Public Policy Essay

No one likes a sex offender. The special hatred toward this particular type of criminal is both culturally accepted and addressed in public policy. Washington was the first state to implement an involuntary commitment program for sex offenders. The Sexually Violent Predator (SVP) law permits the civil commitment of sex offenders *after* they have served a prison sentence. While the SVP law has survived several constitutional challenges, controversy remains over the state’s authority to indefinitely detain an exclusive group of people based re-offense estimates and expert evaluation—neither of which, comes cheap. Washington’s SVP law should be abolished as it inequitably provides justice based on threat of the hypothetical and is sustained by a system of runaway legal costs.

The SVP law shortchanges offenders and their victims by inequitably punishing crimes based on sex. In 1989, Earl Shriner, a repeat sex offender, raped a seven-year-old boy, mutilated his genitalia and left him in the Tacoma woods barely alive (Willmsen, 2012). The public was outraged that despite warnings that Shriner was too dangerous to be freed, he was allowed to release from prison two years earlier (Willmsen). This is the incident largely credited with the enactment of the SVP law, which requires all sex offenders to be reviewed for civil commitment eligibility prior to release from prison (Department of Corrections, 2012). The SVP law assumes that civilly committing individuals who might otherwise do harm makes the public safer. Though somewhat logical, it inadvertently offers preferential protection from sex crimes and fails to consider crimes of similar seriousness. For example, James Williams, a severely mentally-ill offender, fatally stabbed a woman with a butcher knife as she was walking home to her Seattle apartment on New Year’s Eve 2007 (Singer, 2008). Prior to this, Williams had been incarcerated on an Assault 1 charge, accrued over 248 infractions during his eleven-year prison stay and was considered high risk by prison officials and law enforcement (Singer). As was the case with Shriner, the public was appalled that Williams was allowed to be released and felt that if was not, he would not have victimized this woman. However, Williams was incarcerated for Assault 1—not a sex crime and thus, not eligible for civil commitment under the SVP law. This demonstrates a systematic disparity in Washington’s criminal justice system. What makes individuals like Shriner any more dangerous than individuals like Williams? What makes victims of sex crimes more important than victims of other crimes? The answer: policies which overtly administer preferential justice for sex crimes than for other serious offenses.

In Washington, criminal sentences are allocated based on seriousness of the offense as determined by a criminal sentencing grid (Caseload Forecast Council, 2011). This ensures that not only the punishment fits the crime but that punishment is applied equitably across crimes of similar seriousness. Rape 1—the most serious of sex crimes—and Assault 1 are both Class A felonies with the same level of assigned seriousness (Caseload Forecast Council) and thus, subject to the same criminal sentence. However, upon completion of the sentence for Rape 1, an individual will be reviewed for civil commitment under the SVP law and the individual completing a sentence for Assault 1 will not. This contradicts the provision of fair and proportional punishments on behalf of the criminal sentencing grid by extending additional sanctions toward sex offenders than for offenders who have committed crimes of an equally serious nature. In the cases of Shriner, the sex offender, and Williams, the Assault 1 offender, the SVP law protects the public from sexual victimization while ignoring other, potentially fatal forms of harm.

The idea that the SVP law makes the public safer by civilly committing sex offenders who might otherwise do harm is a false insurance policy based on a hypothetical risk determined by tools of little accuracy. To determine eligibility for civil commitment, sex offenders are evaluated through risk assessment tools designed to predict the likelihood that they will reoffend (Klima & Lieb, 2008). Though these risk assessment tools are based on empirically derived predictive factors, studies have found them to be of weak predictive accuracy because sex offenders have such a low base rate of re-offense (Barnoski, 2005). For every 100 sex offenders released from prison, only 3 of them will commit a subsequent sex offense (Barnoski). Compared to other felony offenders, sex offenders also have the lowest rate of re-offense for other offenses—including violent offenses (Barnoski). If the civil commitment of sex offenders is justifiable in the interest of public safety, then the low base rate of reoffending among sex offenders implies that not only are they are no more dangerous than felony offenders in general but, the low accuracy of the risk assessment tools used might result in civilly committing sex offenders that are not dangerous.

The controversy over the justification and necessity of the SVP law is complicated by the fact that it places a significant financial burden on taxpayers. With an annual price tag of about 40.5 million dollars (Gookin, 2007), the SVP law is supported by a system of runaway legal costs. About a third of the SVP budget is allocated toward the legal costs of individuals civilly committed under the SVP law (Willmsen, 2012). With a pre-packaged case made possible by making release from prison contingent upon evaluation for civil commitment, defense attorneys are faced with the challenge of proving beyond a reasonable doubt that their civilly committed client is not likely to engage in acts of predatory sexual violence—a definition by which their client has already met. The exoneration of their civilly committed client relies on expert testimony, which is expensive. Some experts have earned millions for their expert testimony in civil commitment cases (Willmsen). Furthermore, defense attorneys shop for the expert that will offer their civilly committed client the most favorable testimony and in some cases, employ more than one expert to do so, resulting in runaway legal costs with little containment. Due to the legal requirement that civilly committed individuals are ensured a legal defense whose cost is incurred by the state, the public ends up footing the bill. Considering the current budget deficit, spending of taxpayer dollars on the legal costs to keep sex offenders civilly committed seems especially wasteful.

The SVP law is a unique combination of public demand and legislative supply. The public’s hatred of sex offenders and the legislation satiating their antipathy has conceived a civil commitment process that discriminates toward sex offenders with little empirical support that this discrimination is justified. While the indefinite detainment of sex offenders might be necessary to protect the public, it is imperative to examine whether preemptive action is the best way to do so. The public must decide whether they want to keep paying for a civil commitment process that may not only be superfluous but, may have little impact on public safety. The SVP law should be eliminated so that justice is determined by standard sentencing policy; individual civil liberties are protected unless there is a demonstrated threat; and the state is no longer burdened with the legal expenses required to maintain the civil commitment process.

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