL. AM. ACAD. PSYCH. L.,19 (1995) (recidivism was reported in only one of among twenty-nine paraphilic men in the first six months of treatment).

[23] Icenogle, *supra,* at 287, notes 85-92 (*citing* Bradford, *Treatment of Sexual Offenders with Cyproterone Acetate, in* 6 HANDBOOK OF SEXOLOGY: THE PHARMACOLOGY AND ENDOCRINOLOGY OF SEXUAL FUNCTION 516, 531-33 (1988)).

[24] Balyk, Id. Six cases of chronic pedephilia were treated with serotonergic reuptake inhibitors (SRI) (flovox amine and clomipramine hydrochloride). In all cases pedophiliac craving was reduced and maintained at the sub-clinical level. Dr. Balyk also cites many studies, including the following, supporting the effectivenss of SRI's: Kafka, M.P., *Successful Treatment of Paraphiliac Coercive Disorder (A Rapist) with Fluvoxetine Hydrochloride*, Br.J. Psychiatry 1991; Vol. 158, pg. 844-847; Emmanuel N.P.; Lydiard, R.B.; Ballenger, J.C.; *Fluvoxetine Treatment of Voyeurism* (Letter), Am.J. Psychiatry 1991; 1488-150; Bianchi, M.D., *Fluvoxetine Treatment of Exhibitionism* (Letter), Am.J. Psychiatry 1990; Vol. 147, pg. 1089-1090; Goodman, W.K.; Delgado, P.L., et al, *Specificity of Sertonin Reuptake Inhibitors in the treatment of Obsessive-Compulsive Disorders: Comparison of Fluvoxamine and Desipramine*. Arch. Gen. Psych. 1990; Vol. 45, pg. 577-585.

[25] Finn, *supra,* at 251; Fitzgerald, *supra,* at 16. One critic asserts that Depo-Provera treatments are "pragmatically impotent." Andrew Vachhs, *Sex Offenders: Is Castration an Acceptable Punishment?*, A.B.A.J. 43 (July 1992). While a growing number of courts are adopting it, Icenogle, *supra,* at 288, note 97, notes that only a small number of reported state appellate and federal cases discuss the use of biological pharmacological treatment of sex offenders. In one, *Arizona v. Christopher*, 133 Ariz. 508, 652 P.2d 1031 (1982), a convicted child molester unsuccessfully sued the state on the basis that he was constitutionally entitled to effective chemical treatment for his psychiatric illness. Although his pre-sentence report recommended pharmacologic treatment and behavior modification therapy, he was only treated with therapy. He later committed further molestations and was sentenced to twenty-five years in prison. *See also, People v. Gauntlett*, 152 Mich. App. 397, 401, 394 N.W.2d 437 (1986) *review denied*, 426 Mich. 873 (1986) (mandatory imposition of chemical castration by sentencing judge as a condition of parole was not legal under Michigan law); *Wisconsin v. Krieger*, 163 Wis.2d 241, 471 N.W.2d 599 (Wis. App. 1991) (Court refused to withdraw guilty plea of sexual offender on grounds that he was not guilty under Wisconsin law by reason of mental disease or defect.); *Idaho v. Estes*, 821 P.2d 1008 (Idaho App. 1991) (Treatment for convicted pedophile with Depo-Provera rejected by trial judge since drug provided no guarantee of success in rehabilitation.)

[26] Judge Michael McSpadden, of Texas, was threatened with impeachment proceedings for granting a castration request by a defendant. *The Case for Castration*, Lawrence Wright, Texas Monthly (May 1992, Pg. 108). Subsequently, however, the Texas Senate overwhelmingly passed legislation approving voluntary castration. It is expected to pass in 1997. Laura A. Stromberg *Bill Proposes Voluntary Castraction for Inmates*, _____ Journal, Dec. _____, 1996.

Four studies on sex offenders who underwent castration demonstrated recidivism dropped from 54% - 85% pretreatment to 2.2% - 4.9% after. Icenogle, *supra,* at 282, note 23 (*citing* Bradford, *Organic Treatment for the Male Sexual Offender*, 528 ANNALS N.Y. ACAD. SCI. 193, 194 (1988)).

