

# Sex Offender Law Report

## Comparison of State Laws on Involuntary Commitment of Sexually Violent Predators

by Roxanne Lieb

Many governments, both in the United States and elsewhere, have enacted laws to further protect society from dangerous offenders by providing additional police powers to confine, treat, and supervise individuals who pose acute risks. In the United Kingdom, Australia, and Canada, the laws are focused on the general category of dangerous offenders, whereas the U.S. laws are intended exclusively for sex offenders.

### History of U.S. Sexual Offender Laws

The United States first attempted to impose special laws for sexual offenders in the 1930s. These sexual psychopathy laws diverted individuals from the criminal justice system into the mental health system. By 1960, sexual psychopathy laws were adopted by half the states. Ultimately the laws fell into disfavor, with dissatisfaction coming from numerous political bases. Citizens lobbied to eliminate the programs after some program graduates committed very heinous crimes; civil rights advocates argued that the laws amounted to preventive detention; and rehabilitation generally became a less popular solution for crime problems.

In 1990, a new form of legislation for dangerous sex offenders was created. Washington State enacted a Sexually Violent Predator (SVP) law aimed at sex offenders who were outside the reach of the criminal law but were

See *COMPARISON*, page 26

## Proposed and Enacted Legislative Changes in Sex Offender Management

by Jennifer McCarthy

The amendment of prior sex offender laws and the creation of new laws has been the typical legislative response to high profile cases of child abductions and child murders by sex offenders. These laws have either placed stricter registration requirements on sex offenders who live in the community or imposed stricter sentences which serve to incapacitate these offenders for longer periods of time.

In the past decade, four of the most prominent examples of the legislative response to the management of sex offenders in the community has been the enactment the following acts:

1. The Wetterling Act (named after Jacob Wetterling, abducted in 1989), passed as part of the 1994 Violent Crime Control and Law Enforcement Act;
2. Megan's Law (named after Megan Kanka, killed in 1994), enacted in 1996 and amended The Wetterling Act;
3. The Pam Lynchner Sex Offender Tracking and Identification Act of 1996 (named after Pam Lynchner, who was attacked and sexually assaulted) further amended The Wetterling Act; and
4. The Jacob Wetterling Improvements Act (1997) heightened the registration requirements for sex offenders in the community.

These laws bear witness to the notion of zero tolerance regarding sex offenses in general. According to the Center for Sex Offender Management, those pertaining to registration:

are promoted as a means of deterring offenders from committing future crimes; providing law enforcement with an additional investigative tool; and increasing public protection. (<http://www.csom.org/pubs/sexreg.html>.)

### Missing Registrants

The limitations of, and problems with, the implementation of the aforementioned laws were highlighted by the abduction and subsequent deaths of three children earlier this year—13-year-old Sarah Lunde and 9-year-old Jessica Lunsford in Florida, and 10-year-old Jetseata Gage in Iowa. These children were murdered by convicted sex offenders who managed to commit these heinous crimes despite being on the sex offender registries in their respective communities.

Subsequent to the deaths of these children, examination of the sex offender registries throughout the country discovered that approximately 100,000 sex offenders who were "supposed" to be registered were actually "missing" from the registries. ([http://www.missingkids.com/missingkids/servlet/NewsEventServletLanguageCountry=en\\_US&PageId=2005](http://www.missingkids.com/missingkids/servlet/NewsEventServletLanguageCountry=en_US&PageId=2005).) This discovery, combined with the deaths of these children, highlighted the urgent need for improvement in the monitoring and tracking of sex offenders.

### Jessica's Law

In response to the death of Jessica Lunsford, Florida Governor Jeb Bush enacted

See *CHANGES*, next page

## ALSO IN THIS ISSUE

New Way to Commit Old Crimes .....	19
HIV Status and Related Legislation, Part IV .....	20
From the Literature .....	24

*COMPARISON, from page 17*

judged to pose a high risk to reoffend. Since the Washington law's enactment, 16 other states have adopted similar laws. Texas requires outpatient treatment rather than confinement; Pennsylvania law pertains only to 20-year-olds "aging out" of the juvenile system.

In 2004, officials from each state with an SVP law were contacted to solicit information about their law and program. This article summarizes the responses from states regarding three issues, namely:

- How many individuals have been held under these laws?
- How many have been released under some form of less restrictive alternative?
- What are the program costs?

