

SEXUALLY VIOLENT OFFENDER LEGISLATION

Special Issues in Corrections

October 1997

**U.S. Department of Justice
National Institute of Corrections
Prisons Division
Washington, D.C.**

National Institute of Corrections

Morris L. Thigpen
Director

Susan M. Hunter
Chief, Prisons Division

Keith O. Nelson
Correctional Program Specialist

SEXUALLY VIOLENT OFFENDER LEGISLATION SURVEY

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Introduction

At the request of the Advisory Board, the NIC Prison Division initiated a national survey of correctional agencies on the issue of Sexually Violent Offender Legislation. The interests of the Advisory Board were to find out the number of states who had statutes that provided for the **civil commitment** of convicted sex offenders upon their **release** from incarceration. **The U.S. Supreme Court decision in State of Kansas v. Leroy Hendricks (Nos. 95-1649 and 95-9075), prompted the Board's interest in this issue.** This decision upheld the right of a State to engage in a civil commitment proceeding based on a "mental abnormality" or "personality disorder" when the individual is "likely to engage in predatory acts of sexual violence." **Significant to this decision were the facts that there were no-requirement to show mental illness nor a finding of double jeopardy when the civil commitment occurs upon the release from incarceration.**

The project was intended:

- To find out the number of states that have legislation that allows for the post incarceration commitment of sexual predators,
- To find out if due process provisions exist for offenders who are subject to commitment.
- To learn the numbers of offenders who were committed under this type of legislation.
- To judge legislative sentiment toward this type of legislation,
- To determine the role of the DOCs in the civil commitment process,

NIC faxed the survey instrument to departments of corrections (DOCs) nationwide on September 3 and 4, 1997. Staff made follow-up contacts with DOCs during the weeks following to promote a high response rate. Completed surveys were returned by 49 **states and the District of Columbia**.

Findings

Results of the survey show a great deal of legislative interest in this issue.

- A total of 19 of the responding states indicated that there were no current statutes and no statute was reported as pending or previously introduced.
- Of the remaining survey respondents, 17 indicated that legislation had been previously introduced or was pending and 12 have current statutes. Two states, **Iowa** and **Maine** had laws which were repealed, but both have had new bills introduced.
- The **Ohio** statute provides for a “modified life sentence” rather than civil commitment.
- Of the respondents reporting statutes, 9 of the 13 report full “due process” procedures. These states have formal judicial hearings and an appeal process is available to the offender. **Only Nebraska** reports an administrative process, but does allow for offender appeal. Neither **California** nor the **District of Columbia** report having an appeal process available to the offender. As noted earlier **Ohio** statute defines this issue as a sentencing option.
- Most survey respondents which have statutes indicate that the Departments of Mental Health or Departments of Human Services were the agencies to which offenders are committed. The exceptions to this type of placement were the states of **Mississippi** where placement remains in the Department of Corrections and **Ohio** where to offender may be sentenced to “modifiable life.” **Illinois** reports a dual system whereby the facility and security is provided by the Department of Corrections, but treatment and non-security staffing is the responsibility of the Department of Human Services.
- According to respondents all states with statutes require some actions on the part of the respective Department of Corrections with the exception of **Nebraska**. Of the group **1** requires only notification, 3 only require assessment, while 7 jurisdictions require both notification and assessment by the DOC and **1** only requires referral to be done by the DOC.
- In the states requiring DOC action, the process is conducted by DOC Mental Health Professional (MHPs) in 6 jurisdictions and by **DOC Non Mental Health Professionals** in 2 states and in the remaining 4, staff of the Departments of Mental Health/Human Services are used. **Kansas** reports the use of a panel consisting of DOC staff and staff from other agencies.
- As reported the survey shows that there are currently approximately 395 offenders now under civil commitment and at least an additional 521 offenders currently in the process of being committed.

Recommendations:

NIC could assist in the development and evaluation of various risk assessment instruments being used to assess offenders, by convening a panel of experts in this field for the purpose of reviewing and evaluating the current instruments used and promising research while providing suggestions for appropriate utilization. NIC could provide training on the administering and utilization of offender risk assessment instruments.

