



## Psychiatry & Behavioral Sciences Section – 2003

### **I14 Closing the Gap Between Statute and Practice: An Analysis of Two Clinical Cases and Their Sexual Dangerousness**

*Michael H. Fogel, PsyD\*, 500 North Michigan Avenue, Suite 300, Chicago, IL*

The goals of this presentation are to illustrate how to operationalize the statutory language of the Massachusetts Sexually Dangerous Person Act and the Illinois Sexually Violent Persons Commitment Act through the presentation of two clinical case examples.

The first case to be discussed involves a 45-year-old, single, white male who was convicted of possessing Child Pornography. He was sentenced to a 2½-year split sentence with 6 months to serve and the balance suspended with probation; he was to be on probation for approximately 5 years following his release from custody. Due to the instant offense and previous sexually related offenses (e.g., Sodomy, Indecent Assault and Battery, Rape of a Child), he was referred for an evaluation to determine whether he met the Massachusetts statutory criteria of a Sexually Dangerous Person prior to his release from custody. Specifically, Massachusetts General Laws defines a Sexually Dangerous Person, in part, as someone who “suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility.” The Law defines the term “mental abnormality” as a “congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.” A “personality disorder” is defined by Law as a “congenital or acquired physical or mental condition that results in a general lack of power to control sexual impulses.” Aspects of this individual’s index offense will be addressed, as well as his history of sexual behavior and sexual offending. In addition, static and dynamic risk factors will be reviewed to explain this individual’s sexual dangerousness.

The second case to be discussed involves a 41-year-old, single, white male who was convicted of Aggravated Rape and three counts of Rape. He received a 10 to 20 year sentence for each charge, to be served concurrently. In addition, pursuant to previous statutory language, at the time of conviction he was adjudged a Sexually Dangerous Person and committed for a day-to-life to a Massachusetts facility for the treatment of Sexually Dangerous Persons. Per statute, if the committed person believes that he is no longer a Sexually Dangerous Person, he may petition the court for examination and discharge once every twelve months. Consequently, after approximately 13 years in confinement, this individual submitted said petition and was referred for an evaluation to determine whether he continued to meet the statutory criteria to be deemed a Sexually Dangerous Person. In contrast to the aforementioned statutory definition that was enacted in 1999, this individual was adjudicated under prior statutory language; therefore, Massachusetts General Laws provides alternative parameters under which to evaluate these persons. For the purposes of these individuals, a Sexually Dangerous Person is defined as “any person who has been previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.” This individual’s index offense, history of sexual offending, and course of sex offender specific treatment will be reviewed. In addition, as above, static and dynamic risk factors will be addressed to explain this individual’s sexual dangerousness. Lastly, this case will be analyzed using the statutory language of the Illinois Sexually Violent Persons Commitment Act.

**Sexual Offender, Sexually Dangerous Person, Sexual Dangerousness**