Religion and Child Abuse

Continued from page 16

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LAW
Should Parents Be Told When a Convicted Child Molester Moves in Next Door?

—John E.B. Myers

Seven-year-old Megan Kanka was playing outside her suburban New Jersey home when she was approached by 33-year-old Jesse Timmendequas, who lived with two other men directly across the street. Timmendequas said, "Hi. Guess what? I have a new puppy at my house. Would you like to pet him?" Megan said yes and followed Timmendequas across the street and into his house. Once inside, Timmendequas took Megan to his room, slipped a belt around her neck, tightened it, and strangled the life out her. When the little girl was dead, Timmendequas sexually assaulted her.

Megan's parents looked everywhere. In panic, they reported her missing. Less than 24 hours later, Megan's body was discovered where Timmendequas discarded it, next to a portable toilet.

Police investigators quickly focused on Timmendequas, who had two prior convictions for molesting young girls. Not long after he was taken into custody, Timmendequas confessed.

As if their grief was not enough, Megan's parents learned that the authorities knew all along that Timmendequas and his roommates were convicted child molesters. If the authorities knew these dangerous men were living in a neighborhood filled with children, why were parents not informed so that they could warn their children? A simple warning might have saved Megan's life.

Men like Jesse Timmendequas pose a continuing threat to children, and prison is the only safe place for some sex offenders (Salter, 1995). Yet incarceration lasts only so long, and nearly all convicted child molesters eventually return to the community. State governments faced with the prospect of repeat sex offenders responded with three new legislative approaches.

Registration laws

Nearly all states require convicted sex offenders to register with authorities. Although details of registration laws vary from state to state, the laws generally require offenders to register with local law enforcement authorities, and to notify authorities when they move. Failure to register is a crime.

continued on next page

Should parents be told

Continued from page 17

The sex offender registry is used by law enforcement to generate lists of possible suspects when sex offenses occur. In addition, prospective employers check the registry.

Effective July 1, 1995, California established a statewide "900" number in the State Department of Justice (DOJ) that citizens can call to ask whether a particular individual is a registered sex offender (Cal. Penal Code §290.4). A caller must identify himself or herself (ruling out anonymous calls), must provide specific information about the suspected person, and must pay a modest fee. When the information generates a "hit," the caller is informed that the suspected person is a registered sex offender.

Although these offenders are a significant danger to children, most of them are not "mentally ill" as that term is defined in state civil commitment laws. Because they are not mentally ill, they cannot be psychiatrically hospitalized against their will.

Although California's "900" number has yet to be challenged in court, sex offenders have challenged other registration laws. To date, however, court challenges have failed.

Involuntary civil commitment of sexual predators

A subgroup of child molesters poses such a high risk of reoffense that they are justifiably called sexual predators. Yet, like other criminals, when these men reach the end of their prison terms, they are entitled to release. Although these offenders are a significant danger to children, most of them are not "mentally ill" as that term is defined in state civil commitment laws. Because they are not mentally ill, they cannot be psychiatrically hospitalized against their will.

In 1990, the state of Washington broadened the concept of involuntary civil commitment to allow sexually violent predators to be involuntarily committed for treatment after their prison terms expire (Wash. Revised Code § 71.09.010 et seq). The Washington code defines a sexually violent predator as "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence" (§ 71.09.020[1]).

In 1994, Wisconsin joined Washington by enacting the Wisconsin Sexually Violent Person Commitments Act (Wis. Statutes Annotated § 980.01 et seq.) The Wisconsin law defines mental disorder as "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence" (§980.01[2])

The Washington and Wisconsin civil commitment laws were challenged in court. Washington's law was attacked by Andre Brigham Young, a career criminal with a 30-year history of sexual violence, including six rape convictions. Young was about to be released from his latest stint in prison when he was civilly committed as a sexually violent predator. Young raised a plethora of constitutional challenges to the law, all of which were rejected by the Washington Supreme Court (*In re Young,* 1993). Following his defeat in Washington's highest state court, Young took his case to federal court where, in 1995, he convinced a federal judge that the Washington law is unconstitutional (*Young v Weston,* 1995 [holding that law violated substantive due process and rights against ex post facto laws and double jeopardy]). The ultimate fate of the Washington law awaits a decision from a higher federal court.

The Wisconsin civil commitment law was challenged in court by several committed sex offenders. In December 1995, the Wisconsin Supreme Court rejected the challenges and upheld the Wisconsin law (*State v. Carpenter,* 1995; *State v. Post,* 1995). The disappointed Wisconsin offenders' next step is to turn to the federal courts in hopes of a different result.

Long-term involuntary civil commitment is unquestionably a major infringement of liberty. A small proportion of sex offenders are so dangerous, however, that institutional

continued on next page

Should parents be told

Continued from page 18

incapacitation is the only effective way to protect the community. More states are likely to consider involuntary civil commitment for dangerous sexual predators.