### State Comparisons

Although state laws for SVPs have common elements, the organizational structure and facility operations in each state vary greatly. As such, making comparisons is not easy. Key differences include breadth of the law and release/discharge decision.

**Breadth of the Law.** Some states have restricted the SVP laws to a narrow group of sex offenders, whereas other states' laws apply to a larger pool. For states with a broader pool of eligible offenders, Arizona for example, it is not surprising to see proportionally higher numbers of persons both held under the law and discharged/released.

**Release/Discharge Decision.** Some states require a judge or jury to authorize release; in others, the decision is made at an administrative level. Some individuals confined under the law must prove that they are no longer a risk to society; in other states, it is only necessary to prove that the individual's risk to reoffend has been reduced.

### Summary of Results

Seventeen states have laws that authorize confinement of sex offenders identified as "sexually violent predators." This paper focuses on three questions:

1. **Number of Persons Held Under SVP Laws:** As of December 2004, 3,493 persons have been held for evaluation as an SVP or committed for treatment.
2. **Number of Persons Released Under Some Form of Less Restrictive Alternative:** As of December 2004, 427 persons were discharged or released.
3. **SVP Program Costs:** It is difficult to directly compare reported costs for state

---

## *Although state laws for SVPs have common elements, the organizational structure and facility operations in each state vary greatly.*

---

SVP programs. The service delivery models vary across states. Frequently, budget figures are spread across multiple parts of state government and not prorated to capture the SVP program portions. The cost of operating secure facilities for committed SVPs in the United States is at least \$224 million annually. States with small numbers of program residents will naturally have higher costs per resident.

Table 1 on page 27 provides information on the state laws and numbers of individuals held since the law went into effect, released, and revoked. (See Table 1: Involuntary Civil Commitment of Sexually Violent Predators: State-by-State Comparison—Program Descriptions and Commitment Data.) We use the term "held since the law went into effect" rather than "committed," because it provides a more accurate reflection of the scope of the law's application. In many states, individuals are sent to the treatment facility for evaluation and may choose to wait some time before proceeding with the commitment hearing.

### Costs of SVP Laws

The full costs of an SVP law are typically spread across a state's budget. For this document, we requested that staff report the estimated costs for housing, supervision, and treatment. Legal costs, risk screening, and conditional release costs were not to be included to facilitate comparisons across states. For some states, this cost separation was feasible; for others, budget categories overlapped and it was difficult. Consequently, we concluded that these cost comparisons are likely to have hidden flaws and should not be taken at face value.

A comprehensive comparison of costs would necessitate structured interviews with state staff who have sufficient time to dedicate to the task. At a minimum, cost categories would need to be aligned in the following areas:

- Treatment;
- Security and supervision;

- Direct care (such as food, clothing, supplies);
- Healthcare;
- Contracted services;
- Legal services;
- Psychological evaluation;
- Transportation;
- Administrative overhead; and
- Capital costs and/or debt service.

Table 2 on page 29 reports on cost information by state. (See Table 2: Involuntary Civil Commitment of Sexually Violent Predators: State-by-State Comparison—Program Costs as Reported by States.) Two conclusions emerged:

- The cost of operating secure facilities for committed SVPs in the United States is at least \$224 million annually.
- States with small numbers of program residents will naturally have higher costs per resident.

### Other Surveys

During the preparation of this report, we learned about other efforts to compare state SVP programs.

**Kansas.** As of early October 2004, only five states fully responded to Kansas' survey. This is a work in progress. It is a several page Word document and asks for detailed information regarding client demographics, program descriptions, and costs by budget category. (Kansas Social and Rehabilitation Services, "Survey of Sexual Predator Treatment Program Issues" (Jul. 2004); contact Lizz Phelps, J.D., SRS/Health Care Policy at [Lmp@srskansas.org](mailto:Lmp@srskansas.org); (785) 296-4552.)

**Maryland.** The results of and cost data from Fitch and Hammen's unpublished manuscript are available in an article in the *Annals of the New York Academy of Sciences*. (W.L. Fitch, "Sexual Offender Commitment in the United States: Legislative and Policy Concerns," 989 *Annals of the NY Acad. of Sci.* 489-501 (2003); W.L. Fitch and D. Hammen, *Sex Offender Commitment: A Survey of the States*, unpublished manuscript (2002).) A summer 2004 update of data is planned. The contact person for this survey Larry Fitch, [fitchl@dnhm.state.md.us/](mailto:fitchl@dnhm.state.md.us/).

