



## Maryland High Court says Registry is Punishment, Rather than merely a Post-Conviction Ruling

By Steve Lash, *Bridgetower Media*

**BALTIMORE, MD** — A sharply divided Maryland high court ruled March 31 that a convict's placement on the Sex Offender Registry qualifies as "punishment" for a sex offense, meaning that all elements of the crime required for placement – such as the victim's age – must be proven beyond a reasonable doubt at trial or conceded in a plea agreement before his or her name can be placed.

The 4-3 ruling marked the first time the Court of Appeals has held registration to be a punishment of the criminal rather than merely a post-conviction administrative act by a state official to alert the public to a convicted child sex abuser in their midst.

The Court of Appeals rendered its decision in holding that convicted human trafficker Jimmie Rogers' name may not be placed on the Sex Offender Registry because he had not stated in his plea agreement that his victim was a minor. The high court said the head of the Maryland Sex Offender Registry had wrongfully added Rogers' name, ruling that such a function rests with judges.

In its decision, the majority cited the U.S. Supreme Court's 2000 *Apprendi v. New Jersey* ruling that the constitutional guarantee of due process requires that any fact that would increase a defendant's punishment be proven beyond a reasonable doubt.

The Court of Appeals deemed registration a punishment based on the "affirmative disability and restraint" it places on sex offenders, including the stigma of being on the public registry. These disabilities and restraints also include the "plethora of personal information" registrants must provide, such as every address where they live or habitually reside and all their email addresses, computer log-in names and instant-messaging identities, the court said.

The court also noted the "punishment" of being on the registry for 25 years, which is generally longer than the prison sentence for the underlying sexual offense.

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# APA Decries Civil Commitment Laws

CURE-SORT News Team

American Psychiatric Association's Board of Trustees approved a task force report on sexually dangerous offenders at its meeting last fall in San Diego recommending that psychiatrists vigorously oppose sexual predator laws.

Opposing such laws is necessary "to preserve the moral authority of the profession and ensure continuing societal confidence in the medical model of civil commitment," states the report. The report was written by the Task Force on Sexually Dangerous Offenders, a component of APA's Council on Psychiatry and Law, which endorsed the report before it went to the Board for action.

**Paul Appelbaum, M.D.**, was chair of the council when the five-member task force was formed five years ago. Its creation, he noted, was in response to several [states](#) adopting sexual predator laws allowing sex offenders post-incarceration to be civilly committed to psychiatric facilities. "We were concerned that psychiatry was being used to preventively detain a class of people for whom confinement rather than treatment was the real goal. This struck many people as a misuse of psychiatry."

The task force agreed, stating in its report that the diagnosis of sexual predator is based on "a vague and circular determination that an offender has a 'mental abnormality' that has led to repeat criminal behavior. Thus, these statutes have the effect of defining mental illness in terms of criminal behavior. This is a misuse of psychiatry, because legislators have used psychiatric commitment to effect nonmedical societal ends."

The task force recommends that societal concerns about protection from dangerous sex offenders be met instead through customary sentencing alternatives within the criminal justice system.

**Appelbaum observed** that since the U.S. Supreme Court decision last year in the case *Kansas v. Hendricks* upholding the constitutionality of the Kansas sexual predator law, several states have introduced or passed similar laws.

The purpose of the task force was to assemble information necessary to inform decision making by psychiatrists, legislators, and judges regarding the clinical and ethical implications of sexual predator statutes. The report synthesizes available literature on the diagnoses, treatment, and recidivism of sex offenders, and sexual predator commitment laws including relevant court cases. There is also a section on juvenile sex offenders, frequently asked questions, and a summary of conclusions and policy recommendations.

Appelbaum commented, "The task force report serves as a resource for psychiatrists who want to learn more about sexual disorders and developing treatments and underscores the need for training in psychiatric research programs."

The report notes that except for a few dedicated researchers and clinicians, most psychiatrists are unfamiliar with the assessment and treatment of sex offenders.

## **Another Case Finds Pennsylvania Violates State and Federal Ex Post Facto Prohibition**

In an opinion issued May 11 in the Commonwealth Court of Pennsylvania, a person forced to register as a sex offender had the registry declared unconstitutional as applied to him, an individual whose offense was committed prior to the date of the registry or certain of its provisions.

