NEW JERSEY SEXUALLY VIOLENT PREDATOR ACT: CIVIL COMMITMENT OF THE SEXUALLY ABNORMAL

Robert Lee Hornby*

TABLE OF CONTENTS

* B.A., History and Political Science, University of Arizona, 1996; J.D., Seton Hall University School of Law, 2000.

I. Introduction

On August 12, 1998 Governor Christine Todd Whitman signed into law a bill requiring the civil commitment of individuals classified as sexually violent predators.[1] The bill was part of a package of legislation which sought to make it difficult for certain sex offenders to gain freedom after committing egregious criminal sexual acts.[2] Spawned from the fervor created over Megan's Law,[3] the Sexually Violent Predator Act[4] was meant to "make it easier to keep sex offenders locked up and harder for them to prey again on our children and families."[5] Governor Whitman made it clear that

---

1 *See Whitman Signs Strict Sex-Offender Bills*, THE TIMES OF TRENTON, Aug. 13, 1998, at A2.

2 *See id.*

3 In 1994, New Jersey became the first state in the nation to pass legislation which required certain sex offenders to register with the communities in which they moved to after they were released from prison. *See* N.J. STAT. ANN. § 2C:7-1 *et. seq.* (West 1999). All fifty states now have some form of notification provision for child sex offenders. *See* John Gibeaut, *Defining Punishment: Courts Split on Notification Provisions of Sex Offender Laws*, A.B.A. J., Mar. 1997, at 36.

The abduction, rape, and brutal murder of seven-year-old Megan Kanka by a twice convicted sex offender caused a national and regional outcry that carried Megan's Law into enactment despite constitutional concerns pertaining to the right of privacy of the sexual offender. *See* Ralph Siegel, *Suspect Admits Killing Girl*, THE RECORD OF NORTHERN NEW JERSEY, Aug. 2, 1994, at A1. The New Jersey Supreme Court upheld the constitutionality of the statute, only requiring certain procedural safeguards to ensure the rights of the criminal. *See* Doe v. Poritz, 142 N.J.1, 662 A.2d 367 (1995). For a detailed analysis of the constitutional concerns raised by Megan's Law and the way in which the New Jersey Legislature dealt with those concerns see Robert J. Martin, *Pursuing Public Protection Through Mandatory Community Notification of Convicted Sex Offenders: The Trials and Tribulations of Megan's Law*, 6 B.U. PUB. INT. L.J. 29 (1996).

4 N.J. STAT. ANN. § 30:4-27 (West 1999).

5 Governor Christine Todd Whitman, *State of the State Address* (visited Jan. 13, 1998) <www.state.nj.us/governor/sos98.html>. Governor Whitman made it abundantly clear in her 1998 State of the State address that the Sexually Violent Predator Act was an important element in reducing violent crime in New Jersey when, speaking to a Joint Session of the New Jersey State Legislature, she stated that:

> Since 1994, we've put more criminals behind bars and we've increased the length of time they spend there. That's especially true for violent criminals, whose sentences are 13 percent longer then they were just four years ago. . . .Under Megan's Law, we've already kept more that 80 such predators in civil commitment beyond their initial prison terms. We should expand that authority.

Id.

the rights of incarcerated criminals were not at issue as she poignantly stated in her 1998 State of the State Address: "I believe we should make it easier to keep still-dangerous sex offenders away from our children even after they've served their criminal sentences."[6]

Despite the focus on the victims of these horrendous sexual crimes, any civil commitment legislation would face the challenge of confronting the rights of the sex offender. New Jersey's recent compassion toward victims, and hard-line stance toward criminals, could only continue in the Sexually Violent Predator Act if the legislation was constitutionally permissible.[7] Despite the potential constraints, the New Jersey Legislature pushed the legislation forward, relying on both the guidance of other state's legislative attempts to commit sexual predators and the approval of such acts by the United States Supreme Court.[8]

This Note examines the genesis of the Sexually Violent Predator Act in the state of New Jersey. Part II of the Note sets forth the nature of the problem and gives a brief history of involuntary civil commitment for sex offenders.[9] Specifically, Part II examines the constitutional problems which arise when an individual is compelled to remain incarcerated beyond what the criminal justice system initially deemed appropriate and the way in which the United States Supreme Court has dealt with those problems.[10] Further, this section delves into the variety of statutes enacted by other states and the way in which those statutes attempted to avoid those constitutional constraints.[11] Finally, Part II

---

6 *Id.* After coupling involuntary commitment with the widely popular Megan's Law, the governor called upon the New Jersey Legislature to continue the work already started and enact a statue before the end of the session. *See id.*

7 In recent years, New Jersey has concerned itself with granting greater constitutional rights to victims. For example, in 1991 the New Jersey passed the Victim's Rights Amendment, which states that "A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system." *See* N.J. CONST. art. I, § 22. The amendment allows for a victim to be present at all judicial proceedings involving the criminal defendant, except where the victim is properly sequestered because of testimony. *See id.* This trend is also seen in the Megan's Law statute. *See supra* note 3.

8 *See Whitman Requests In-Prison Hospital For Sex Offenders*, THE TIMES OF TRENTON, Feb. 27, 1998, at A1.

9 *See infra* Part II.

10 *See infra* Part II.

11 *See infra* Part II.

provides a brief analysis of the way in which the United States Supreme Court has dealt with the potential constitutional violations.[12]

Part III of this Note outlines New Jersey's experience with involuntary civil commitment and explores the genesis of the Sexually Violent Predator Act.[13] Part IV examines the Sexually Violent Predator Act itself, setting forth the attempt by the New Jersey Legislature to create legislation which constitutionally confines those deemed to have sexually violent dispositions.[14] Finally, Part V further analyzes the Sexually Violent Predator Act, examining whether the Act satisfies the constitutional guidelines of the Supreme Court and the possible difficulties which may arise with its implementation.[15]

II. Civil Commitment of Sexual Predators

A. The Nature of the Problem

When a state attempts to incarcerate an individual beyond the term of a criminal sentence, three important constitutional concerns arise that implicate the rights of the criminal defendant.[16] The first constitutional argument against such confinement is that the involuntary commitment of a sexual predator may violate the Ex Post Facto Clause.[17] The Supreme Court has stated that ex post facto laws are "[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to crime, when committed."[18] Thus, the individual who is subjected to involuntary civil commitment may argue that continued confinement beyond

---

12 *See infra* Part II.

13 *See infra* Part III.

14 *See infra* Part IV.

15 *See infra* Part V.

16 *See* Eric S. Janus and Lisbeth J. Nudell, *Defending Sex Offender Commitment Cases*, *in* THE SEXUAL PREDATOR 3-16 through 3-18 (Anita Schlank and Fred Cohen eds., 1999).

17 U.S. CONST. art. I, § 10. The Ex Post Facto Clause states that "[n]o State shall pass any. . .ex post facto law." *Id.* Ex post facto literally means "after the fact." *See* BLACK'S LAW DICTIONARY 580 (6th ed. 1991).

18 Calder v. Bull, 3 U.S. 386, 390 (1798).

that levied under their original criminal sentence is a violation of constitutional guarantees.[19] Another argument posited is that involuntary civil commitment violates the Fifth Amendment's[20] prohibition against double-jeopardy.[21] Both the double-jeopardy and ex post facto arguments, however, rest upon the notion that involuntary civil commitment is a form of punishment.[22]

The most enduring challenges to involuntary civil commitment stem from the Due Process Clause of the Fourteenth Amendment.[23] The Due Process clause explicitly states that no "state shall. . .deprive any person of life, liberty, or property without due process of law."[24] In the case of an individual being civilly committed, a liberty interest is implicated, since the individual is losing the freedom to move about without constraint.[25] The Supreme Court has traditionally held that an individual's liberty interest is "fundamental"[26] and must be afforded a high degree of constitutional protection.[27] As a result, a state is forbidden to violate that right unless it can demonstrate that the infringement on that

---

19 *See* Weaver v. Graham, 450 U.S. 24, 28-29 (1981). The ban on ex post facto laws is necessary to give the citizenry "fair warning" of the possible punishments for violating government statutes, while allowing reliance on those laws until they are changed. *See id.* Further, the ban against such ex post facto government action is meant to curtail "arbitrary and potentially vindictive legislation." *Id.* at 29.

20 "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. CONST. amend. V.

21 Double-jeopardy refers to the concept that an individual may not be prosecuted twice for the same offense. *See* North Carolina v. Pearce, 395 U.S. 711, 714 (1969). The Double Jeopardy Clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment. *See* Monge v. California, 524 U.S. 721, 728 (1998). For a detailed history of double jeopardy, including both a common law and constitutional analysis, see GEORGE C. THOMAS III, DOUBLE JEOPARDY 47-118 (1998).

22 *See Sexually (Mentally) Dangerous Persons*, 23 MENTAL & PHYSICAL DISABILITY L. REP. 583, 585 (1999).

23 *See* Deborah L. Morris, *Constitutional Implications of the Involuntary Commitment of Sexually Violent Predators—A Due Process Analysis*, 82 CORNELL L. REV. 594, 596-97 (1997).

24 U.S. CONST. amend. XIV, § 1.

25 *See* Morris, *supra* note 23, at 599.

26 A fundamental right has been defined as a right "deeply rooted in this Nation's history and tradition." *See* Cruzan v. Missouri Dept. of Health, 497 U.S. 261, 303 (1990). Further, the Court has stated that a fundamental right is a right "implicit in the concept of ordered liberty." *See* Palko v. Connecticut, 302 U.S. 319, 325 (1937), *overruled on different grounds*, Benton v. Maryland, 395 U.S. 784 (1969).