**Texas.** Data pertaining to Texas was updated in a June 2004 version conducted by the Texas Council on Sex Offender Treatment (CSOT). (CSOT, "State-by-State Comparison of the Involuntary Civil Commitment of Sexually Violent Predators" (Aug. 2003).)

*See COMPARISON, next page*

COMPARISON, from page 26

**Table 1: Involuntary Civil Commitment of Sexually Violent Predators:  
State-by-State Comparison—Program Descriptions and Commitment Data**

State Code (Year Law Effective)	Treatment Following Commitment	Treatment Provider	Number Held Since Law Went Into Effect*	Number Discharged or Released	Number Revoked Since Release
<b>Arizona</b> ARS 36-3774 et seq. (1996)	Placed in custody of the Department of Health Services. If appropriate, a judge may grant conditional release to a less restrictive alternative.	Department of Health Services, Arizona Community Protection and Treatment Center	332	221	7
<b>California</b> WIC 6600 et seq. (1996)	First four phases are inpatient. Fifth phase is during conditional release. Treatment duration is competency-based, not time limited.	Department of Mental Health, Atascadero State Hospital (moving to Coalinga State Hospital). Contracts with Liberty Behavioral Health Corporation for Community Aftercare Program.	495	67	Not Available
<b>Florida</b> SVP law was relocated to ss394.910-394.931, Part V, Florida Statutes, in 1999	Secure residential-phased program. Final phase, transition, determined by courts.	Department of Children and Families, Florida Civil Commitment Center on grounds of Desoto Correctional Institution. Contracts with Liberty Behavioral Health Corporation.	662	11	2
<b>Illinois</b> 725 ILCS 207/1 et seq. (1998)	Least restrictive manner appropriate. Judge has discretion to order institutional care or conditional release with necessary treatment services.	Department of Human Services, Treatment and Detention Facility. Contracts with Liberty Behavioral Health Corporation for some treatment staff.	228	15	3
<b>Iowa</b> 229.A1 et seq. (1998)	Secure, long-term, and highly structured five-phase program.	Department of Human Services	42	0	0
<b>Kansas</b> 59-29a01 et seq. (1994)	Committed to Social and Rehabilitation Services for placement in secure facility. Right to petition for discharge at annual review.	Department of Social and Rehabilitation Services, Sexual Predator Treatment Program, Larned State Hospital	129	18	14
<b>Massachusetts</b> Part I Title XVII, Chap. 123A 1 et seq. (1998)	Committed to a secure treatment center. May apply for community access program.	Department of Corrections; Treatment Center for Sexually Dangerous Persons at Bridgewater State Hospital	306	4	0
<b>Minnesota</b> 253B.185 et seq. (1994)	Least restrictive treatment program that can meet the SVP's and society's needs. Secure phased program.	Department of Human Services	235	1	1
<b>Missouri</b> 632.480 et seq. (1999)	Committed to custody in a secure facility until the SVP is safe to be at large. Right to petition for release at annual review.	Department of Mental Health with security costs shared by the Department of Corrections	82	6	0