Respondent List

Tom Gilkeson
Director of Research
Alabama Department of Corrections
P.O. Box 301501
Montgomery, Alabama 36130
Tel: 334/353-3877 Fax: 334/353-3870

Bruce Richards
Program Coordinator
Alaska Department of Corrections
240 Main St., Suite 700
Juneau, Alaska 99801
Tel: 907/465-3307 Fax: 907/465-3390

Kenneth Marion
Arizona Department of Corrections
363 North 1st Avenue
Phoenix, Arizona 85003
Tel: 602/255-4244 Fax: 602/255-4235

Marcia White
Arkansas Department of Corrections
P.O. Box 8707
Pine Bluff, Arkansas 71611
Tel: 870/247-6344 Fax: 870/247-3700

Marilyn Kalvelage, Chief
Classification Services Division
California Department of Corrections
1515 "S" Street, Room 300 N
P.O. Box 942883
Sacramento, California 94283-0001
Tel: 916/322-2544 Fax: 916/445-0864

Kristi Rosten
Statistical Analyst
Colorado Department of Corrections
2862 South Circle Drive, Suite 400
Colorado Springs, Colorado 80906
Tel: 719/540-4796 Fax: 719/540-4755

Michael Donahue
Major
Connecticut Department of Correction
24 Wolcott Hill Road
Wetherfield, Connecticut 06109
Tel: 860/692-7485 Fax: 860/692-7483

Carl Danberg
Deputy Principal Assistant
Delaware Department of Correction
80 Monrovia Avenue
Smyrna, Delaware 19977
Tel: 302/739-5601 Fax: 302/653-2853

JoAnne Lernoff
Correction Programs Administrator
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399
Tel: 850/487-2165 Fax: 850/921-8195

Dr. Barry J. Coyne
Sex Offender Treatment Program
Department of Public Safety
919 Ala Moana Boulevard
Honolulu, Hawaii 96814
Tel: 808/587-1271 Fax: 808/587-1280

James C. Spalding
Director
Idaho Department of Corrections
500 South 10th Street
Boise, Idaho 83720
Tel: 208/334-2318 Fax: 208/334-2443

Nancy Miller
Legal Counsel
Illinois Department of Corrections
100 W. Randolph, Suite4-200
Chicago, Illinois 60601
Tel: 312/814-3017 Fax: 312/814-3542

Randy Koester
Director/Legal Affairs
Indiana Department of Corrections
302 W. Washington Street, 8334
Indianapolis, Indiana 46204
Tel: 317/232-5782 Fax: 317/233-1474

John Goeldner
Executive Officer
Iowa Department of Corrections
523 East 12th Street
Des Moines, Iowa 50319
Tel: 515-281-6879 Fax: 515/281-7345

Tim Madden
Kansas Department of Corrections
900 Jackson Street, 4th Floor
Topeka, Kansas 66612
Tel: 785/296-4508 Fax: 785/296-0014

Coleen Williams
Chief Systems Analyst
Kentucky Department of Corrections
State Office Building, 5th Floor
Frankfort, Kentucky 40601
Tel: 502/564-4360 Fax: 502-564-5642

Melissa Cook
Executive Officer
Louisiana Department of Public Safety & Corrections
P.O. Box 94304
Baton, Rouge, Louisiana 70804
Tel: 504/342-6956 Fax: 504/342-2486

Denise Giles
Victim Services Coordinator
Maine Department of Corrections
Sate House Station III
Augusta, Maine 04333
Tel: 207/287-4385 Fax: 207/287-4370

Audrey Brown
Executive Assistant
Maryland Department of Public Safety and Correctional
Services/Division of Corrections
6776 Reistertown Rd, Suite 310
Baltimore, Maryland 212 15-2342
Tel: 410/764-4188 Fax: 410/764-4182

Allison Price
Legislative Liaison
Massachusetts Department of Correction
100 Cambridge Street, 22nd Floor
Boston, Massachusetts 02202
Tel: 617/727-3300 x104 Fax: 617/727-3048

Richard McKeon
Administrative Assistant to the Director
Michigan Department of Corrections
P.O. Box 30003
Lansing, Michigan 48909
Tel: 517/373-1944 Fax: 517/373-6883

Stephen J. Huot
Director of Sex Offender/CD Services
Minnesota Department of Corrections
1450 Energy Park Drive, Suite 200
St. Paul, Minnesota 55108-5219
Tel: 612/642-0279 Fax: 612/603-0620

Bill Greenleaf
Director of Planning & Programs
Mississippi Department of Corrections
723 N. President Street
Jackson, Mississippi 39202
Tel: 601/359-5646 Fax: 601/359-5778

Dora B. Shiro, Ed.D.
Director
Missouri Department of Corrections
P.O. Box 236
Jefferson City, Missouri 65102
Tel: 573/751-2389 Fax: 751-4099

Diana Leibinger-Koch
Legal Counsel
Montana Department of Corrections
1539 11th Avenue
Helena, Montana 59620
Tel: 406/444-9593 Fax: 406/444-4920

