

Civil Commitment of Sexual Offenders: Introduction and Overview

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Civil commitment laws for sexual offenders, also known as Sexually Violent Predator (SVP) or Sexually Dangerous Person (SDP) statutes, allow for the involuntary civil commitment of individuals convicted of sexual offenses following the expiration of their prison terms. Washington was the first state to enact a civil commitment law in 1990. As of 2015, 20 states (Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin) and the District of Columbia have established similar laws. The Pennsylvania law is unique in that it applies only to youth adjudicated for a sexual offense who are “aging out” of the juvenile justice system.

The notion of civilly committing sexual offenders is not entirely new. Although rarely used, “Sexual Psychopath” laws were initially enacted in the 1930s and 1940s to allow for the prolonged commitment of sexually violent individuals for the purposes of treatment. The early Sexual Psychopath laws were enacted to help sexual offenders who were determined to be in need of treatment rather than punishment. The Sexual Psychopath laws provided the courts with an option of ordering treatment in a secure treatment program rather than a prison sentence. In contrast, the newer civil commitment laws require an individual to complete his or her legal sentence before being civilly committed for treatment. Individuals are civilly

committed until such time that the courts deem they no longer meet the criteria for civil commitment.

Although state-to-state variation exists in the exact language of these laws and who qualifies, each law shares three common elements necessary for commitment: (1) the individual must have committed a qualifying sexual offense; (2) the individual must have a qualifying mental condition; and (3) the individual's mental disorder creates a high probability that the person will commit new sexual offenses in the future due to a serious difficulty controlling his or her behavior. Although the vast majority of civilly committed sexual offenders come from the adult correctional system, approximately half of the 21 jurisdictions listed above allow for the civil commitment of adults who committed their offense as a juvenile.

Unlike traditional psychiatric civil commitment, individuals subject to sexual offender civil commitment laws typically are diagnosed with a paraphilia rather than a nonsexual, major mental health disorder. Paraphilias are a class of mental disorders defined by an atypical sexual interest and/or behavior that causes mental distress to a person and/or makes the person a serious threat to the psychological and physical well-being of other individuals. According to civil commitment program information, individuals subject to sexual offender civil commitment are usually diagnosed with atypical sexual attraction to certain groups of people (such as prepubescent children) or activities (such as coercion or violence) and have acted on those interests. Some states allow civil commitment for those diagnosed solely with a severe personality disorder.

In addition to having committed a qualifying sexual offense and having a qualifying mental condition, an individual must be assessed to pose a significant (i.e., high) risk to reoffend because of that disorder in order to qualify for civil commitment. Each jurisdiction

defines the threshold of likelihood to reoffend that determines whether someone meets the criteria for civil commitment, but most indicate the offender must be “likely” or “more likely than not” to reoffend. Overall, approximately 1–5% of United States sexual offenders being released from prison will be civilly committed. Recent estimates indicate there are approximately 4,700 individuals civilly committed under SVP statutes.

To determine whether an individual meets the criteria for sexual civil commitment, he or she is evaluated by a mental health professional (or committee) and, if found to meet the criteria, is referred to the prosecuting authority for filing of the civil commitment petition. In some states, the individual may be referred for filing in the absence of a finding by a mental health expert. The individual may then agree to the commitment or stand trial for commitment. Depending on the jurisdiction, the trial may be a jury or bench trial.

Most states provide for an automatic review of an individual’s need for continued commitment annually or biannually, and some jurisdictions allow individuals to petition to the courts every 6 months; however, there are also jurisdictions that do not provide for regular review of committed individuals. Many statutes provide for a graduated release through a “conditional release program,” “provisional discharge,” or other less restrictive alternative. These conditional release programs allow individuals the opportunity to work, live, and receive treatment in the community while still providing structure and supervision. In many states, civilly committed sexual offenders are subject to enhanced supervision and monitoring requirements when released into the community. Once granted a conditional release, individuals remain under the jurisdiction of the court and are reviewed annually until the court decides they no longer require civil commitment. At that point, individuals are discharged but

remain subject to any existing legislation regarding sexual offenders such as registration, residence restrictions, or other local ordinances.

The civil commitment of individuals who have committed sexual offenses is a complex issue that has evolved over many years of serious sex crime cases and legislative attempts to address community safety considerations posed by persistent sexual offenders. Although each jurisdiction may have some variation on the legal requirements for commitment, each individual referred for civil commitment must be determined to have committed a qualifying sexual offense, have a qualifying mental condition, and be identified as high risk to commit another sexual offense as a result of the disorder. Other papers available through the Sex Offender Civil Commitment Programs Network (SOCCPN) and Association for the Treatment of Sexual Abusers (ATSA) provide additional information regarding the complexities involved in civil commitment of sexual offenders. Interested readers are referred to those papers as well as to the websites of ATSA and SOCCPN.