

Controversial Issues with Sexually Violent Predator (SVP) Laws: A Guide for Professionals



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Written in collaboration with the Sex Offender Civil Commitment Programs Network.

The topic of sexual offending often triggers strong emotionality due to the harm done. This emotionality contributed to the use of the label “Sexually Violent Predator (SVP),” as opposed to “Sexually Violent Offender,” in statutes. However, these same statutes can also trigger concerns about civil commitment based on the belief that such laws are unconstitutional and that there are many flaws in the process of committing and treating people designated as SVPs. The following points will hopefully offer some clarification about these controversial issues:

- 1. Constitutionality of SVP Statutes.** The U.S. Supreme Court has twice upheld the constitutionality of SVP statutes. The Court has confirmed that the laws do not constitute double jeopardy and are not ex post facto laws, since the purpose of civil commitment is to provide treatment, not punishment (*Kansas v. Crane*, 2002; *Kansas v. Hendricks*, 1997). However, the civil commitment programs and statutes in Minnesota (*Karsjens et al v. Minnesota Department of Human Services et al.*, 2012) and Missouri (*John Van Orden, et al v Schafer et al.*, 2015) have been declared unconstitutional. Therefore, there continue to be issues raised regarding the constitutionality of these laws.
- 2. The Ethics of SVP Staff and Evaluators:** The ethics of those who work in SVP programs and those who conduct the evaluations used to determine who should be committed have been called into question by some who believe that mental health professionals should not associate themselves with these programs. However, others argue that if society is going to confine the highest risk sexual offenders following termination of their prison sentences in order to receive treatment, it is important that competent, skilled clinicians evaluate and treat these clinically complex and challenging individuals. In their opinion, skilled mental health professionals should actually be encouraged to seek these positions and be supported in their work.
- 3. The Controversial Diagnosis: Paraphilia NOS:** Many individuals committed as SVPs were diagnosed with the DSM-IV diagnosis Paraphilia, Not Otherwise Specified (NOS) for either sexual interest in pubescent children (formerly called “hebephilia”) or forced sexual acts on others (with the qualifier “sexually attracted to non-consenting persons” or

simply “non-consent”).¹ Some psychologists expressed concern that this diagnosis should not have been used to meet the mental disorder prong of the commitment standard. Additionally, concerns were raised that evaluators may have, at times, erroneously assumed the presence of a paraphilia simply based on the commission of a sexual offense. Although several cases have upheld the use of this diagnosis in SVP proceedings (*Brown v. Watters*, 2010; *McGee v. Bartow*, 2010; *United States v. Carta*, 2009), the controversy regarding diagnostic practices in SVP cases remains a spirited issue of debate in professional circles.

4. **Limitations in Predicting Future Violence:** Civil commitment is an intervention that is future-oriented. To that end, an individual’s risk for future offending is very important. The state of current research and tools are not designed to predict individual risk. Current actuarial risk tools place individuals in groups with similar characteristics but are not able to predict the risk of that single case, and instruments frequently used when evaluating sexual offenders’ risk for reoffending have shown lower field reliability than what is reported in their test manuals (Miller, Kimonis, Otto, Kline, & Wasserman, 2012). In addition, recent research studies (Duwe, 2013; Hanson, Harris, Helmus, & Thornton, 2014) have suggested that those previously believed to present a high risk for reoffending may actually be lower risk than initially thought. And, over time, research has shown that risk for reoffense decreases. It is important for any evaluator doing these assessments to keep up with the rapidly changing research literature in this area and to not overstate their confidence regarding risk predictions.
5. **Low Release Rates.** The premise of SVP laws is that individuals will be provided treatment while civilly committed until such time as they are deemed safe to be released. This presumes the opportunity for many to be released, subject to various conditions, based on information and recommendations from treatment programs and forensic risk assessments to the decision makers. Thresholds for release vary across jurisdictions, but it is always the courts that make the ultimate determination regarding such releases or any increased liberty. Political and public pressures can influence judicial decision-making to varying degrees.
6. **Lack of Transition Services.** Transitional services offered to assist SVPs in reintegration is a complicated issue. A few states lack any type of transition services or conditional release, and it is unrealistic to think that civilly committed sexual offenders can be successfully reintegrated into society with no step-down process or follow-up. Changes to the statutes in those states might be required in order to address the issue. Similarly, the

¹ *Note: Using the DSM-5, this diagnosis is now called “Other Specified Paraphilic Disorder.”

successful reintegration of civilly committed persons relies on community resources to assist with desistance. This includes housing, vocational opportunities, and social/emotional supports. Some agencies and individuals who can provide these resources are uncomfortable doing so as it may feel like they are condoning the sexual offender's behavior

Summary: Twenty states and the District of Columbia have SVP statutes, and these jurisdictions do not appear likely to abandon them. Therefore, attorneys, public policy makers, and those in the mental health field should focus their efforts on improving the process for evaluating the risk presented by sexual offenders at different points in time and in response to improvements in risk assessment measures, improving the quality of treatment provided, and identifying more community resources to aid in the transition of SVPs back to the community. In addition, more research is needed in the areas of risk assessment and treatment of high-risk offenders. The Sex Offender Civil Commitment Programs Network (SOCCPN) and Association for the Treatment of Sexual Abusers (ATSA) are resources available to assist all who are working toward those very important goals.

References:

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U.S. District Court of Eastern Missouri Case No. 4:09CV00971 AGF

U.S. District Court of Minnesota, Civil No. 11-3659