Larry A. Tewes
Assistant Director of Classification and Programs
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, Nebraska 68509-4661
Tel: 402/471-2654 Fax: 402/479-5623

Robert Bayer
Director
Nevada Department of Prisons
5500 Synder Avenue
Carson City, Nevada 89702-7011
Tel: 702/887-3216 Fax: 702/687-6715

John Vinson
Legal Counsel
New Hampshire Department of Corrections
P.O. Box 1806
Concord, New Hampshire 03302
Tel: 603/271-5600 Fax: 603/271-5643

Richard P. Cevalco, Ed.D.
New Jersey Department of Corrections
P.O. Box 863
Trenton, New Jersey 08625
Tel: 609/292-1142 Fax: 609/633-2187

Cathleen M. Catanach
CRU Supervisor
New Mexico Corrections Department
P.O. Box 27116
Santa Fe, New Mexico 87502-0116
Tel: 505/827-8676 Fax: 505/827-8801

Glenn S. Goord
Commissioner
New York State Department of Correctional Services
1220 Washington Avenue, Building 2
Albany, New York 12226-2050
Tel: 518/457-8134 Fax: 518/457-7252

Daniel Stieneke
Director Division of Prisons
North Carolina Department of Correction
P.O. Box 29540
Raleigh, North Carolina 27626-0540
Tel: 919/733-3226 Fax: 919/733-8272

Elaine Little
Director
North Dakota Department of Corrections & Rehabilitation
P.O. Box 1898
Bismark, North Dakota 58502-1898
Tel: 701/328-6616 Fax: 701/328-6651

David Berenson
Director of Sex Offender Services
Ohio Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43226
Tel: 614/752-1733 Fax: 614/728-1680

Jim Rabon
Sentence Administrator
Oklahoma Department of Corrections
P.O. Box 11400
Oklahoma City, Oklahoma 73136
Tel: 405/425-2615 Fax: 405/425-2608

Jim Eckland
Executive Assistant
Board of Parole and Post-Prison Supervision
Oregon Department of Corrections
2575 Center Street NE
Salem, Oregon 97310
Tel: 503/945-0919 Fax: 503/373-7558

Mary Beth Marschik
Director/Office of Legislative Affairs
Pennsylvania Department of Corrections
Box 598
Camp Hill, Pennsylvania 17001-0598
Tel: 717/975-4969 Fax: 717/787-0132

George A. Vose
Director
Rhode Island Department of Corrections
40 Howard Avenue
Cranston, Rhode Island
Tel: 401/464-2611 Fax: 401/464-2630

Susan Montgomery
Executive Assistant
South Carolina Department of Corrections
P.O. Box 21787
Columbia, South Carolina 29221-1787
Tel: 803/896-8501 Fax: 803/896-1220

Vickie M. Feist
South Dakota Department of Corrections
115 East Dakota Avenue
Pierre, South Dakota 57501
Tel: 605/773-6467 Fax: 605/773-3194

Gary A. Lukowski, Ph.D.
Assistant to the Commissioner
Tennessee Department of Correction
320 South Avenue North
Nashville, Tennessee 37243-0465
Tel: 615/741-6918 Fax: 615/741-9883

Mike McManus
Legal Affairs
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77340
Tel: 409/294-6003 Fax: 409/294-6994

Dr. Christine Mitchell
Director of Planning & Research
Division of Administrative Services
Utah Department of Corrections
6100 South 300E
Salt Lake City, Utah 84107
Tel: 801/265-5597 Fax: 801/265-5676

John G. Perry
Director/Planning and Development
Vermont Department of Corrections
103 South Main
Waterbury, Vermont 05671-1001
Tel: 802/241-2307 Fax: 802/241-2565

Jim Jones
Executive Assistant to the Director
Virginia Department of Corrections
6900 Atmore Drive
Richmond, Virginia 23261-6963
Tel: 804/674-3119 Fax: 804/674-3509

Victoria Roberts
Program Administrator
Washington State Department of Corrections
P.O. Box 41127
Olympia, Washington 98504
Tel: 360/753-1678 Fax: 360/586-4577

Wyetta Fredericks
West Virginia Division of Corrections
112 California Avenue
Charleston, West Virginia 25304-0280
Tel: 304/558-2036 Fax: 304/558-5934

Anthony Streveler
Director/Bureau of Offender Programs
Wisconsin Department of Correction
149 East Wilson Street
Madison, Wisconsin 53707
Tel: 608/266-3831 Fax: 608/261-7100

Shelley Allen
Wyoming Department of Corrections
700 West 21st Street
Cheyenne, Wyoming 02009
Tel: 307/777-7405 Fax: 307/777-7479

