

The Community Protection Act and the Sexually Violent Predators Statute

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I. THE COMMUNITY PROTECTION ACT

The Washington Community Protection Act was born of personal tragedy, public outrage, and unspeakable cruelty. Governor Booth Gardner created the Task Force on Community Protection following the murder of a young Seattle woman by a work release inmate with a history of violent sexual offenses and the brutal assault and mutilation of a young Tacoma boy by a recently released sex offender. The appointed members of the Task Force included representatives of the legislature, victims' support groups, law enforcement, victim and offender treatment agencies, the bench, and the bar.¹ Their mission: to respond in a meaningful and responsible way to the public outrage over these and other cases in which violent sex offenders were released to the community only to reoffend.

The Task Force held public hearings around the state in which citizens shared their experiences and frustrations with our state's response to sex offenders. The Task Force also heard from experts, studied the latest research on the issue, and developed the following principles for controlling sex offenders:

- If sex offenders are not detected and prosecuted, they are likely to continue their crime patterns.
- Without the participation of victims in prosecution, the state can rarely obtain a conviction. Sentencing policies

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1. Task Force Members included: Norm Maleng, Chair; State Representative Marlin Appelwick; Ida Ballasiotes; Lucy Berliner; Rosemary Bippes; Professor David Boerner; Mary Margret Cornish; Fran Dew; Judge Anne Ellington; Spokane County Sheriff Larry Erickson; Helen Harlow; Pierce County Prosecutor John Ladenburg; Roland Maiuro, Ph.D.; Yvonne Huggins-McLean; Mike Patrick; King County Councilmember Kent Pullen; Department of Corrections Secretary Chase Riveland; Robert Scherz, M.D.; Robert Stalker; Melba Sunel; D.S.H.S. Secretary Dick Thompson; Trish Tobis; Paul Wert, Ph.D.; and State Senator R. Lorraine Wojahn.

must take into account victims' attitudes toward appropriate sentences.

- Sex offenders who use direct physical violence and/or a weapon must be confined in prison for significant terms.
- Repeat sex offenders require very severe sentences . . .
- A certain group of sexual offenders identified as sexually violent predators must be confined under a special civil commitment procedure until they are safe to be released.
- Sex offenders confined to a prison or juvenile institution will one day be released, thus treatment should be available during their incarceration. Participation in treatment should not reduce the confinement term.
- Sex offenders must be supervised following their release from prison and juvenile institutions.²

Following these principles, the Task Force drafted a series of recommendations and submitted them to the 1990 legislature. These recommendations were passed by a unanimous vote of both houses.³

While most of the attention has been focused on the sexually violent predator civil commitment section,⁴ the Community Protection Act is a comprehensive package of which the civil commitment section is but a small piece. Other highlights of the Act include:

- Increased sentence ranges for all sexual offenses.⁵ For example, using the mid-point of the range, the statute increased the presumptive ranges for rape in the first degree and rape of a child in the first degree from five years to seven and one-half. The statute also elevated standard range sentences for rape in the second degree and rape of a child in the second degree from two to five years.⁶
- Mandated registration of sex offenders released into the community.⁷ This provision authorizes police to notify, on a "need-to-know" basis, the community of the presence of a convicted sex offender in their neighborhood.
- Treatment for offenders and compensation for victims.⁸

2. GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION, DEP'T OF SOCIAL AND HEALTH SERVICES, FINAL REPORT II-2 to II-3 (1989).

3. Second Substitute S. B. 6259, 51st Leg. (1990); S. J., 51st Leg., Vol. 1, 164 (1990); H. J., 51st Leg., Vol. 1, 370 (1990). See 1990 Wash. Laws ch. 3 (codified at WASH. REV. CODE §§ 71.09.010-.902 (Supp. 1990-91)).

4. WASH. REV. CODE ch. 71.09 (Supp. 1990-91).

5. *Id.* §§ 9.94A.310-.320 (Supp. 1990-91).

6. *Id.*

7. *Id.* §§ 9A.44.130-.140 (Supp. 1990-91).

8. *Id.* § 71.09.060(1) (Supp. 1990-91) (treatment for detained predators).

The statute places a special emphasis on the juvenile offender in an effort to break the cycle of abuse that can produce adult sex offenders.

II. THE SEXUALLY VIOLENT PREDATORS STATUTE

Prosecutorial experience in capturing, prosecuting, and incarcerating sex offenders helped to convince the Task Force that a small number of offenders will predictably commit future acts of sexual predation unless they are given intensive treatment in a secure setting. While the treatment of sex offenders in prison has improved during the last decade, treatment does not guarantee that offenders being released from prison at the end of their confinement term are safe to be at large. Some of these individuals will be beyond the reach of criminal jurisdiction, having served out their sentences, yet will continue to pose a real danger to the community. The Task Force examined the gap in the system that allowed known violent and dangerous offenders to re-enter society after incarceration, largely untreated, and prey on more victims. To address the lack of treatment for offenders under existing law, the statute's civil commitment section provides treatment in a secure setting for chronic sex offenders.⁹

For a court to hold that a person is a "sexually violent predator," a person must have a past history of a crime of sexual violence *and* "a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence" if released into the community.¹⁰ "Predatory" acts are those directed toward "strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization."¹¹

Through a civil proceeding, the statute gives respondents an array of due process rights normally associated with a criminal proceeding, including the right to counsel and the right to a jury trial.¹² In addition, the prosecutor bears the burden of the highest standard of proof in the law—proof beyond a reasonable doubt.¹³

A respondent found to be a sexually violent predator will

9. *See id.* § 71.09.060(1).

