



### I13 Deconstructing Sexual Offender Civil Commitment Laws: Appearance, Reality, and Psycholegal Implications

*Jonathan A. Dudek, PhD\*, and Thomas Grisso, PhD, University of Massachusetts Medical School, Law and Psychiatry Program, 55 Lake Avenue North, Worcester, MA*

The goals of this presentation are to compare and contrast a sample of existing state sex offender civil commitment statutes and to discuss their legal, forensic assessment, and research implications.

This research project initially deconstructed and compared the legal standards and language contained within various sexual offender civil commitment statutes. It was found that although these statutes appeared superficially similar, they differed markedly in their language, legal standards, and procedures. It was concluded that these differences have significant legal implications while also impacting forensic clinical practice and research.

Currently, 17 states, including Arizona, Illinois, and Massachusetts, have enacted so-called “sexual predator” laws. These statutes provide for the civil commitment of sexual offenders, lasting from a day to natural life, although the initial petition for commitment is based upon a criminal offense. The general framework of these laws includes the following provisions. First, the individual must have committed a violent sexual offense, such as rape, an offense involving a child, or a “sexually motivated” act, although some states have also incorporated other crimes, such as attempted offenses and conspiracies. Further, there must be proof of a mental condition, defined as a “mental abnormality,” “mental disorder,” or “personality disorder,” for instance. Lastly, as a result of this mental condition, it must be demonstrated that the person is “likely to engage” in future sexual criminal acts (i.e., be dangerous). The U.S. Supreme Court opinion in *Kansas v. Hendricks* (1997) upheld the constitutionality of the sexual predator laws.

Initially, copies of the existing sex offender civil commitment statutes were acquired and then deconstructed in a spreadsheet according to legal standards and language (e.g., definitions of the “sexual predator” and “mental disorder” constructs), special provisions (e.g., procedures pertaining to the handling of persons found incompetent to stand trial or not guilty by reason of insanity), and standards of proof, to facilitate their comparison. Upon cursory examination, the statutes appeared similar, each containing a description of a “sexual predator,” a definition of mental illness or mental disorder, and stringent legal standards of proof, for instance. The statutes of Arizona, Illinois, and Massachusetts were selected for particular examination. Specifically, their legal standards, language, special provisions, procedures, and standards of proof were represented graphically in a flow chart format, attempting to illustrate the various “pathways” to being designated or not designated a so-called “sexual predator.” Similar legal standards and language were uniformly color-coded.

An inspection of the graphics revealed a number of major differences among the legal standards, language, and procedures of the Arizona, Illinois, and Massachusetts sex offender civil commitment laws. For instance, the Massachusetts statute, unlike the others, contains a specific procedure for cases where an individual has been previously adjudicated as a “sexually dangerous person.” Although the Massachusetts and Arizona statutes similarly ask whether or not the person will be “likely to engage” in sexual offenses, the Massachusetts law adds the proviso “if not confined to a secure facility.” Alternatively, the Illinois statute asks whether it is “substantially probable that the person will engage in acts of sexual violence.” The Illinois and Massachusetts statutes contain standards asking whether or not the person has a “congenital or acquired condition” affecting “emotional or volitional capacity,” encompassing a “mental disorder” and “mental abnormality,” respectively. However, in Massachusetts, if the person is found not to have this “mental abnormality,” there is a subsequent test to ascertain whether or not the person has a “personality disorder,” defined as a “a congenital or acquired physical or mental condition,” resulting in “a general lack of power to control sexual impulses.” Uniquely, the Arizona statute asks whether the person has a “paraphilia, personality disorder or conduct disorder or any combination of paraphilia, personality disorder or conduct disorder,” representing a “mental disorder.” Both the Massachusetts and Arizona laws contain similar legal procedures for addressing persons who have been charged with a sexual offense and found incompetent to stand trial, unlike the Illinois law. The Illinois and Arizona statutes contain provisions, addressing whether or not the person has been found “not guilty or not responsible” for a sexual offense “by reason of insanity, mental disease, or mental defect” or “guilty but insane” of such a crime, respectively. The Massachusetts sexual offender civil commitment law does not address this issue of criminal responsibility.

There are a number of significant implications of the diversity (i.e., the lack of uniform sexual predator and mental illness definitions, differences in statutory language, and varying legal procedures) of the state sexual offender civil commitment statutes. First, this diversity makes the generalization of Federal court decisions across jurisdictions difficult, and it appears highly likely that these opinions will impact the various states differently. In addition, the varying legal standards among the sexual predator laws will markedly influence the structure of forensic assessments. Lastly, because of the variation among the sexual predator constructs (e.g., what comprises a “sexually violent person” versus a “sexually dangerous person”), individuals conducting research in this area should be aware of the resulting comparative challenges presented by these statutes.



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**Sexual Offender, Sexual Predator, Civil Commitment**