27 *See* Michael H. v. Gerald D., 491 U.S. 110, 122 (1989).

right is narrowly tailored to promote a compelling state interest.[28]

B. Constitutional History of Involuntary Civil Commitment

Despite the Due Process concern for liberty, the Supreme Court has historically permitted the involuntary civil commitment of certain violent offenders.[29] In *Baxstrom v. Herold*[30] the Supreme Court dealt with the civil commitment of an individual who was incarcerated for a violent offense,[31] but who was also declared to be mentally ill.[32] Prior to the expiration of his criminal term, the defendant in *Baxstrom* was recommended for long-term civil commitment in a state hospital.[33] After an evaluation of the

---

28 *See* Reno v. Flores, 507 U.S. 292, 302 (1993). In Washington v. Glucksberg, 521 U.S. 702, 722 (1997), Chief Justice Renquist explained why the Court adhered to this heightened degree of scrutiny:

> In our view. . .the development of this Court's substantive-due-process jurisprudence. . .has been a process whereby the outlines of the "liberty" specially protected by the Fourteenth Amendment—never fully clarified, to be sure, and perhaps not capable of being fully clarified—have at least been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition. This approach tends to rein in the subjective elements that are necessarily present in due-process judicial review. In addition, by establishing a threshold requirement—that a challenged state action implicate a fundamental right—before requiring more than a reasonable relation to a legitimate state interest to justify the action, it avoids the need for complex balancing of competing interests in every case.

Id. at 722.

29 *See* Morris, *supra* note 23, at 599.

30 383 U.S. 107 (1966).

31 Although not a sexual offense, the defendant in *Baxstrom* was convicted of second degree assault. *See id.* at 108.

32 *See id.*

33 *See id.* While serving his prison term Basxtrom was declared insane and transferred to Dannemora State Hospital, a treatment facility under the supervision of the New York Department of Corrections where prisoners were treated for mental defects. *See id.* When it was determined that his criminal sentence was about to end, the director of Dannemora moved to civilly commit Baxstrom. *See id.* Civil commitment was actually overseen by the Department of Mental Hygiene, which refused to take custody of Baxstrom. *See id.* at 109. Thus the defendant was "moved" to civil commitment simply by falling under the supervision of the Department of Mental Hygiene, even though he remained at the more secure Dannemora facility. *See id.*

defendant, it was concluded that he was in fact mentally ill, and he was subsequently transferred to a medical care facility after his criminal sentence expired.[34] The Court reviewed the *habeus corpus* plea of the defendant and determined that he was wrongly confined in violation of equal protection under the laws of the state.[35]

The *Baxstrom* Court focused not upon the idea that it was improper to subsequently civilly commit a criminal defendant, but instead upon the fact that the defendant was not afforded the normal procedures for the civil commitment of an individual, in violation of his constitutional rights.[36] As a result, *Baxstrom* has been used for justifying the civil commitment of an individual after a criminal sentence has ended so long as proper steps have been taken to effectuate the commitment.[37]

While the Court has allowed for involuntary civil commitment under the proper circumstances, it has also made clear that a state must follow specific guidelines when civilly confining individuals.[38] In *Addington v. Texas*,[39] the defendant was civilly committed under a state statute because he was mentally ill and posed a danger to himself and others.[40] The defendant argued that the statutory confinement standard, requiring both mental illness and a threat to himself and other was violative of his due process rights.[41] Further, the defendant argued that due process was violated when the trial

---

34 *See Baxstrom*, 383 U.S. at 108-109.

35 *See id.* at 109.

36 *See id.* at 110. The Court found that there was an equal protection violation because the defendant was not afforded "equal protection of the laws by the statutory procedure under which a person may be civilly committed at the expiration of his penal sentence without jury review. . .[and] further. . .by his civil commitment to an institution maintained by the Department of Corrections beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill[.]" *Id.*

37 *See* Morris, *supra* note 23, at 601.

38 *See* Morris, *supra* note 23, at 603.

39 441 U.S. 418 (1979).

40 *See id.* The defendant, Addington, had a history of mental illness and had been temporarily institutionalized on several occasions prior to the one which led to his confinement. *See id.* at 420. Addington was charged with "assault by threat," and his mother instituted proceedings after the incident to institutionalize him. *See id.* During the commitment proceedings, the state introduced evidence that Addington was delusional and had made numerous threats to harm his parents and others and that he had acted on those threats causing injury and property damage. *See id.* at 421-22. Expert testimony by physicians stated that the defendant was in fact dangerous, and an order for commitment was subsequently issued against him. *See id.* at 422.

41 *See Addington*, 441 U.S. at 422.

court used a "preponderance of the evidence standard" rather than the "beyond the reasonable doubt standard" required for imprisonment under criminal statues.[42]

The *Addington* Court rejected the defendant's argument that a reasonable doubt standard must be met, but simultaneously stated that a preponderance standard was insufficient to meet the requirements of due process.[43] While the Court stated that some middle standard of proof was more appropriate, it rejected defendant's statutory argument and held that the threshold standard of mental illness and a threat to others was permissible.[44] More importantly, however, the Court recognized that "[t]he state has a legitimate interest under its parens patriae powers in providing care to its citizens who are unable because of emotional disorders to care for themselves; the state also has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill."[45] With this holding, the Supreme Court validated the state's ability to civilly commit an individual using that state's police powers despite the threat of violating the individual's due process liberty interests.[46]

Following the affirmation of the right of a state to involuntarily civilly commit an individual, the Court, in *United States v. Salerno*,[47] faced the issue of whether a class of individuals could be confined if there were only a mere suspicion that they were dangerous to the public at large.[48] The Court held that there was not a violation of due process when such individuals were detained

---

42 *See id.*

43 *See id.* at 423. The Court noted:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact-finding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.' The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.

Id.

44 *See id.* at 426. The Court explained that, "[t]he State has no interest in confining individuals involuntarily if they are not mentally ill or if they do not pose some danger to themselves or others." *Id.*

45 *Id.*

46 *See* Morris, *supra* note 23, at 604.

47 481 U.S. 739 (1987).

48 *See generally id.*

because they could prove to be a threat to the general public in the future.[49] The Court stated that the government's "regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest."[50] The Court determined that the legislature had recognized a compelling state interest and had a legitimate interest in keeping these individual from the public, even if the dangers were only perceived.[51]

The Supreme Court's rejection of the aforementioned due process arguments paved the way for *Foucha v. Louisiana*.[52] In *Foucha*, the state statute for civil commitment allowed an individual to be civilly committed when they were adjudged not guilty by reason of insanity.[53] The statute permitted the individual to petition for release once committed, but would allow for release only if the individual could show that he was not dangerous to the public.[54] The State did not maintain that the individual fell under the technical definition of mental illness, but instead justified continued commitment on the basis that the individual had an "antisocial personality" which rendered him dangerous to himself and others.[55] The Court determined that the state still had the burden of proving that the individual was mentally ill, and refused to apply the

---

49 The individuals in this case were arrestees detained before trial pursuant to the Bail Reform Act of 1984. *See generally id.*

50 *Id.* at 748.

51 *See id.* at 750. The Court elaborated on the fact that the state's interest was compelling and seemed to grant deference to the findings of Congress. *See id.* Chief Justice Renquist stated:

> The Bail Reform Act. . .narrowly focuses on a particularly acute problem in which the Government interests are overwhelming. The Act operates only on individuals who have been arrested for a specific category of extremely serious offenses. Congress specifically found that these individuals are far more likely to be responsible for dangerous acts in the community after arrest. Nor is the Act by any means a scattershot attempt to incapacitate those who are merely suspected of these serious crimes.

Id.

52 504 U.S. 71 (1992).

53 *See id.* at 73.

54 *See id.*

55 *See id.* at 78. This was a stark departure from the standard in *Addington*, which required that the individual be both mentally ill and dangerous to others. *See Addington*, 441 U.S. at 426. The Supreme Court had earlier held that the *Addington* standard need not be met in cases where the individual was proved to be insane. *See* Jones v. United States, 463 U.S. 354 (1983).

rationale of *Salerno* to these circumstances.[56] Thus, the Court reaffirmed the notion that clear and convincing evidence of mental illness and dangerousness was still needed to involuntarily commit an individual.[57]

Examination of Supreme Court jurisprudence up until 1992, shows that the Supreme Court permitted the involuntary civil commitment of individuals where there was a proven mental defect and where there was a danger to the public at large.[58] Further, an important distinction arising from the Supreme Court jurisprudence was between the classification of a confined individual as a criminal or as a person that is mentally ill, since due process requires different standards of proof for the two categories.[59] However, as with Louisiana in the *Foucha* case, states did not always adhere to Supreme Court decisions, and they attempted to push involuntary incarceration by lowering the confinement standard.[60]

---

56 *See id.* at 80. The Court stated that, "[t]he narrowly focused pretrial detention of arrestees permitted by the Bail Reform Act was found to be one of those carefully limited exceptions permitted by the Due Process Clause. We decline to take a similar view of a law like Louisiana's, which permits the indefinite detention of insanity acquittees who are not mentally ill but who do not prove they would not be dangerous to others." *Id.* at 83.

