

THE ALLIANCE

THE ALLIANCE is a Quarterly publication of the New York State Alliance of Sex Offender Service Providers (NYSASOSP) and the New York State Chapter of the Association for the Treatment of Sexual Abusers (NYSATSA.)

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From: Richard B. Krueger, M.D. Vice-President, New York Association for the Treatment of Sexual Abusers

Dear NYATSA and Alliance Members:

The focus of this newsletter is on Sexually Violent Predator (SVP) statutes, which provide for civil commitment of high-risk sexually violent predators. As you may know, after many years of submission of such legislation by the Governor and passage by the Senate, the Assembly this year also passed its version, but the Joint Conference Committee delegated with the task of writing a law acceptable to both houses was unable to agree on a joint law.

In January of 2006, the Board of the NYSATSA and Alliance approved and distributed a policy statement on SVP legislation to the Legislature and posted it on its website, nysatsa.com. Included in this issue of the Newsletter are this policy statement, a subsequent letter sent to the legislature in May of 2006, and an op-ed that was published on May 21st, 2006, in the local edition of the New York Times by John La Fond and Bruce Winick, two national authorities on such legislation.

While SVP legislation has apparently stalled in New York for this legislative term, the Federal Government recently passed its version of such an act in the Adam Walsh Child Protective Act of 2006. This provides for support for states to explore SVP options, which suggests that such legislation may be a matter for future consideration in New York State.

The position of the NYSATSA and Alliance Board is that SVP statutes should be carefully considered before enactment because of the enormous financial costs of such programs, the inability to control such costs, and because such programs compete for available resources used to manage offenders in the community.

Accordingly, the NYSATSA and Alliance Board recommends that the Governor appoint a commission to thoroughly review other SVP programs and sex offender management policies in order to develop an integrated and forward-thinking set of recommendations, which will, in the end, be more fiscally sound and effective at reducing sexual violence.

NYS ATSA AND ALLIANCE POLICY STATEMENT CONCERNING SEXUAL VIOLENT PREDATOR LEGISLATION

The Boards of the New York State ATSA and Alliance have developed the following statement concerning sexually violent predator legislation in New York to provide useful information as this legislation is again being debated.

The New York State Association for the Treatment of Sexual Abusers (NYSATSA) and the New York State Alliance of Sex Offender Service Providers (Alliance) Boards endorse the public policy statement adopted by the National ATSA Executive Board of Directors on March 20th, 2001, a copy of which can be found on the New York State ATSA and Alliance website. The New York Boards, however, endorse the following updated policy statement that has special reference to the State of New York and is more current, being adopted in January of 2006:

Sexual violent predator legislation may have a place in the treatment and management of sexual offenders and in the reduction of sexually violent crime. However, at this point, despite the fact that 17 states have passed such legislation and the fact that New York State is attempting to enact a form of such legislation through aggressive use of its current psychiatric civil commitment law, the unproven efficacy and potentially enormous costs of such programs mandate careful further study and design before enacting such legislation in the State of New York.

We would thus recommend that a multidisciplinary group be established by the Governor and Legislature to study such legislation, reviewing the current laws, existing programs, and experience of

existing programs, and experience of other states and countries that have enacted such legislation, along with current laws pertaining to sexual offenders in New York, in order to make recommendations relevant for New York. Any recommendations should include projected costs, an analysis of the impact of such legislation on the community and organizations involved, and methods of assessing the effects and outcome of such a program in an ongoing way. We state this for the following reasons:

1. It is clear that there are a number of individuals who are sexually violent predators and whose release into the community at all or without intensive supervision would place the public at risk.
2. As of July 2005, 17 states have adopted such statutes (Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, Pennsylvania (for juveniles only), South Carolina, Texas, Virginia, Washington, and Wisconsin). Additionally, similar measures (so-called dangerous offender legislation) have been passed in Canada and in Australia.
3. Enormous costs are associated with such programs. Some have estimated potential costs for New York at \$250,000/inmate/annum. California in 2001 estimated its costs at \$107,000/inmate/annum and expended \$350,000,000 to build a new facility to house individuals committed under its program, with additional annual legal costs of up to \$70,000/annum.
4. The number of inmates able to be released into the community varies greatly between programs in various states,

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ranging from a rate of 66% released in Arizona (law enacted 1996) to only to 2% in Florida (law enacted 1999). Nationally, as of December 2004, 3943 individuals had been committed under such statutes and only 12% released.