See COMPARISON 1, next page

COMPARISON, from page 27

Table 1 continued

State Code (Year Law Effective)	Treatment Following Commitment	Treatment Provider	Number Held Since Law Went Into Effect*	Number Discharged or Released	Number Revoked Since Release
<b>New Jersey</b> 30:4-27.24 et seq. (1994)	Involuntary commitment to secure facility. Department can recommend conditional discharge if likely to comply with treatment plan, but the order is at the court's discretion.	Department of Human Services. Department of Corrections operates a temporary facility at the Northern Regional Unit (Kearny).	311	0	0
<b>North Dakota</b> 25.03-3.01 et seq. (1997)	Committed to the custody of Department. Director assigns the least restrictive treatment facility or program necessary.	Department of Human Services	28	0	0
<b>Pennsylvania</b> SB421 (2003)	For 20-year-olds who are "aging out" of the juvenile system and are found to pose a high risk of reoffending. Committed to a facility designated by the Department.	Department of Public Welfare. Southwest Secure Treatment Unit at Torrance State Hospital. Contracts with Liberty Behavioral Health Corporation for executive director.	4	Not Available	Not Available
<b>South Carolina</b> 44-48-10 et seq. (1998)	Committed to the custody of the Department of Mental Health at an inpatient secure facility. Right to petition for release at annual review.	Department of Mental Health, Behavioral Disorders Treatment Program	86	15	0
<b>Texas</b> Health and Safety Code 841.001 et seq. (1999)	Outpatient group twice per week, individual twice per month; treatment begins upon release from prison; entitled to a biennial review; entitled to file unauthorized petition for release.	Outpatient treatment managed by Council on Sex Offender Treatment; administered by Department of Human Services (direct services are contracted).	41	Not Applicable	Not Applicable
<b>Virginia</b> 37.1-70 et seq. (2004)	Committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation, and Substance Abuse Services. Residents have an annual review before the court in the committing jurisdiction for the first five years; every two years thereafter.	Department of Mental Health, Mental Retardation, and Substance Abuse Services, Virginia Center for Behavioral Rehabilitation	10	0	0
<b>Washington</b> 71.09.010 et seq. (1990)	Detained at secure facility for evaluation and treatment. Right to petition for less restrictive alternative or SVP status at any time. Transition release facilities available (phase 6).	Department of Social and Health Services, Special Commitment Center and Transitional Facilities	220	13	1
<b>Wisconsin</b> 980.01 et seq. (1994)	Institutional care at a secure mental health facility. Person may petition for supervised release 18 months after initial commitment.	Department of Health and Family Services, Sand Ridge Secure Treatment Center	282	56	16
<b>Total</b>			<b>3,493</b>	<b>427</b>	<b>44</b>

\* Projected through December 31, 2004.

See COMPARISON, next page

COMPARISON, from page 28

**Table 2: Involuntary Civil Commitment of Sexually Violent Predators:  
State-by-State Comparison—Program Costs as Reported by States\***

State	Cost Per Day Per Client	Cost Per Year Per Client	Annual Salary and Benefits of Treatment Officer	Projected Total Annual Program Cost (in millions)
<b>Arizona</b>	\$220.00	\$80,300	\$37,360	\$9.7
<b>California</b>	\$293.00	\$107,000	\$56,492	\$45.5
<b>Florida</b>	\$137.00	\$50,005	\$39,176	\$21.5
<b>Illinois</b>	\$227.40	\$83,000	\$45,000	\$19.0
<b>Iowa</b>	\$182.07	\$66,456	\$55,500	\$2.5
<b>Kansas</b>	\$145.41	\$53,075	\$26,977	\$6.6
<b>Massachusetts</b>	\$136.99	\$50,000	\$50,000	\$15.1
<b>Minnesota</b>	\$314.00	\$109,000	\$47,000	\$19.3
<b>Missouri</b>	\$168.00	\$61,320	\$33,178	\$6.8
<b>New Jersey</b>	\$164.04	\$59,939	\$50,000	\$16.7
<b>North Dakota</b>	\$267.89	\$97,780	\$35,014	\$3.2
<b>Pennsylvania</b> (juveniles only)	Not Available**	Not Available**	Not Available**	\$2.5
<b>South Carolina</b>	\$34.74	\$12,680	\$18,922	\$1.2
<b>Texas</b> (outpatient)	\$20.83	\$31,000	\$6,000 – \$7,000	\$0.5
<b>Virginia</b>	\$220.00	\$80,000	\$125,000	\$6.0
<b>Washington</b>	\$289.00	\$105,665	\$104,026	\$23.3
<b>Wisconsin</b>	\$273.97	\$100,000	\$53,353	\$24.7

\* Cost figures represent states' reports and are not adjusted to take account of significant differences among states.

\*\* Not applicable due to small enrollment.

Roxanne Lieb serves as director of the Washington State Institute for Public Policy, a nonpartisan research organization funded by the state legisla-

ture. She has authored several publications related to sex offender laws and policy.

For additional information, please contact Roxanne Lieb at (360) 586-2768; liebr@wsipp.wa.gov.

The Institute wishes to thank Kathleen Gookin, an Olympia-based consultant, who conducted the survey of states. ■