57 *See Foucha*, 504 U.S. at 86. The Court seemed to rather strongly assert the need for both mental illness and dangerousness would not be lowered stating:

> [T]he State now claims that it may continue to confine Foucha, who is not now considered to be mentally ill, solely because he is deemed dangerous, but without assuming the burden of proving even this ground for confinement by clear and convincing evidence. The court below gave no convincing reason why the procedural safeguards against unwarranted confinement which are guaranteed to insane persons and those who have been convicted may be denied to a sane acquittee, and the State has done no better in this Court.

Id.

58 *See* Robert Billbrey, *Civil Commitment of Sexually Violent Predators: A Misguided Attempt to Solve a Serious Problem*, 55 J. MO. B. 321, 322 (1999).

59 *See Addington*, 441 U.S. at 423. *See also* Sherry F. Colb, *Insane Fear: The Discriminatory Category of "Mentally Ill and Dangerous,"* 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 341, 342 (1999).

60 *See Foucha*, 504 U.S. at 86.

C. *Previous Attempts to Create Sexual Predator Laws in States Other than New Jersey*

While the involuntary civil commitment of sexual predators has only recently become a controversial issue, the ability to civilly commit sex offenders who are perceived dangerous has been recognized in many states for over fifty years.[61] Early "sexual psychopath" statutes enacted prior to the Second World War, permitted the civil commitment of sexual offenders based upon the notion that these individuals had some sort of psychopathic problem, which rendered them helpless to control their sexually deviant behavior.[62] Since the main focus of these statutes was to treat sexual offenders so that they would no longer pose a danger to the public or to themselves, confinement until the individual was completely cured was justified.[63] Yet, these early attempts at committing sexual predators were all but abandoned in the mid-1970's, when the treatment of sex offenders was deemed to be a failed effort.[64]

The State of Washington led the modern resurgence of sex offender legislation, becoming the first state to test the limits of involuntary civil commitment of sexually violent individuals.[65] Sparked by a horrendous rape and sexual mutilation of a young child, the Washington Legislature passed the Washington Sexually Violent Predator Act ("Washington Act").[66] The Washington Act

---

61 *See* Tom Prettyman, *Federal and State Challenges to State Sex Offender Laws*, 29 RUTGERS L.J. 1075, 1075 (1998). The very first "sexual psychopath" law was actually adopted in the state of Michigan in 1937. *See* BRUCE D. SALES AND SALEEM A. SHAH, MENTAL HEALTH AND LAW 259 (1996). Various laws designed to protect the public from sex offenders soon followed, and by 1970, twenty-nine states and the District of Columbia had adopted some form of legislation dealing with the confinement and treatment of sex offenders. *See id.*

62 *See Prettyman*, *supra* note 61, at 1076.

63 *See Prettyman*, *supra* note 61, at 1075. This is quite different from the Supreme Court standard in *Addington*, which required that the individual be both mentally ill and dangerous to others. *See Addington*, 441 U.S. at 426.

64 *See* Janus and Nudell, *supra* note 16, at 4-3. Most of the early sex offender laws were repealed in the 1970s when medical and political concerns were raised about the ability to actually rehabilitate those deemed to be sexual predators. *See id.*

65 *See* Morris, *supra* note 23, at 611.

66 *See* WASH. REV. CODE § 71.09 *et seq.* (1992). After sex offender Earl Shriner brutally attacked and injured a young boy subsequent to the state's failed efforts to

permits the involuntary civil commitment of those individuals classified as sexually violent predators under the definitions contained within the Act.[67] The Washington Legislature was careful to define the class of individuals who would be included in the statute as "a small but extremely dangerous group" who cannot be aided by the traditional facilities existing within the state for mentally ill individuals.[68]

A "sexually violent predator" within the Washington Act is defined as a person "who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence."[69] If an individual was classified as a sexually violent predator by a jury using a "beyond a reasonable doubt standard," the individual would be subject to involuntary civil commitment.[70] However, the great departure from earlier civil commitment statutes was the use of the term "mental abnormality"[71] to serve as the first prong in deciding whether or not to classify the individual as a sexually violent predator.[72] This deviated from the

---

incarcerated him, the Governor of Washington assembled the Task Force on Community Notification to re-evaluate the way in which sex offenders are subjected to involuntary civil commitment. *See* Young v. Weston, 898 F. Supp. 744, 746 n.1 (W.D. Wash. 1995).

67 *See id.* § 71.09.

68 *See id.* § 71.09.010.

69 *Id.* § 71.09.020(1). Under the Washington Act "sexually violent offense" includes "rape, rape of a child, and child molestation" along with "such offenses as murder, assault, kidnapping and burglary", where those offenses are "sexually motivated." *Id.* § 71.09.020(6).

70 *See id.* § 71.09.090(1). Although the burden of proof is placed upon the state, some argue that the defendant truly bears the burden to prove or disprove "who" he really is. *See* Janus and Nudell, *supra* note 16, at 3-2. The focus of civil commitment proceedings is on character, in that the defendant's propensity to engage in future sexually violent behavior is at issue. *See id.* Therefore, it may be argued that the burden of proof shifts to the defendant who must combat the public notion that he is prone to commit future offenses based on his past conduct. *See id.* at 3-3.

71 Within the terms of the Washington statute, "mental abnormality" is defined as "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others." WASH. REV. CODE § 71.09.020(2).

72 *See Young*, 898 F. Supp. at 750. Reviewing the statute, the *Young* court determined that "[t]he legislature's decision to employ a term unrecognized in the psychiatric community, coupled with its provision of a definition of no value to treatment professionals, is an indication that the State did not intend the statute to

term "mentally ill," which the Supreme Court had approved as squaring with due process in civil commitment proceedings.[73]

In 1994, following the lead of the Washington Legislature, Kansas passed its Sexually Violent Predator Act ("Kansas Act").[74] Similar to the Washington Act, the Kansas Act permitted the involuntary civil commitment of those persons deemed to be sexually violent predators.[75] The Kansas Act also limited the civil commitment measures to a small group of individuals that posed a great danger to the public.[76] The Kansas Act justified the commitment by the need for long term treatment of these individuals, which could not be provided by the established methods of care within the state.[77]

Like the Washington Act, the Kansas Act relied on the use of the terms "mental abnormality" and "personality disorder" to classify the individuals as sexually violent predators.[78] The Kansas Act defined mental abnormality as a "congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a

---

capture only the seriously mentally ill." *Id.* at 750 n.2.

73 *See Baxstrom*, 383 U.S. at 108.

74 *See* KAN. STAT. ANN. §§ 59-29a01 *et seq.* (Supp. 1998). Several other states have also enacted statutes allowing for the civil commitment of sexual predators. *See* WIS STAT. ANN. §§ 980 *et. seq.* (West 1997); MINN. STAT. ANN. § 253B.02; ARIZ. REV. STAT. ANN. §§ 13-4601 *et. seq.* (West 1997); CAL. WELF. & INSTITI. CODE §§ 6600 *et. seq.* (West 1998); 1998 FLA. LAWS ch. 98-64; 725 ILL. COMP. STAT. §§ 207 *et. seq.* (West 1998); IOWA CODE §§ 229A *et. seq.* (1998); MO. REV. STAT. §§ 632-480 *et. seq.* (West 1988); S.C. CODE ANN. §§ 44-48 *et. seq.* (1998); WASH. REV. CODE §§ 25-03.3 *et. seq.* (1997); D.C. CODE ANN. §§ 22-3503 through 22-3511 (1997).

75 *See* KAN. STAT. ANN. § 59-29a01 (Supp. 1998).

76 *See id.* The Kansas statute stated that there exists:

> [A] small but extremely dangerous group of sexually violent predators. . .who do not have a mental disease or defect that renders them appropriate for involuntary treatment. . .sexually violent predators generally have anti-social personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The legislature further finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high.

Id.

77 *See id.* The Kansas Act stated that "the treatment needs of this population are very long term and the treatment modalities for this population are very different than traditional treatment modalities for people appropriate for commitment." *See id.*

78 *See id.* § 59-29a02(b).

degree constituting such person a menace to the health and safety of others."[79] Thus, like its predecessor in Washington, the Kansas Act departed from the traditional definition of "mental illness" in Supreme Court jurisprudence.

D. *Setting the Stage for the Sexually Violent Predator Act: Kansas v. Hendricks*

In 1996, the United States Supreme Court granted certiorari to hear arguments on the constitutionality of the burgeoning legislative trend for involuntary civil commitment at the state level.[80] In *Kansas v. Hendricks*,[81] the Court addressed the aforementioned Kansas version of the Sexually Violent Predator Law.[82] The Court's opinion in *Hendricks* was instrumental in the creation of New Jersey's Sexually Violent Predator Law, for it affected the way in which the actual statute was structured.[83]

Under the authority of its Sexually Violent Predator Act, Kansas attempted to commit Leroy Hendricks to a civil institution without his consent.[84] Hendricks had a prior history of child molestation and was incarcerated for taking "indecent liberties" with two thirteen-year-old boys.[85] Prior to his release from a Kansas jail, the state sought to have Hendricks classified as a sexually violent

---

79 *Id.*

80 *See* Ed Panhale, *Predator Law Faces Supreme Court Test*, SEATTLE POST-INTELLIGENCER, June 18, 1996 at B1. Although the Supreme Court granted certiorari to hear the argument only for the Kansas Sexually Violent Predator Act, many states, including Washington, were interested in the resulting decision because of the effect of the decision on their own sexual predator laws. *See id.* As Washington State Assistant Attorney General Sara Sappington professed, "[u]ltimately, I think [the case] will determine the constitutionality of the Washington statute." *See* Aaron Epstein, *U.S. Supreme Court to Determine Brady Law, Sex Predator Statutes; Ruling Will Determine If Washington State Law is Constitutional*, THE NEWS TRIBUNE (Tacoma, Wa.), June 18, 1996, at A3.