5. The costs of such programs can be reduced substantially by measures that would facilitate release of an individual into the community or community commitment in the first place. For instance, Texas has a civil commitment statute that is entirely outpatient.

6. The capability of releasing a patient into the community is dependent on a variety of factors including the availability of community housing and treatment and monitoring resources and these need to be considered as part of any such legislation.

7. The costs of such programs are not entirely within the control of the states that pass them because various federal class action suits and other standards insure substantial expenditures beyond what a state legislature might have budgeted. Additionally, should legislatures decide that such programs are not desirable, they are difficult to dissolve.

8. Research on the effects of such legislation on recidivism and crime rates is sparse and not definitive.

9. It may be more cost-effective to extend the length of sentencing for sexually violent crime rather than creating a whole new sexual predator statute. Further research into this possibility is needed.

10. Detailed risk assessment could make more rational use of limited resources and

increase the monitoring and scrutiny of offenders who are at greater risk and consideration of this should be included in any such legislation.

11. The current New York State Sex Offender Registration Act (SORA) was enacted 10 years ago and did not have the benefit of many of the risk assessment and actuarial instruments and other research that has been done since. This should be reexamined as part of any step towards sexual predator legislation.

12. Lifetime parole or probation for certain crimes has been enacted in some states with apparent reduction in crime rates and this should be considered as an integral part of sexual predator legislation.

By Richard B. Krueger, M.D., Vice-President, NYASTA, for the Board of Directors.

Family Law and Domestic Violence Legislative Update: 2006

Janet R. Fink, Deputy Counsel
New York State Unified Court System
August 24, 2006: The 2006 session of the New York State Legislature ended on June 23, 2006 with the passage of several significant measures affecting Family Court and family law. These measures, which are summarized below, are available on www.assembly.state.ny.us and www.senate.state.ny.us. While several of the bills have been signed, many await action by the Governor. Additionally, two major federal bills passed by Congress have now become law: the *Safe and Timely Interstate Placement of Foster Children Act of 2006* and the *Adam Walsh Child Protection and Safety Act of 2006*.
<http://thomas.loc.gov>.

NY State ATSA Letter to Members of the New York State Assembly, Senate, and Joint Conference Committee, and Others Regarding Proposed Sexually Violent Predator (SVP) Legislation

The following is a letter dated May 30, 2006, sent by NYSATSA to the stakeholders named above.

Dear New York State Legislator:
We are writing to implore you to not pass an SVP bill without further study.

We are attaching a position statement adopted by the Board of the New York State Association for the Treatment of Sexual Abusers (NYSATSA) in January of this year advising that a multi-disciplinary commission be formed to further study this problem along with a copy of a recent New York Times op-ed by John LaFonde and Bruce Winick, two of the nation's leading authorities on SVP legislation.

Important reasons for not passing a bill at this time include the following:

1. **Financial:** Without very careful planning and integration into a system of sex offender management, an SVP program will do little more than warehouse offenders, at roughly 10 times the cost of a prison bed (prison beds nationally cost on average \$22,500/inmate per year, and ATSA estimates a cost of \$250,000/inmate per annum for New York State). After a recent legislative breakfast that involved discussions of this proposal, assertions were heard to the effect that "1000 offenders would be committed by such a proposal within two years." This would mean for the people of New York over a quarter of a billion dollars per annum in expense, devoted to a population which will only increase and obligate more expenditures with each successive year.

Furthermore, both bills being considered, as well as many passed by the various states in the 1990's, were based on the State of Washington's SVP statute. In the State of Washington's 16 years of operation, of 220 individuals committed, only 13 have been released into the community. If one were to apply this same rate of release, roughly 1 per year per 200 individuals committed, extended to "1000 offenders" this would mean 5 offenders would be released per year, at a cost of, taking the

above figures, \$50,000,000 per offender released per year. These offenders would still have to be subject to conditions of extensive monitoring and parole that are expensive and even now inadequate.

This is patently not cost effective.

2. **Lack of Control of Costs:** While legislators may think that costs can be controlled, federal class action suits can impose penalties and mandates for treatment that are very expensive. The State of Washington was recently fined \$8,000,000 and ordered by a federal judge to provide community placement and treatment modalities. Moreover, once created, such programs are virtually impossible to disband and tend instead to grow and obligate more and more of a state's budget.