Public notification of the whereabouts of sex offenders

If Megan Kanka's parents had known that three convicted child molesters lived across the street, Megan might be alive today. But Megan's parents did not know: no one told them. "As far as his neighbors . . . knew, Jesse Timmendequas was a mild-mannered laborer who lived with two roommates . . . and liked to show his new puppy to neighborhood children" (Hoffman, 1994, p. B1).

Should neighbors be informed when a convicted child molester lives across the street or down the block? Should local educators be informed? How about the YMCA, scouts, and girls and boys clubs? Arguments can be made to support both positions. On the one hand, parents, educators, and other concerned citizens are in the best position to protect children, and notification gives them the information they need.

If Megan Kanka's parents had known that three convicted child molesters lived across the street, Megan might be alive today.

On the other hand, critics argue that public notification creates a false sense of security (Prentky, 1996). They worry "that by isolating and ostracizing the released sex offender, these laws actually create the very problems they were designed to prevent. Still others contend that continued harassment from the public and the police does not allow released criminals a fair chance to start their lives again" (Boland, 1995, pp. 185-186). Bedarf (1995) argues that public notification offends the basic human dignity of sex offenders.

In addition to these practical and personal issues, critics argue that public notification violates the constitutional rights of convicted sex offenders. Finally, critics worry about vigilantism. The possibility that citizens will "take matters into their own hands" is not mere speculation. In 1993, for example, Joseph Gallardo, a convicted child rapist, was set to be released from a Washington State prison. A few days before Gallardo's release, the local sheriff distributed pamphlets warning of his arrival and, not long thereafter, Gallardo's house mysteriously burned to the ground.

Despite the drawbacks of public notification, at least 22 states provide some form of public notice. Most public notification statutes are of very recent origin. For example, California's public notification statute was signed by the governor on October 10, 1995.

On May 17, 1996, President Clinton signed a new federal law—the federal Megan's law—requiring state and local law enforcement agencies to "release relevant information that is necessary to protect the public concerning a specific person required to register" as someone who has committed a criminal offense against a child [42 U.S.C. § 14071(d) (2)]. At the White House signing ceremony, the President stated:

> From now on, every state in the country will be required by law to tell a community when a dangerous sexual predator enters its midst. We respect people's rights, but today America proclaims there is no greater right than a parent's right to raise a child in safety and love. Today, America warns: If you dare to prey on our children, the law will follow you wherever you go, state to state, town to town.

With passage of the federal Megan's law, the number of states with public notification laws will rise dramatically, and with the new laws will come further legal challenges.

Most public notification laws create levels of notice tied to the dangerousness of the offender. The New Jersey law—known as Megan's law—is typical, providing three levels of notice: 1) if the risk of reoffense is low, notice is limited to law enforcement agencies that are likely to encounter the offender; 2) if the risk of reoffense is moderate, notice is given to community organizations, such as schools; and 3) if the risk of reoffense is high, the public is informed through means designed to reach citizens who are likely to encounter the offender.

continued on next page

Should parents be told

Continued from page 19

In October 1995, Schram and Milloy published a report on Washington's public notification law. Schram and Milloy's preliminary assessment found that "community notification had little effect on recidivism as measured by new arrests" (p. ii). At the same time, however, "[o]ffenders who were subjects of community notification were arrested for new crimes much more quickly than comparable offenders who were released without notification" (p. 16), indicating perhaps that offenders subjected to public notification are watched more closely and caught more quickly.

Sex offenders will challenge public notification laws in court. Megan's law, for example, was attacked almost immediately (*Doe v Poritz*, 1995). In July 1995, the New Jersey Supreme Court upheld Megan's law, writing:

> The essence of our decision is that the Constitution does not prevent society from attempting to protect itself from convicted sex offenders . . . [W]e remain convinced that the statute is constitutional. To rule otherwise is to find that society is unable to protect itself from sexual predators by adopting the simple remedy of informing the public of their presence (pp. 372, 422).

In March 1995, a New Jersey federal court struck down Megan's law as unconstitutional (*Artway v. Attorney General*, 1995). In April 1996, a higher federal court vacated the lower court's decision (*Artway v. Attorney General*, 1996). As of this writing, New Jersey's Megan's law is back on the books, although its future remains uncertain. Ultimately, the U.S. Supreme Court is likely to decide whether states have the authority to notify the public of sex offenders in their midst.

Conclusion

The laws described in this article will not stop child molestation. Yet the laws are rational measures that are intended to deal with dangerous criminals. In the final analysis, these laws are justified by law, logic, and common sense. Because of these laws, children are a little safer, and fewer of them will meet the terrible fate of little Megan Kanka.

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