81 521 U.S. 356 (1997).

82 *See Hendricks*, 521 U.S. at 346.

83 *See infra* notes 146-147 and accompanying text.

84 *See Hendricks*, 521 U.S. at 346.

85 *See id.* at 353.

predator so that the state could maintain custody over him.[86] At a trial to determine whether he was a sexual predator, Hendricks revealed gruesome information about his sexual disposition.[87] He also admitted that whenever he was not confined he would sexually abuse children.[88] Upon this information, the jury determined beyond a reasonable doubt that Hendricks was a sexually violent predator.[89] Hendricks appealed the court's decision on grounds of violation of ex post facto laws, double jeopardy, and the Due Process Clause of the Constitution.[90]

The Supreme Court quickly dispensed with arguments from Hendricks that there was a constitutional violation on either ex post facto or double jeopardy grounds.[91] The Court noted that there was not sufficient evidence to classify the commitment proceedings as criminal in nature.[92] Further, the Court stated that the Kansas Act was not a criminal statute, since it did not serve the purposes of either deterrence or retribution.[93] The Court held that the Kansas Act did not serve a retribution function because it did not "affix culpability for prior criminal conduct," but instead used the prior conduct merely to demonstrate a "mental abnormality" or to support a conclusion of future dangerousness to the public.[94]

---

86 *See id.* at 354.

87 *See id.* Hendricks detailed his propensity for sexually violent behavior by describing to the court a variety of acts which he committed over the course of forty years of his life. *See id.* Hendricks testified that he had repeatedly molested young children and had in fact been treated and released on several occasions. *See id.* Hendricks admitted that treatments had failed and that he still harbored sexually deviant feelings toward young children. *See id.* at 354-355.

88 *See Hendricks*, 521 U.S. at 355. Hendricks stated in testimony that the only way to be sure that he would stop molesting was for him to die. *See id.*

89 *See id.*

90 *See id.* at 356.

91 *See id.* at 361.

92 *See id.* The Court noted that deference would be given to the state legislature as to whether or not the proceeding was civil or criminal in nature. *See id.* The Court stated that "Kansas' objective to create a civil proceeding is evidenced by its placement of the Sexually Violent Predator Act within the Kansas probate code, instead of the criminal code, as well as its description of the act as creating a 'civil commitment procedure.'" *Id.*

93 *See Hendricks*, 521 U.S. at 361.

94 *See id.* at 362. The Court also noted that the Act does not make a criminal conviction a prerequisite for commitment, since as acquitted individuals could also be subject to involuntary confinement. *See id.* In addition, the Court observed that there was no scienter requirement in the Kansas Act, a criteria which is a hallmark of most criminal statutes. *See id.* In other words, the defendant need not have a "guilty mind."

Likewise, the Court determined that there was no deterrent function because individuals that have a "mental abnormality" or "personality disorder" as defined by the statute are unlikely to be deterred because of their condition.[95] Therefore, the Court concluded that the essence of the Kansas Act was not punitive in nature, thus dispensing with any arguments for ex post facto or double jeopardy.[96]

In his Due Process claim, Hendricks echoed the prior pronouncements of the Supreme Court by arguing that substantive due process is violated when the state commits an individual who is not both mentally ill and dangerous to the public.[97] Pointing to the Kansas Act, the Kansas Supreme Court agreed with this argument, holding that the Act's standard of "mental abnormality" did not equate with the Court's traditional notion of "mental illness."[98] Thus, the Court began its Due Process analysis by taking a very broad approach to civil commitment, stating that "[s]tates have in certain narrow circumstances provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety."[99] After detailing specific instances of such commitment, the Court concluded that involuntary commitment of a dangerous subclass of persons was not inconsistent with traditional notions of ordered

---

See id.

95 *See Hendricks*, 521 U.S. at 363-364. The Court also noted:

> [T]he conditions surrounding that confinement do not suggest a punitive purpose on the State's part. The State has represented that an individual confined under the Act is not subject to the more restrictive conditions placed on state prisoners, but instead experienced essentially the same conditions as any involuntarily committed patient in the state mental institution.

Id. at 363.

96 *See id.* at 369. While the Court held that civil commitment was not consistent with punishment, some commentators have argued that the power to civilly commit is of greater magnitude. *See* Janus amd Nudell, *supra* note 16, at 1-5. Civil commitment is easier both procedurally and substantively from a due process standpoint, and may allow for the indefinite confinement of an individual as long as they are receiving treatment. *See id.* In contrast, punishment of an individual is usually for a shorter, finite set of time and is not contingent upon treatment. *See id.* This has led one commentator to conclude that "it is far better to be punished then to be treated." *See id.*

97 *See id.* at 356.

98 *See id.*

99 *Id.* at 357.

liberty.[100]

The *Hendricks* Court did not abandon the prior precedent which required something more than a general danger to the public through some future violent conduct.[101]The Court held that the Kansas Act "requires proof of more than a mere predisposition to violence; rather, it requires evidence of past sexually violent behavior and a present mental condition that creates a likelihood of such conduct in the future if the person is not incapacitated."[102] The Court thus accepted the use of "mental abnormality" as satisfying the conditions required of substantive Due Process.[103]

In accepting a determination of mental abnormality, the Court attempted to explain its departure from the prior strict adherence to the use of the term "mental illness."[104] The Court stated that the term "mental illness" was "devoid of any talismanic significance."[105] That is, neither trained psychiatrists nor the Court itself has adhered to one strict meaning as to what constitutes the definition of mental illness.[106] The Court noted that it has traditionally deferred to the state legislatures to give meaning to specific medical terms and phrases.[107] The Court therefore concluded that the dispositive factor was whether or not the state statute sets forth criteria "relating to an individual's inability to control his dangerousness."[108]

After establishing the necessary criteria that a state must meet in order to involuntarily commit an individual, and determining that the Kansas Act met those standards, the Court found that Leroy Hendricks was within the class of individuals covered by the statute.[109] The Court had little trouble in determining that

---

100 *See Hendricks*, 521 U.S. at 357. The Court also made note of the fact that the Supreme Court has traditionally upheld involuntary civil commitments in circumstances where proper procedures are adhered to. *See id.*

101 *See id.* at 358.

102 *Id.*

103 *See id.* The Court found "[t]he precommitment requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of these other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness." *Id.*

104 *See Hendricks*, 521 U.S. at 358-59.

105 *See id.* at 359.

106 *See id.*

107 *See id.*

108 *See id.* at 360.

109 *See Hendricks*, 521 U.S. at 360.

Hendricks was mentally abnormal and, thus, fit within the statute.[110] Hendricks had been diagnosed as suffering from pedophilia and had testified that he would molest other children if afforded the opportunity to do so.[111] The Court stated frankly that the "admitted lack of volitional control, coupled with a prediction of future dangerousness, adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings."[112] Hence, the Court found that there was no Due Process violation in subjecting a known pedophile to involuntary civil commitment.[113]

III. Brief History of Involuntary Commitment in New Jersey

The involuntary commitment of sexually violent predators is not new to New Jersey and the State has confined sexual predators when it was conclusively determined that they were mentally ill and posed a danger to themselves or others.[114] Originally, "mental illness" was a highly technical term which turned upon the ability of a psychologist to determine whether the patient suffered from psychosis,[115] which is a serious mental defect.[116] In 1994, however,

---

110 *See id.*

111 *See id.* The Court noted that the medical community considers pedophilia to be a "serious mental disorder." *See id.*

112 *Id.*

113 *See Hendricks*, 521 U.S. at 360. The Court held that "Hendricks' diagnosis as a pedophile, which qualifies as a 'mental abnormality' under the Act, thus plainly suffices for due process purposes." *Id.*

114 *See* N.J. STAT. ANN. § 30:4-27 (West 1993).

115 *See* AMERICAN PSYCHIATRIC ASSOCIATION (DIAGNOSTIC), STATISTICAL MANUAL OF MENTAL DISORDERS DSM-III-R 404 (3d ed. rev. 1987). When a person suffers from psychosis he:

> Incorrectly evaluates the accuracy of his or her perception and thoughts and makes incorrect inferences about external reality, even in the face of contrary evidence. . . .Direct evidence of psychotic behavior is the presence of either delusions or hallucinations. . . .The term psychotic is sometimes appropriate when a person's behavior is so grossly disorganized that a reasonable inference can be made that reality testing is markedly disturbed. Examples include markedly incoherent speech without apparent awareness by the person that the speech is not understandable. . . .

Id.

116 *See* N.J. STAT. ANN. § 30:4-27.2.r. (West Supp. 1993).

the New Jersey Legislature recognized the inflexibility contained in the term and altered the definition.[117] The definition of "mental illness" was changed to read:

> "Mental Illness" means a current, substantial of thought, mood, perception or orientations that significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein.[118]

According to this definition, an individual could be involuntarily committed even subsequent to the expiration of a criminal sentence.[119]

Although the definition of "mental illness" was made much more lenient in 1994, many felt that the use of the term still permitted some sexual predators to go free.[120] The concerns, simply stated, were that "[t]he nature of the mental condition from which a sexually violent predator may suffer may not always lend itself to characterization under the existing statutory standard, although civil commitment may nonetheless be warranted due to the danger the person may pose to others as a result of the mental condition."[121] As concern over sexually violent predators grew in the 1990's, the state began to rethink the involuntary commitment of sexually violent predators and scrutinize not only the procedure by which those individuals were confined, but also the state treatment facilities for

---

117 *See* 1994 N.J. Sess. Law Serv. 542, 542 (West); *see also* Claudine M. Leone, *New Jersey Assembly Bill 155—A Bill Allowing the Civil Commitment of Violent Sex Offender After the Completion of a Criminal Sentence*, 18 SETON HALL LEGIS. J. 890 (1994).