3. **Many States Have Chosen Not to Pass or Are Questioning Existing SVP Statutes:** Sixteen of the seventeen programs now existent in the United States were passed in the 1990's. Many legislatures, such as in the State of Maine, have considered this legislation and not passed it for economic and other reasons. Moreover, existent programs are being called into question. The State of Florida in its 6 years of operation has released only 1 of 825 individuals, which prompted The Miami Herald to call for an inquiry. Kansas has questioned the efficacy of its program, suggesting that longer prison terms may be a better approach. And a loophole was found in California's SVP program which allowed 54 individuals committed to go free.

4. **SVP Statutes Divert and Obligate Funds Which are Needed for Other Programs or Could Be Better Spent to Address Problems of Sexual Violence:** An inpatient SVP program diverts funds from other vitally needed probation or parole programs and makes other treatment, programs, and placement difficult.

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Only 10% of sexual crimes are committed by individuals who have committed previous sex crimes, and 95% of victims know their victimizer. Thus, all of the funds devoted to an inpatient SVP program will target only a few offenders who are unlikely to be released in any event. SVP programs thus create a false sense of confidence and divert funds and energy from other public health efforts to decrease sexual violence that are more likely to have an effect.

5. These Statutes Lack Empirical Support:

There is no demonstrated effect of these programs on sexual crime rates. Statistics documenting their efficacy are uniformly lacking.

6. Professionals Who Work With Sex Offenders Say This is Not What Is Needed:

The major professional organization in New York State that represents the opinions of sex offender treatment providers, with a membership from both the field of mental health and of corrections, has opined that the New York State SVP options being considered are not what is needed. Other measures, such as longer sentencing, lifetime probation/parole, or tough conditions of mandated treatment are more useful and important.

7. These Statutes Do Not Always Work:

Heinous sexual crimes continue to occur despite SVP statutes in states with SVP statutes. The actuarial sciences that underlie risk assessment are imperfect.

8. Sexual Violence is a Complicated Problem and Newer Legislative Approaches to It

Should be Carefully Studied: Some states and countries are considering or have enacted forms

of civil commitment alternatives or comprehensive measures for monitoring and treatment of sex offenders and other offenders and these approaches merit further study.

Such policies are, however, enormously complicated, which is why we have suggested that a commission be formed to take on this task. The definition of what is dangerous, the design of the commitment scheme, and many other aspects of such laws affect the number of individuals committed or released, which in turn affects the cost of such programs. SVP programs should be very carefully designed and worked out in advance rather than left to a last-minute happenstance political compromise which could result in a law with an unexpected design and thus with unexpected results and costs.

9. It Would Be Financially Reckless to Pass Such a Program Now.

To do so would obligate the next administration and the people of New York for years to come in a scheme that it is our opinion is certain not to work.

We would thus implore you to establish a commission that could review this proposed legislation and all of the experiments and alternatives in depth and create a forward-thinking law that would endure and be more effective than what is now being contemplated and even serve as a model for others to emulate.

Thank you for your attention to this matter.

Richard B. Krueger, M.D., Vice-President
Kenneth J. Lau, LCSW, President
For the Board of Directors of NYATSA

Western Region News Briefs

Michelle Clark, MA will be engaging in new duties as she begins work at the Western New York Children's Psychiatric Center Mobile Mental Health Consultation Team. Michelle will continue to use her expertise and skills to assess juvenile sexual offenders, as well as other children and youth with a variety of mental health problems who are involved in the juvenile justice system. Best of luck to Michelle in her new job!

New York State Office of Mental Health Holds “Informational Meeting” regarding Civil Commitment.

NYS Office of Mental Health Representatives held a meeting at the Central New York Psychiatric Center that was open to the public to provide information about the use of civil commitment of sexually violent predators (SVPs). Participants were informed that Governor Pataki “directed the Office of Mental Health (OMH) and the Department of Correctional Services (DOCS) to use existing commitment laws for the civil commitment of sexually violent predators to ensure the public safety of New York State Citizens.”