10. *Id.* § 71.09.020(1).

11. *Id.* § 71.09.020(3).

12. *Id.* § 71.09.050.

13. *Id.* § 71.09.060(1).

be sent to the Special Commitment Center operated by the Department of Social and Health Services, where a treatment program will be prescribed.¹⁴ The basic components of this treatment program include individual and group therapy with a focus on sexual deviancy, anger management, substance abuse, social skills, relapse prevention, and specialized services for persons with developmental disabilities.

The offender is entitled to an annual review of his progress while committed and may petition the court for his release at any time.¹⁵ If a judge determines that probable cause exists to believe the petitioner is no longer likely to reoffend, the petitioner must be released unless the state proves again in another trial that the petitioner remains, beyond a reasonable doubt, a sexually violent predator.¹⁶

Critics say that there is nothing that we can do with these chronic sex offenders. They say that we have no choice but to release these walking time bombs back into society and wait for them to subject further unsuspecting adult and child victims to rape, torture, and murder. I do not agree that this tragic result is mandated by the Constitution. The statute strikes the critical balance between due process and community protection. The aim of the law is two-fold. First, it aims to identify those offenders who, beyond a reasonable doubt, will most likely commit sexual assaults again if released without treatment. Second, it aims to provide those offenders with treatment for sexual deviancy and violence in a secure setting.

Opponents of this law say that it is impossible to predict the future behavior of people based upon their past history and professional evaluations of their mental health status; yet we do this every day in the context of involuntary treatment act proceedings.¹⁷ For decades, we have committed people to mental hospitals based upon a prediction by a mental health professional and the court that the person poses a clear danger to themselves and others unless involuntarily treated in a secure institution. Explaining the need for a distinct civil commitment law for sexually violent predators, the legislature found:

The existing involuntary commitment act . . . is inadequate

14. *Id.* § 71.09.060(1).

15. *Id.* §§ 71.09.070-.090.

16. *Id.* § 71.09.090.

17. *See generally id.* ch. 71.05.

to address the risk to reoffend because during confinement these [sexual] offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement. . . . [T]he prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the involuntary treatment act.¹⁸

Opponents' fears of a civil commitment drift-net cast by overzealous prosecutors over the prison population to catch hundreds of sex offenders each year have simply not been realized. County prosecutors are not indiscriminately filing civil commitment petitions against any and all repeat sex offenders just as they are about to be released from prison. A State Prosecutor's Committee on sexually violent predators has been established to provide investigative and technical assistance to prosecutors contemplating the filing of a petition. The vast majority of prosecutors who have considered filing such a petition have taken full advantage of the Committee's resources. To date, in the twenty months since the law became effective, fourteen sexually violent predator civil commitment petitions have been filed state-wide.

Of those fourteen cases, a jury or judge has found the respondent to be a sexually violent predator in each of the nine cases that have proceeded to trial. Four of the fourteen cases are still pending trial, and the remaining case was voluntarily dismissed by the filing county prosecutor after a post-filing psychological evaluation concluded that the respondent lacked a mental abnormality or personality disorder that would make him likely to reoffend. These statistics illustrate that county prosecutors are implementing the new civil commitment scheme with utmost care pursuant to legislative intent, proceeding against only the "small but extremely dangerous group of sexually violent predators [that] exist [in this state]."¹⁹

In contrast, a criminal statute for habitual sex offenders convicted of two or more offenses, as proposed by some observers, would likely result in the lifetime incarceration of hun-

18. *Id.* § 71.09.010.

19. *Id.*

dreds, even thousands of offenders, without the emphasis on treatment that is present in the Community Protection Act. Under such a scenario, undoubtedly many offenders would be included for whom the state could not have proved beyond a reasonable doubt that they were likely to reoffend if at large. In many ways, the Sexually Violent Predators statute is more sensitive to individual liberties than a habitual criminal statute and other alternatives that have been proposed.

III. CONCLUSION

In responding to the public outrage over chronic violent sex offenders, the Governor's Task Force on Community Protection submitted a balanced and sensitive package to the legislature. The law fills a gap in the system and coerces treatment for a very small number of offenders who, beyond a reasonable doubt, suffer from mental disorders that make them likely to reoffend if released without treatment. The measure is an innovative solution to a difficult problem and thus has engendered some controversy. I am confident that the law will ultimately be upheld by the courts of this state and will eventually be accepted as a necessary measure for our society to protect itself from a small, but dangerous class of criminal.