118 N.J. STAT. ANN. § 30:4-27.2.r.

119 *See id.* Since the change in definition in 1994, New Jersey had civilly committed 84 sexual offenders in psychiatric facilities subsequent to the completion of their criminal incarceration. *See Whitman Requests In-Prison Hospital for Sex Offenders*, THE TIMES OF TRENTON, Feb. 27, 1998, at A1.

120 *See generally* Leone, *supra* note 117.

121 *Statement to Senate Committee Substitute for S895sca (Draft Version)*, Aug., 11, 1998.

housing those individuals.[122]

A. *Senate Task Force on Greystone Park Psychiatric Hospital*

In 1996, Senate President Donald T. Difrancesco established a task force to study the problems, which plagued the Greystone Park Psychiatric Hospital.[123] Greystone Park is a state-run institution that is both a statutorily established psychiatric facility[124] and a state hospital.[125] As such, Greystone Park was not initially intended to be a facility meant to serve the purpose of incarcerating criminals.[126] However, since 1995, Greystone Park has received a number of sex offenders who were originally incarcerated for child molestation.[127]

The Senate Task Force on Greystone Park Psychiatric Hospital[128] was specifically designated to study the reported incidents of sexual abuse, mismanagement, and escapes from which Greystone Park was purported to have experienced.[129] The public appeared quite interested in the investigation of Greystone Park,

---

122 On August 15, 1994 the New Jersey Legislature created the Joint Legislative Task Force to Study the Adult Diagnostic Treatment Center. *See generally* REPORT OF THE JOINT TASK FORCE TO STUDY THE ADULT DIAGNOSTIC AND TREATMENT CENTER (June 19, 1995) [hereinafter JOINT TASK FORCE REPORT]. The Creation of the Joint Task Force was a direct response to the brutal murder of two young children by sexually violent predators. *See id.* The Joint Task Force was charged with studying the Adult Diagnostic and Treatment Center at Avenel and to recommend any changes in the care and confinement of sexual predators. *See id.* Further, the Joint Task Force was given the discretion to seek out alternatives to the treatment and rehabilitation of sexually violent predators. *See id.* at 2.

123 *See generally* FINAL REPORT OF THE SENATE TASK FORCE ON GREYSTONE PARK PSYCHIATRIC HOSPITAL (June 17, 1999) [hereinafter GREYSTONE PARK REPORT].

124 *See* N.J. STAT. ANN. § 30:1-7 (1999).

125 *See id.*

126 *See* Brian T. Murray, *Greystone Escape Spurs Alarm*, THE STAR-LEDGER, Nov. 10, 1996, at 53.

127 *See id.*

128 *See generally* GREYSTONE PARK REPORT, *supra* note 123. The Senate Task force was comprised of three Senators: Robert J. Martin (R-Morris), C. Louis Bassanor (R-Union), and Richard J. Codey (D-West Orange). *See id.* Senator Robert Martin served as the Chairman of the task force. Greystone Park is, in fact, located within the 26th Legislative District which Senator Martin represents. *See id.*

129 *See See generally* GREYSTONE PARK REPORT, *supra* note 123.

since it is located near a residential neighborhood in Parsippany, New Jersey.[130] The strong public interest resulted in three public hearings at which any interested party could voice their opinion concerning the operation of the facility.[131] Public concern centered upon the fact that the sex offenders kept at Greystone Park were under no more supervision than other patients and that many could literally walk off hospital grounds.[132]

The community pressure and reports of lack of security led to suggested reform measures, which the task force subsequently recommended for adoption.[133] In its final report, the task force recommended changes in "staffing and supervision, training of employees, security and *patient treatment*."[134] The task force particularly emphasized the increased problems of security and community notification that arose when civil commitment proceedings led to the placement of sex offenders in state hospitals.[135] Therefore, to counter this danger, the task force noted that "[l]egislation should be enacted to require the continuous confinement of sex offenders, who are deemed in need of involuntary commitment, at a secure facility, such as the Forensic

---

130 *See* Lawrence Ragonese, *Morris Politicians Roused on Greystone Security—Codey's Action on Sex Offenders Elicits Response from GOP Legislators*, THE STAR-LEDGER, Oct. 15, 1995, at 47.

131 *See See generally* GREYSTONE PARK REPORT, *supra* note 123.

132 Parsippany resident Elizabeth Bitterman echoed this concern at one of the public hearings held by the task force:

> We have questions on Megan's law. . . . Prior to the law, a State inmate in a State prison who served the maximum sentence was released even if it was likely that he would commit a crime again. . .Megan's law criminals do not belong in the mental health system in an insecure facility like Greystone. . . .If an offender subject to community notification ends up with grounds privileges at Greystone, I believe the members of my community should have access to the same notification as everyone else in the State of New Jersey.

Public Hearing before the Senate Task Force on Greystone Park Psychiatric Hospital, Mar. 12, 1996.

133 The Senate task force made on-site visits to Greystone Park on two occasions. Following these visits and three public hearings the task force concluded that "the atmosphere and conditions at Greystone were antithetical to what is necessary for quality treatment of some of our most vulnerable citizens." GREYSTONE PARK REPORT, *supra* note 123, at 1.

134 *See* GREYSTONE PARK REPORT, *supra* note 123, at 1.

135 *See* GREYSTONE PARK REPORT, *supra* note 123, at 5.

Psychiatric Hospital."[136]

B. *Task Force for the Review of the Criminally Insane*

Although the Senate Task Force on Greystone Park Psychiatric Hospital had recommended legislation to modify the civil commitment standards for New Jersey, a much more comprehensive study was undertaken by the state government.[137] On September 12, 1996, Governor Whitman signed Executive Order Number 58 ("Order"), which created the Task Force for the Review of the Treatment of the Criminally Insane ("Task Force").[138] The Order required the Task Force to perform a comprehensive study of all of the state's psychiatric facilities and report on the way the criminally insane were housed and treated therein.[139] The Task Force study was much broader than that of the Senate Task Force on Greystone Park Psychiatric Hospital, not only because of the number of facilities in the study, but because of its stated purpose.[140] The Order determined that there was a need to "assess the manner

---

136 *See* GREYSTONE PARK REPORT, *supra* note 123, at 5. The task force also recommended that any proposed legislation should require that a victim's family be notified on any civil commitment hearing or change of status relative to "Megan's Law offenders." *See id.*

137 *See generally* REPORT OF THE TASK FORCE FOR THE REVIEW OF THE TREATMENT OF THE CRIMINALLY INSANE (Oct. 30, 1997) [hereinafter REPORT ON THE CRIMINALLY INSANE]..

138 *See* N.J.A.C. Exec. Order No. 58 (1996). The members of the Task Force were much more diverse then the original Senate Task Force. Again chaired by Senator Robert J. Martin (R-Morris County), the Task force included; Senator Anthony Bucco (R-Denville); Carolyn Beauchamp (Executive Director of the Mental Health Association in New Jersey); Richard S. Cohen (retired Judge Superior Court of New Jersey, Appellate Division); Lily DeYoung (Director Division of Mental Health and Guardianship Advocacy); Jane A. Grall (Assistant Attorney General); Daniel P Greenfield, M.D,, M.P.H., M.S. (General and Consulting Psychiatry, Forensic Psychiatry and Addiction Medicine); Alan G. Kaufman (Director Division of Mental Health Services, Dept. of Human Services); Ralph Rotando (Chariman Greystone Park Psychiatric Hospital, Security Commission); and William H. Thomas (citizen advocate). *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at ii.

139 *See id.*

140 The Task Force studied the three major psychiatric facilities in New Jersey: the Forensic Psychiatric Hospital in Trenton, Ancora Psychiatric Hospital, and Greystone Park Psychiatric Hospital. *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 1.

in which the State houses and handles the criminally insane."[141] The Order did, however, recognize that the criminally insane possess certain rights.[142]

Similar to its predecessor, the Task Force undertook a thorough review of the psychiatric facilities in New Jersey that housed sex offenders.[143] The Final Report of the Task Force was submitted on October 30, 1997, and included recommendations for legislation.[144] Although the final report was late,[145] the extra time permitted the Task Force since an opportunity to review the Supreme Court's decision in *Kansas v. Hendricks*.[146] Consequently, one of the major recommendations of the Task Force was to enact legislation "generally similar to the Kansas Sexually Violent Predator Act."[147] The Task Force noted that this legislation should be uses to supplant, but not replace, current civil commitment legislation,[148] but that the definition of a sexually violent predator should be altered to include "mental abnormality" and "personality disorder."[149] In addition, the Task Force recommended that sexually violent predators should be "centralized and treated in a single secure unit operated by the Department of Corrections."[150]

---

141 N.J.A.C. Exec. Order No. 58 (1996). Specifically, the Task Force was required to "identify possible options for the housing and handling of the criminally insane." *Id.*

142 The Order stated specifically that "[t]he state of New Jersey seeks to preserve the safety of its neighborhoods and communities while recognizing the rights of persons at State psychiatric facilities who have been found to be criminally insane." *Id.*

143 *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 1.