Another option is stereotaxic neurosurgery, which identifies areas of the brain that accumulate large amounts of sexual hormones and when destroyed eliminates erotic fantasies, reduces sex drive and pedophilic urges. Icenogle, *supra,* at 282, note 25 (*citing* Berlin, *Sex Offenders*, *supra,* at 113). This is not viable either.

[27] Abel letter, *supra.*

[28] *See, e.g.*, Icenogle, *supra*; Fitzgerald, *supra;* Peters, *supra*; Dennis H. Rainear, *The Use of Depo-Provera for Treating Male Sex Offenders: A Review of the Constitutional and Medical Issues*, U. TOL. L. REV. 181 (Fall 1984).

[29] *Commonwealth v. Koren*, 435 Pa. Super. 499, 646 A.2d 1205, 1208-1210 (1994).

[30] Fitzgerald, *supra*, at 14 (*citing U.S. v. Tonry*, 605 F.2d 144 (5th Cir. 1979)).

[31] Letter from Dr. Fred S. Berlin (Dec. 6, 1996).

[32] The trial judge in *People v. Gauntlett*, had originally included the following language in his order:

> It was the intent of this Court that Depo-Provera medication be an essential and an integral part of the probationary order in order to give reasonable assurance that throughout the five year probationary term that defendant would not be a danger to young children. It was not the intent of this Court to give probation without jail without this medical protection to the public.
>
> If for any reason, it is not possible to carry out a course of treatment with Depo-Provera whether because of defendant's failure to cooperate, an inability to obtain medical services to carry out such treatment, a medical evaluation which should indicate that such treatment would be harmful to the defendant or not be medically advisable, or for any other reason, or if some appellate court should determine that such a course of treatment making use of Depo-Provera to be inappropriate, unlawful, excessive, not within the trial court's power to give, or not a proper term of probation, or shall set it aside for any other reason; then the entire probation shall be set aside for failure of the condition on which it was based and the defendant then be resentenced by this judge, his successor or by some other judge appointed to do so. The Probation Order shall be amended accordingly.

Icenogle, *supra*, at 288 (*citing People v. Gauntlett*, 134 Mich. App. 737, 352 N.W.2d 310, 313-14 (1984)). This provision for the use of Depo-Provera was then stayed pending appeal.

[33] Under Megan's Law, judges must order an "assessment" to be performed by the State Board to Assess Sexually Violent Predators of defendants who plead guilty or are convicted of sexually violent offenses (typical of paraphiliacs) such as rape, involuntary deviate sexual intercourse, and aggravated indecent assault. Act 24 of Special Session 1 of 1995, 42 Pa.C.S.A. 9791, et seq. The court must hold a hearing prior to sentencing to determine if the offender is asexually violent predator and thus required to register his address with the Pennsylvania State Police upon release from incarceration.

[34] Medications such as Depo Provera can be prescribed by any physician under the FDA Guidelines relating to the "use of approved drugs for unlabeled indications." Fitzgerald, *supra*, at 6. In 1981, there were more than fifty centers in the U.S. where Depo-Provera was being used to treat sex problems. *Id.* (*citing* Berlin and Coyle, *Sexual Deviation Syndromes*, 149 JOHNS HOPKINS MED. J. 119 (1981)). Treatment typically consists of weekly injections of 300 to 500 milligrams. An oral form is available but is not recommended since compliance is not ensured. Icenogle, *supra*, at 284, notes 50-51 (*citing* Lehne, *supra*, at 517).

To locate additional programs in your area, you may contact Dr. Abel (ph. 1-800-806-ABEL), Dr. Berlin (ph. 410-539-1661) or Dr. Balyk (ph. 908-495-7449), or the programs listed in the insert.

[35] The optimal situation occurs where the defendant is released from incarceration, returns to his family and is able to become employed, supporting himself and his family and is able to pay for his treatments, and does not re-offend.

[36] The likelihood of the sex offender re-offending while on this treatment is substantially reduced. (*See* studies cited herein.) As stated by Icenogle: "Thus it would appear that the state can entomb the deviant behavior while allowing the offender to continue contributing to society." Icenogle, *supra*, at 280.