Clydie A Smith
Chief/Legislative Affairs
District of Columbia Department of Corrections
1923 Vermont Avenue, N.W.
Washington, D.C. 20001
Tel: 202/673-3457 x147 Fax: 202/332-1470

SEXUALLY VIOLENT OFFENDER LEGISLATION SURVEY

<u>STATE</u>	<u>STATUTE</u>	<u>NO STATUTE</u>	<u>PENDING/ PREVIOUSLY INTRODUCED</u>	<u>DATE</u>
AL		X	X	
AK		X	X	
AZ	X			7/96
AR		X		
CA	X			1/96
CO		X	X	
CT		X		
DE		X		
FL		X		
GA*				
HI		X		
ID		X		
IL	X			1/98
IN		X	X	
IA	a		X	
KS	X			5/94
KY		X		
LA			X	
ME			X	
MD				
MA	b		X	
MI			X	
MN	c			1939 1994
MS	X			1/98
MO			X	

<u>STATE</u>	<u>STATUTE</u>	<u>NO STATUTE</u>	<u>PENDING/ PREVIOUSLY INTRODUCED</u>	<u>DATE</u>
MT		X		
NE	X			1997
NV		X	X	
NH		X		
NJ	X			9/95
NM		X		
NY		X	X	
NC		X		
ND	X			8/97
OH	d			
OK		X	X	
OR		X	X	
PA			X	
RI		X		
SC		X	X	
SD			e	
TN		X		
TX		X		
UT		X		
VT		X		
VA				
WA	X			7/90
WV		X		
WI	X			6/94
WY		X		
D.C.	f			10/96
P.R.*				
V.I.*				

Agencies of Commitment

<u>STATE</u>	<u>DEPARTMENT OF CORRECTIONS</u>	<u>DEPARTMENT OF MENTAL HEALTH</u>	<u>OTHER</u>
AZ		X	
CA		X	
IL	g		h
KS		X	
MN			h
MS	X		
NE		X	
NJ		X	
ND			h
OH	d		
WA		X	
WI			
D.C.			h

Commitment Procedures

<u>STATE</u>	<u>FORMAL HEARING</u>	<u>ADMINISTRATIVE</u>	<u>JUDICIAL</u>	<u>APPEAL PROCESS</u>
AZ	X		X	X
CA	X		X	
IL	X		X	X
KS	X		X	X
MN	X		X	X
MS	X		X	X
NE	X	X		X
NJ	X		X	X
ND	X		X	X
OH	d	d	d	d
WA	X		X	X
WI	X		X	X
D.C.	X		X	

Commitment Process

<u>STATE</u>	<u>DOC ACTION</u>	<u>NOTIFICATION</u>	<u>ASSESSMENT</u>	<u>BOTH</u>	<u>OTHER</u>	<u>DOC Non MENTAL HEALTH STAFF</u>	<u>DOC MENTAL HEALTH STAFF</u>	<u>OTHER</u>
AZ	X			X			X	
CA	X				i	X		
IL	X		X				X	
KS	X			X				j
MN	X		X				X	
MS	X			X		X		
NE								
NJ	X			X				X
ND	X			X			X	
OH	d		d				d	
WA	X			X	k			h
WI	X			X	i		X	
D.C.	X	X						h

Number of Inmates Committed

<u>STATE</u>	<u>COMMITTED</u>	<u>IN PROCESS</u>
AZ	3	12
CA	53	181
IL	1	-
KS	11	-
MN	100	-
MS	1	-
NE	(90) m	(5) m
NJ	60	-
ND	n	-
OH	d	d
WA	23	218
WI	65	105
D.C.	f	-
total	395	521

* No survey response

a Legislation passed in 1994, repealed in 1996

b Repealed in 1990

c Two statutes: *Psychopathic Personality* and *Sexually Dangerous Person*

d Statute allows for "a modifiable life sentence"- offenders sentenced to flat time at the end of which a risk assessment conducted for Parole Board review, Board can continue the offender, with a risk assessment being done every two years

e Statute allows for a maximum sentence to be imposed with supervised release to equal length of the sentence

f Council enacted emergency legislation they need Congressional approval by December 11, 1997, to become permanent if not approved it will expire

g Department of Corrections is responsible for providing a facility and security and the Department of Human Services is responsible for treatment

h Department of Human Services

i Referral

j Panel consisting of DOC staff and staff from other agencies

k End of Sentence Review Committee

l Legislation effective 1/98

m Actual number unreported DOC

n Legislation effective 8/97