144 *See id.*

145 *See* N.J.A.C. Exec. Order No. 58 (1996). The original Executive Order authorizing the task force stated that "[t]he Task Force shall complete its study and report to the governor within six months of the date the Task Force first convenes." *Id.* Note that the Task Force reported an organizational meaning on January 31, 1997[.]" *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 1.

146 In fact, the Task Force held a meeting the day after the Supreme Court handed down the *Hendricks* decision to review its implications. *See id.* At the time, the Task Force purposely decided to submit its finding later than its one-year deadline so that it could have the necessary time to review and insure that its recommendations would not conflict with the Supreme Court's decision in *Hendricks*. *See* Interview with Senator Robert Martin, in Newark, N.J. (Mar. 29, 2000) (on file with the author).

147 REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 3.

148 *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 3.

149 *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 3. The Task Force suggested that N.J. STAT. ANN. § 2C:7-2b incorporate the definitions into the already existing category of the sexually violent predator. *See id.*

150 REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 3.. The Task Force also stated the following:

IV. The Sexually Violent Predator Act

A. Legislative History

On March 23, 1998, Senators Robert Martin (R-Morris County) and Anthony Bucco (R-Morris County),[151] introduced Senate Bill Number 895 in the New Jersey State Legislature.[152] The bill was actually part of a package of legislation[153] which was created in response to the Governor's Task Force for the Review of the Treatment of the Criminally Insane.[154] The bill was entitled the "New Jersey Sexually Violent Predator Act" and encompassed many of the recommendations that the Task Force had set forth five months earlier.[155] Upon introduction in the Senate, the bill was referred to the Senate Law and Public Safety Committee.[156] The Committee then prepared a substitute version of the bill, which was subsequently voted out of committee.[157] On May 28, 1998 the Sexually Violent Predator Act passed the Senate by a vote of 35-0.[158] This bill was then transferred to the New Jersey General Assembly, which introduced the bill on May 28, 1998.[159] It was then referred to the Assembly Appropriations Committee.[160] Following favorable release by the Appropriations Committee, the bill was given a

---

> Prior to enactment of this legislation, dangerous sexual offenders who have completed their maximum term of incarceration and are committed, either voluntarily or involuntarily, to the custody of the Division of Mental Health Services, should be centralized for treatment in one secure location rather than "mainstreamed" with hospitalized individuals with mental illness.

Id.

151 Note that both Senatord Martin and Bucco served on the Task Force for the Treatment of the Criminally Insane. *See supra* note 138.

152 *See* PRESS RELEASE ON S895 (Aug. 12, 1998).

153 *See id.*

154 *See generally* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 3.

155 *See* S. 895 § 1 (1998).

156 *See* 86 N.J. Leg. Index No. 1, 149 (Jan. 31, 1999).

157 *See id.*

158 *See id.*

159 *See id.*

160 *See id.*

Second Reading before the General Assembly on June 15, 1998. The General Assembly then passed the Sexually Violent Predator Act on June 25, 1998 by a 75-0-0 margin.[161] Finally, on August 12, 1998, Governor Whitman signed the bill whose effective date was concurrent with the date of signing.[162]

B. Legislative Intent

The purpose of the legislation was to ensure that individuals who were likely to commit acts of predatory sexual violence would be confined to facilities for the treatment of their particular disorder.[163] The bill made a legislative finding that certain sex offenders "suffer from mental abnormalities or personality disorders" which cause them to be more likely to repeat their acts of sexual offense against the general public.[164] Because of this tendency to repeat their violent acts, those found to be sexually violent predators would be subject to civil commitment so that they could receive treatment for their mental condition and so the public would be protected from the possibility of repeat sexual attacks.[165]

A key component of the legislation was the classification of those persons who would be considered sexually violent predators.[166] A sexually violent predator was defined as an individual who:

> (1) has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be

---

161 *See* 86 N.J. Leg. Index 1, 149 (Jan. 31, 1999).

162 *See id.*

163 *See Bill to Put Sex Offenders in Mental Hospital Gets Nod,* THE TIMES OF TRENTON, June 26, 1998, at A10.

164 *See* N.J. S. 895 § 2 (1998). The Act states that the likelihood of engaging in acts of sexual violence "means the propensity of a person to commit acts of sexual violence [to] such a degree as to pose a threat to the health and safety of others." *Id.* § 3.

165 *See id.* § 2.

166 Under the Act, person is defined as "an individual 18 years of age or older who is a potential or actual subject" of a sexual offense. N.J. STAT. ANN. § 30:4-27.26 (West 1999).

> incompetent to stand trial; and (2) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.[167]

The statute continued, defining a sexually violent offense as:

> (1) aggravated sexual assault; sexual assault; aggravate criminal sexual contact; kidnapping. . .if the underlying crime is sexual assault; or an attempt to commit any of these enumerated offenses; (2) a criminal offense with substantially the same elements as any offense enumerated in paragraph (1) entered or imposed under the laws of the United States, this State or another state; or (3) any offense for which the court makes a specific finding on the record that, based on the circumstances of the case, the person's offense should be considered a sexually violent offense.[168]

Following the recommendations of the Senate Task Force[169] and the Governor's Task Force[170] the final version of the Act determined that those deemed to be sexually violent predators should be incarcerated in their own separate facilities.[171] The Department of Corrections was the agency deemed responsible for the sexually violent predators to be civilly committed pursuant to the Sexually Violent Predator Act.[172]

---

167 N.J. STAT. ANN. § 30:4-27.26b.

168 *Id.*

169 *See generally* GREYSTONE PARK REPORT, *supra* note 123.

170 *See* REPORT ON THE CRIMINALLY INSANE, *supra* note 137, at 3.

171 *See* N.J. STAT. ANN. § 30:4-27.25(d). The statute declared that "because of the nature of the mental conditions from which sexually violent predators suffer and the danger they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from person committed under P.L. 1987, c.116 (C.30:4-27.1 et. seq.) or otherwise confined." *Id.*

172 *See Statement for Senate Committee Substitute for S895*, May 21, 1998, 1; *see also* N.J. STAT. ANN. § 30:4-27.26.

C. *Procedure for the Involuntary Civil Commitment of Sexually Violent Predators*

Once an individual has been labeled a sexually violent predator, the statute sets forth the procedure by which the individual will be civilly committed.[173] The agency with jurisdiction[174] over the individual must notify the Attorney General[175] in writing 90 days prior to the expected release of the individual from custody of the state.[176] Furthermore, notification must be given to the Attorney General 90 days prior to any hearing where a civilly committed sexual predator may be released from the care of the state.[177] Following notification to the Attorney General, the agency with jurisdiction is charged with the transmission of all relevant medical records and any other information which may suggest that the individual is a sexually violent predator.[178]

The Act grants the Attorney General the power to initiate court proceedings for involuntary civil commitment against those individuals who are currently in state care or custody but may be subject to release.[179] The Attorney General may move for involuntary commitment for civilly committed individuals in one of two ways: First, the Attorney General may submit to the court, both

---

173 *See* N.J. STAT. ANN. § 30:4-27.27.

174 The agency with jurisdiction may be either Department of Corrections, a county correctional facility, the Juvenile Justice Commission, or a county juvenile detention facility, and the Department of Human Services. *See* N.J. STAT. ANN. § 30:4-27.26.

175 Pursuant to the Act, the term "Attorney General" may refer either to the State Attorney General or a county prosecutor to which the Attorney General has designated authority. *See id.* § 30:4-27.26.

176 *See id.* § 30:4-27.27.a.

177 *See id.* § 30:4-27.27.a. The Department of Human Services is required to notify the Attorney General 90 days prior to a status review hearing where the department may be recommending that a sexual predator be discharged from civil commitment spawning from an acquittal by reason of insanity for a sexually violent offense pursuant to N.J.S. 2C:4-8. *See id.* § 30:4-27.27.a.(2). Furthermore, notice must also be transmitted to the Attorney General 90 days prior to a hearing where discharge may be likely or recommended for civil commitment where the person lacked mental competence to stand trial. *See id.* § 30:4-27.27.a.(3).

178 *See* N.J. STAT. ANN. § 30:4-27.27.b. While the Act recognizes the confidential nature of this important medical information, it also holds immune any individual who provides such relevant information in good faith from potential criminal or civil liability. *See id.* § 30:4-27.27.d.

179 *See id.* § 30:4-27.28.

a clinical certificate completed by a psychiatrist at the facility in which the person is a patient,[180] and the screening certificate, which authorized admission of the person to the facility.[181] The Attorney General may submit to the court, two clinical certificates for a sexually violent predator, at least one of which is prepared by a psychiatrist."[182] Furthermore, where the Attorney General determines that the public may be at risk from the sex offender, he may make an application to the court to compel a psychiatric evaluation.[183] In addition, the Attorney General may also initiate court proceedings for involuntary commitment against persons incarcerated under New Jersey's criminal justice system.[184] In the case of an incarcerated individual, the Attorney General needs to submit two clinical certificates for a sexually violent predator to the court.[185]

When the court with jurisdiction receives the appropriate certificates from the Attorney General, it will undertake a review to determine if the person is a sexually violent predator.[186] The court will evaluate the documentation and use a probable cause standard to determine whether the individual could be a sexual predator.[187] Upon determination that there is probable cause to believe that the individual is a sexually violent predator, the court will set a date for a final hearing to determine whether involuntary civil commitment is necessary.[188] Prior to the hearing, the individual will remain in

---

180 A clinical certificate for a sexually violent predator is a form "prepared by the Division of Mental Health Services in the Department of Human Services and approved by the Administrative Office of the Courts, that is completed by the psychiatrist or other physician who has examined their person who is subject to commitment within three days of presenting the person for admission to a facility for treatment, and which states that the person is a sexually violent predator in need of involuntary commitment." *Id.* § 30:4-27.26.