You can read the 58 page, well-reasoned opinion here:

<https://floridaactioncommittee.org/wp-content/uploads/2020/05/t.s. v. psp.pdf>

Pennsylvania had previously and recently (2017) had its registry declared unconstitutional (Commonwealth v. Muniz), but then the legislature went back and tried to fix the constitutional issues. The significance of this recent case is that the Court concluded that the changes made by the PA General Assembly in an effort to correct the deficiencies the Supreme Court had found in Muniz do not sufficiently alter the balance test of whether the law is punitive.

The following excerpt from the opinion is very telling: Petitioner is subject to arrest and criminal sanction if he does not verify his residence, notify PSP of changes, or appear for in-person registration, 42 Pa.C.S. §9799.56(d). Consistent with our Supreme Court's precedent, and following Muniz, we discern no material difference between the conditions imposed in probation and the conditions imposed upon Petitioner under subchapter I of Act 29.

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CURE-SORT News is a publication of CURE-SORT. SORT stands for Sex Offenders Restored through Treatment. CURE-SORT is one of several issue chapters of a national criminal justice reform organization known as Citizens United for the Rehabilitation of Errants (CURE), located in Washington, D.C.

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# CURE Civil Commitment Calls and Information to Join

The CURE civil commitment monthly calls are held the first Saturday of each month.

Currently, the call group includes family/friends of men detained in one of the 20 states that have statutes that allow for involuntarily detaining men beyond their original prison sentence, national reform organizations, journalists, former staff of the Kansas commitment center, law firms, and individuals who have an interest in advocating for change to civil commitment laws. Several men housed at treatment centers also participate in the calls.

Advocacy for change to civil commitment comes from family/friends as well as men who are detained. Increasingly, men in several states are coordinating efforts to bring about changes to civil commitment. This effort is in the beginning stages and will continue to be developed.

Currently, individuals in the Minnesota treatment program publish the OCEAN and The Legal Pad articles, both focused on civil commitment matters. These are distributed to all on the monthly call list as well as to several men at various state detention centers. While there have been no significant legal rulings that impact all 20 civil commitment states, a few men have been released via the courts. These releases (either full or conditional) include the states of California, North Dakota, Washington and Kansas. Estimates suggest that 6500 individuals remain in civil commitment programs in 20 states.

All are welcome to join efforts to bring about changes to civil commitment. The call starts at 9 am (Central) and lasts 1 ½ hours. If you wish to join in the monthly CURE civil commitment conference calls, send an email to [eldoncdillingham@gmail.com](mailto:eldoncdillingham@gmail.com) and you will be placed on the notification for the calls.

## CURE-SORT Members Pass Away

It has come to our attention through mail notification that the following persons on our database, have passed away.

Shaun Kissack at the Diagnostic and Rehabilitation Center, Lincoln, NE;

Eugene Bushong and Mark Christiansen at Rushville Treatment and Detention Center, Rushville, IL,

And Don Wagler at the Jefferson City Correctional Center, Jefferson City, MO have passed away.

Our thoughts to the family and close friends of all those passed

## Resources

We are pleased to offer the following resources. Donations accepted to cover cost of postage and printing. Mail Donations to the CURE-SORT, address on Page 3.

**One Breath At A Time** by Ila Davis (\$17.50)

**Understanding Offending Behavior** by Stephen Price. (A collection of 9 of Stephens articles from previous newsletters) (\$4.00 for the set of 9 articles)

**When Someone on the Registry Moves into My Neighborhood** (Member Price \$5; Non-Member \$10)

**A JUST FUTURE:** Families & friends for those in civil confinement. Interested persons please e-mail: [contact@ajustfuture.org](mailto:contact@ajustfuture.org). 202-350-0531. [www.ajustfuture.org](http://www.ajustfuture.org). Just Future Project, PO Box 60263, Washington, DC 20039.

**No More Victims – One Man’s Journey Into Sexual Offending and Recovery**, By S. Sands (Ed G), \$13.95 (does not include shipping).

Send all Requests to: PO Box 1022, Broadalbin, NY 12025, or [gunder788@verizon.net](mailto:gunder788@verizon.net) or [amazon.com](http://amazon.com).