181 *See id.* § 30:4-27.28.a. The Act stipulates that the clinical certificate and the screening certificate shall not be signed by the same physician unless the physician failed at finding another physician to complete one of the certificates. *See id.*

182 *Id.* § 30:4-27.28.b.

183 *See id.* The court must grant the application for evaluation where there is reasonable cause to believe that the person is a sexually violent predator. *See id.*

184 *See* N.J. STAT. ANN. § 30:4-27.28.c.

185 *See id.* Again, one of the certificates must be completed by a psychiatrist. *See id.*

186 *See id.* § 30:4-27.28.f.

187 *See id.*

188 *See id.* § 30:4-27.28.g.

the custody of the state, as the court is required to authorize the temporary commitment of the individual until the final hearing is actually commenced.[189]

Once the sex offender has been temporarily committed, the final hearing on a more enduring civil commitment must be held within twenty days.[190] Further, within ten days of the actual hearing, the Attorney General is charged with serving notice upon the suspected sexual predator, their next-of-kin, their attorney, the agency with jurisdiction, and any other person the court orders.[191] At the actual hearing, the Attorney General is responsible for arguing for the involuntary commitment of the individual.[192] The person being subjected to involuntary commitment has a right to counsel at the hearing,[193] the right to be present,[194] and the right to present evidence similar to a trial.[195]

If, following the final hearing, the court determines by clear and convincing evidence that the individual is indeed a sexually violent predator, it will issue an order for involuntary commitment of the

---

189 *See* N.J. STAT. ANN. § 30:4-27.28.g. The Act makes clear that the individual will be considered a danger to the public stating that "[i]n no event shall the person be released from confinement prior to the final hearing." *Id.* Furthermore, those individuals in a short-term care facility shall be transferred to "a secure facility designated for the custody, care and treatment of sexually violent predators pending the final hearing. . . .Such transfer is to be accomplished in a manner which will give the receiving facility adequate time to examine the person, become familiar with the person's behavior and condition, and prepare for the hearing." *Id.* § 30:4-27.28.h.

190 *See id.* § 30:4-27.29.a. The date for the hearing is actually 20 days from the issuance of the temporary commitment order. *See id.*

191 *See id.* § 30:4-27.30.a. The notification must include the date, time, and place of the hearing. *See id.* The sex offender and his attorney shall also be given copies of the clinical certificates for sexually violent predators, the order for temporary commitment, along with a statements of rights for the individual at the hearing. *See id.*

192 *See id.* § 30:4-27.29.b.

193 *See id.* § 30:4-27.31.a. The right to counsel includes the right to be provided counsel if the individual is indigent. *See id.* Under New Jersey law the state is required to provide counsel to indigent defendants where they are "subjected to a conviction entailing imprisonment or other consequence of magnitude." *See id.* § 2B:24-7.a. For a comprehensive review of the right of an indigent defendant to counsel in New Jersey, see Robert J. Martin & Walter Kowlski, *"A Matter of Simple Justice": Enactment of New Jersey's Municipal Public Defender Act*, 51 RUTGERS L. REV. 637 (1999).

194 *See* N.J. STAT. ANN. § 30:4-27.31.b. The individual may lose the right to be present if the court determines his conduct to be disruptive to the proceeding. *See id.*

195 *See id.* § 30:4-27.31(c). This includes the right to cross examine witnesses as well as the right to present evidence as to why he should not be involuntarily committed. *See id.* § 30:4-27.31..

individual.[196] The individual will then be transferred to a designated facility which specializes in the treatment and care of sexually violent predators.[197] Conversely, if the court does not find by clear and convincing evidence that the person is a sexually violent predator, the individual will be released[198] or returned to their place of incarceration.[199]

Apart from immediate release or a more permanent involuntary civil commitment, the court may release the individual on a conditional discharge.[200] A conditional discharge may be ordered where the Department of Human Services recommends such a course of action and the court determines that the individual is not likely to engage in acts of sexual violence if released.[201] In analyzing whether or not the sex offender is likely commit acts of sexual violence, the court must determine whether the person is "amenable to and highly likely to comply with a plan to facilitate the person's adjustment and reintegration into the community so as to render involuntary commitment as a sexually violent predator unnecessary for that person[.]"[202] The conditional discharge is thus permissible only when there is a plan allowing for treatment and assimilation.[203] The plan shall impose conditions for release which are designed to protect the public from any further acts of sexual violence and which ensure that the sex offender participates in the treatment program so

---

196 *See id.* § 30:4-27.32.a.

197 *See id.*

198 *See id.* § 30:4-27.32.b. The Act allows that any person not initially incarcerated or held by the state "shall be discharged by the facility within 48 hours of the court's verbal order or by the end of the next working day, whichever is longer, with a discharge plan." *Id.*

199 *See* N.J. STAT. ANN. § 30:4-27.32.b. The Act states that "[a] person who is serving a term of incarceration shall be returned to the appropriate, State, county or local authority to complete service of the term of incarceration imposed until release in accordance with law." *Id.* "If the court determines that the person's mental condition has so changed that the person is safe to be at large, the court shall order that the person be returned. . .and the person shall be given day for day credit for all time during which the person was committed." *Id.* § 30:4-27.32.d.

200 *See id.* § 30:4-27.32.c.1

201 *See id.*

202 *Id.*

203 The plan will be designed by a treatment team and with the cooperation of the individual. *See id.* § 30:4-27.32.c.2. The treatment team may consist of "individuals, agencies or firms which provide treatment, supervision or other services at a facility designated for the custody, care and treatment of sexually violent predators." *Id.* § 30:4-27.26(b).

prescribed.[204] If the conditions for treatment are imposed on the individual for more than six months, the court must provide a review hearing to reevaluate whether continued treatment is necessary.[205]

If the conditionally discharged individual violates the treatment program, an individual from the treatment team must immediately notify the court.[206] The court is then responsible for ordering that individual to be immediately transferred to a facility designed to care for sexually violent predators so that an assessment of the individual's propensity for acts of sexual violence can be conducted.[207] Upon examination of the assessment, the court must again make a determination as to whether the individual is in need of involuntary civil commitment.[208]

Once an individual is classified as a sexually violent predator and is subjected to involuntary civil commitment, they are still afforded an opportunity to gain their freedom at an annual status review.[209] The annual court review is held in accordance with the procedures for the initial hearing for incarceration,[210] and will evaluate whether continued civil commitment is necessary.[211] Although these reviews must be conducted on an annual basis, the court may determine that a review of the status of the individual is necessary prior to the next scheduled hearing and schedule a hearing accordingly.[212]

Irrespective of the regularly scheduled annual court review, a classified sexual predator may find his way back into the community if there is a recommendation for discharge.[213] If the treatment team determines that the individual no longer poses a threat to the public if released, then the treatment team will recommend to the

---

204 *See* N.J. STAT. ANN. § 30:4-27.32.c.2. The conditions imposed must be specific and not general in nature. *See id.*

205 *See id.*

206 *See id.* § 30:4-27.32.c.(3).

207 *See id.* § 30:4-27.32.c.(3).

208 *See id.* The court must hold a hearing within 20 days to determine whether the order of conditional discharge should be vacated. *See id.*

209 *See* N.J. STAT. ANN. § 30:4-27.35.

210 *See id.*

211 *See id.*

212 *See id.* However, these review hearings cannot be more frequent then once per month. *See id.*

213 *See* N.J. STAT. ANN. § 30:4-27.36.a.

Department of Human Services that the individual petition the court for discharge from the involuntary civil commitment.[214] Thereupon, the individual shall serve notice of the petition for release on both the court and the Attorney General.[215] The Attorney General then has the option of obtaining an independent clinical evaluation of the individual.[216] When the court receives the petition for discharge it will evaluate the facts upon which the petition was submitted to determine whether there has been a sufficient change in the status of the individual from the last review.[217] The court may also analyze the petition to determine whether it is supported by a "professional expert evaluation," which details the reasons why the person's mental condition has changed.[218] If the court finds that the petition fails to meet one of these two criteria, it may deny the petition for discharge without granting a hearing.[219] In addition, the Attorney General may request that a hearing be conducted upon belief that continued civil commitment is necessary.[220]

If and when a sex offender is going to be released from civil commitment, there must be formulated a discharge plan to ensure public safety.[221] Once a discharge plan has been formulated and the sexual offender is going to be released, the Department of Corrections is required to give written notice to the Attorney General or the prosecutor of the county where the person was prosecuted for being a sexually violent predator.[222] The Attorney General or prosecutor is then charged with notifying the Office of Victim and Witness Advocacy of that county and with making a reasonable effort to notify the victim of the sexual attack or the

---

214 *See id.* While the treatment team contacts the Department of Human Services, this does not mean that the individual needs the permission or clearance to of the Department to petition the court in order to end the involuntary commitment. *See id.* § 30:4-27.36.d.

215 *See id.* § 30:4-27.36.b.

216 *See id.*

217 *See id.* § 30:4-27.36.d.(1).

218 *See* N.J. STAT. ANN. § 30:4-27.36.d.(2).

219 *See id.* § 30:4-27.36.d.

220 *See id.* § 30:4-27.36.b. The Attorney General must file for a hearing within 15 days of receiving the petition or upon completion of the independent evaluation. *See id.*

221 *See id.* § 30:4-27.37. The discharge plan shall be prepared by the treatment team and shall consider the input of the individual. *See id.*

222 *See id.* § 30:4-27.38.

victim's nearest relatives.[223] While notification is deemed mandatory, failure to notify will not delay the release of the sexual offender.[224]

V. *Analysis of the Sexually Violent Predator Act*

Upon examining New Jersey's Sexually Violent Predator Act it is quite evident that New Jersey modeled its statute upon the Kansas statute upheld in *Kansas v. Hendricks.*[225] The most notable borrowed aspect of the Kansas Act is the use of the term "mental abnormality."[226] The New Jersey statue defines "mental abnormality" as "a mental condition that affects a person's emotional, cognitive, or volitional capacity in a manner that predisposes the person to commit acts of sexual violence."[227] Thus, New Jersey has taken the approach of avoiding the use of the traditional classification of "mental illness" and inserting instead a lower standard to permit commitment.[228]

While the United States Supreme Court has approved the use of the term "mental abnormality" in conjunction with involuntary civil commitment statutes, the New Jersey Act may face a more scrutinizing challenge from the New Jersey Supreme Court.[229] New Jersey's Supreme Court is considered to be one of the most liberal in the country,[230] and has consistently granted greater personal liberties

---

223 *See* N.J. STAT. ANN. § 30:4-27.38. The victim shall be notified only if there has been a request for such notification from the victim at the time that the sexual predator was originally sentenced. *See id.*

224 *See id.*

225 521 U.S. 356 (1997).

226 *See* N.J. STAT. ANN. § 30:4-27.26.

227 *Id.* This definition is very similar to the language that Kansas used in its version of the Sexually Violent Predator Act. *See supra* note 76 and accompanying text.

228 The Division of the American Civil Liberties Union in New Jersey opposes the use of the "mental abnormality" standard in New Jersey. *See generally* REASONS STATED BY THE AMERICAN CIVIL LIBERTIES UNION OF NJ FOR OPPOSING THE BILL, ATTACHMENT TO FACT SHEET FOR S895SCS (Aug. 11, 1998) [hereinafter ACLU]. The ACLU views such language as a more lenient standard then the traditional use of "mental illness." *See id.*

229 *See* Hendricks v. Kansas, 521 U.S. 346 (1997).

230 *See* John B. Wefing, *The New Jersey Supreme Court 1948-1998: Fifty Years of Independence and Activism*, 29 RUTGERS L.J. 701, 702 (1998).

to New Jersey citizens than the United States Supreme Court.[231] Furthermore, the Due Process Clause of the New Jersey Constitution has been interpreted much more broadly that its counterpart at the federal level.[232] The Due Process Clause in the New Jersey Constitution states that "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing property, and of pursuing and obtaining safety and happiness."[233] Although the New Jersey judiciary is widely considered one of the most liberal in the nation, recent trends in the court's decisions demonstrate a more conservative approach to individual rights.[234] Further, the appointment of more moderate justices suggests that any monumental deviation from the United States Supreme Court will not be forthcoming.[235]

Proponents of The New Jersey Sexually Violent Predator Act are also faced with the difficulty of the implementation of a distinguishing provision: the separation of those individuals classified as sexually violent predators from both the general

---

231 States are not bound by the decisions of the Supreme Court when it comes to the liberty interests of its citizenry. As long as the state offers the individual more protection under the interpretation of their individual state constitution, it is free to deviate from the 9 justices sitting in Washington. *See* William J. Brennan, *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535, 551 (1986).

232 *See generally* ACLU, *supra* note 228. New Jersey has used this clause to deviate from the United States Supreme Court on Equal Protection issues. *See, e.g., Right to Choose v. Byrne*, 91 N.J. 318 (1982) (requiring New Jersey to pay for medically necessary abortions if it funds births).

233 N.J. CONST. art. I, § 1. The New Jersey Supreme Court, when speaking of this provision, has noted that "[e]ncompassed within its strictures is the requirement of due process. . . .Although this right is not absolute, it may be restricted only when necessary to promote a compelling government interest." *See State v. Baker*, 81 N.J. 99, 114 n.10 (1979).

234 For example, in Doe v. Poritz, 142 N.J. 1 (1995), the court upheld the controversial statute titled Megan's Law, which required sexual offenders to notify the community in which they lived of their presence. *See supra* note 3 (explaining the genesis of Megan's Law in New Jersey).

235 The Republican Party has been able to substantially control both the executive and legislative branches of state government over the past eight years. As such, the Republican governor Christine Whitman has had the opportunity to appoint more conservative justices to the court during her tenure in office. Governor Whitman's nominations include two former members of her staff, Chief Justice Deborah Poritz and recent nominee Peter Veniero. A third former member of the governor's cabinet, Jayne LaVecchia, was also appointed this year. *See* Katherine Blok, *Supreme Court Nomination OK'd*, THE TIMES OF TRENTON, Jan. 11, 2000, at A1.

population of inmates and other civilly committed individuals.[236] The state plans to build a 300-bed facility to house and treat those individuals who are found to be sexual predators under the Act.[237] However, the construction of the facility was met with strong public opposition in the communities in which the facility was originally slated to be built and has since been moved.[238] Because of the public outcry[239] the facility has been relocated, pushing back its construction for another year.[240]

VI. Conclusion

The involuntary commitment of sexual predators in New Jersey will continue to be at the forefront of New Jersey politics as the Sexual Violent Predator Act is implemented in its full capacity. Few issues evoke the strong emotions that accompany reports of sexual molestation or sexual violence against children. Although this

---

236 *See* N.J. STAT. ANN. § 30:4-27.25.d. Prior to the introduction of the Sexual Violent Predator Act, Governor Whitman believed that sexual predators should be housed in separate facilities from both inmates and the mentally ill. *See Bill Expands Sex Offender Confinement: Whitman to Establish Psychiatric Hospital,* THE TIMES OF TRENTON, May, 29, 1998, at A4. In fact, the governor committed $2 million in stated funds to the building of a separate facility to house these sex offenders. *See id.*

237 *See* Tom Haydon and Argelio Dumenigo, *State Tabs Stunned Avenel for Sex-Offender Site*, THE STAR-LEDGER, Aug. 7, 1999, at 1. Ironically, those deemed sexually violent predators are still housed at the Greystone Park facility, which was part of the reason that the legislation arose. *See id.*

238 *See Moving Sex Offender Facility; Whitman Yields to Strong Opposition*, THE RECORD OF NORTHERN NEW JERSEY, July 18, 1999. Originally, a 150 bed facility was being considered in the small community of Chesilhurst in Cumberland County. *See id.* However, the 1,500 residents organized against the placement of the facility in their community and presented the governor with a petition containing 900 signatures. *See id.* Subsequently, the municipality was taken out of consideration for the facility. *See id.*

239 Despite the overwhelming support for committing sexual predators, legislators knew that opposition would meet any decision as to where the sex offender facilities would be located. *See* Tom Haydon and Michael Drewniak, *New Sex Offender Site at Avenel: State Plans Facility for Extra Detention*, THE STAR-LEDGER, Sept. 16, 1998. As the prime sponsor of the legislation, Senator Robert Martin stated shortly after its enactment that "[w]e knew that siting would always be a difficult situation. This is a very politically volatile placement. It was always meant to be at a secure location, and I guess Avenel fits that description." *Id.*

240 *See* Tom Haydon, *Woodbridge Calls Foul on Sex Offender Plan*, THE STAR-LEDGER, Oct. 21, 1999, at 1.

legislation is not specifically aimed at child molesters, it is surely its focus. While New Jersey has historically protected the rights of criminal defendants, there are many who feel that child sex offenders are the worst possible criminals and should be afforded few rights. As such, publicly promoting greater rights for these individuals will be political suicide, leaving only the judiciary to address any constitutional concerns. As for now, it appears that the future for these individuals is behind bars.

With this legislation, the New Jersey Legislature has once again demonstrated a determination to confine sexual predators so as to protect the public from their deviant behavior. The State is so eager to separate these individuals from the public that it has authorized the investment of significant resources into building a sexual predator treatment facility. With the construction of such a facility, the occasional "escapes" of sexual predators from mental facilities such as Greystone Park should become less frequent and less publicized. Moreover, the State has chosen to include the Department of Corrections in the oversight and care of these individuals. With the public having to deal much less with these sexual predators, and with the State taking a more heavy handed role in their confinement, one must wonder whether the State is dedicated to their rehabilitation and treatment or is simply making a quiet and concerted effort to dispose of this unwanted sector of society.

Regardless of whether New Jersey is serious in the treatment of these sexual predators, it is clear that the first steps have been taken to redefine the nature of involuntary civil commitment. If the New Jersey Supreme Court follows suit with its federal counterpart, the Sexually Violent Predator Act should begin to snare those sexual deviants who may have otherwise escaped the arms of justice. While the plan for a sexually violent treatment facility calls for only 300 beds, it is possible that a great many more individuals will be subject to extended confinement. Of course, this will come at a great monetary cost to the taxpayers, as the Act itself contemplates long term confinement and treatment. Yet, the general public of New Jersey has demonstrated that the cost in dollars is irrelevant when compared to the loss of life of one little child like Megan Kanka.