Presenters informed the public of the goals of the civil commitment program, to ensure public safety and “provide proven, effective treatment interventions.” The criteria for civil commitment in NY State Mental Hygiene Law were identified, including the presence of a mental illness and being in need of involuntary hospitalization. It was reported that “OMH, DOCS and Division of Parole (would) collaborate to identify inmates sentenced for qualifying offenses” and “inmates with SVP qualifying offenses” would be evaluated within 12 months of their release from a prison facility. The presenters discussed the steps that would be taken to assess such individuals, including the use of actuarial risk assessment guides such as the STATIC-99 and MnSOST-R. Upon completion of these steps of assessment, a recommendation would be made as to whether or not the individual should be committed “based on review by 2 physicians.”

The Relapse Prevention Model was identified as the form of treatment that would be utilized with SVPs once they are committed. OMH security measures were reported to be in place to address the potential risks presented by SVPs. OMH noted the following sites would be working with the SVP population: Manhattan PC, Kirby Forensic, Central New York PC, St. Lawrence PC, and Mid-State CF Annex. Staffing levels and training for direct care staff was also identified. It was reported that “all mental health treatment will be provided within the secure facility.”

President signs H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006

Prior to its passage, this new law has been debated and discussed in many forums, including the national ATSA list serve. There are four primary highlights to this new law.

1. **Expanding The National Sex Offender Registry.** The bill will integrate the information in State sex offender registry systems and ensure that law enforcement has access to the same information across the United States, helping prevent sex offenders from evading detection by moving from State to State. Data drawn from this comprehensive registry will be made available to the public so parents have the information they need to help protect their children from sex offenders.
2. **Strengthening Federal Penalties For Crimes Against Children.** The bill imposes tough mandatory minimum penalties for the most serious crimes against children and increases penalties for crimes such as sex trafficking of children and child prostitution. It also provides grants to States to help them institutionalize sex offenders who have shown they cannot change their behavior and are about to be released from prison.
3. **Making It Harder For Sex Predators To Reach Children On The Internet.** The bill authorizes new regional Internet Crimes Against Children Taskforces that will provide funding and training to help State and local law enforcement combat crimes involving the sexual exploitation of minors on the Internet.

Creating A New National Child Abuse Registry And Requiring Investigators To Do Background Checks Of Adoptive And Foster Parents Before They Are Approved To Take Custody Of A Child. By giving child protective service professionals in all 50 States access to this critical information, there will be improvement of their ability to investigate child abuse cases and help ensure that vulnerable children are not put into situations of abuse or neglect.

Doing More Than Their Time

By **JOHN Q. La FOND** and **BRUCE J. WINICK**

Reprinted from an op-ed piece dated May 21, 2006 with permission from the New York Times

The New York Legislature is debating whether to approve a sex offender civil commitment law. The law would allow the attorney general to confine sex offenders in secure hospitals indefinitely after they have served their prison sentences. This is a bad idea.

More than a dozen states have tried this novel strategy for preventing sexual recidivism. Their experiences clearly show that these laws waste taxpayer dollars and embroil state agencies in endless litigation. Instead of warehousing a small percentage of sex offenders, states should use the money on cost-effective strategies like community supervision combined with mandatory treatment that would reach many more released convicts.

These commitment laws, including the proposed New York statute, have vague and expansive definitions, allowing for the confinement even of convicted sex offenders who are not mentally disturbed or dangerous. Every state that has put these laws into effect has committed far more and released far fewer sex offenders than expected. As a result, these states are paying for ever growing numbers of patients in costly hospitals, many of them elderly men who require expensive medical care.

By December 2004, 3,493 men had been confined nationwide under these laws; only 427 had been given conditional release (most of them) or final discharge. This has led to unexpected costs for state governments: Minnesota, for instance, initially expected to cap its population at 350. In January, however, Gov. Tim Pawlenty proposed borrowing \$44.6 million to build another locked residential building for this population, this one with 400 beds.

The Constitution requires that civilly committed patients must receive treatment for their mental disorders. And while treating sex offenders in secure hospitals is extraordinarily expensive — about \$100,000 per person a year, not including the costs of construction and legal fees for the inevitable lawsuits — conditional release programs add even more expense. By December 2004, Washington State, which was one of the first states to enact this new commitment law, had about 220 hospitalized offenders and was spending about \$105,665 per person per year. Experts say that a civil commitment program will cost New York \$250,000 an offender for a single year.

Simply put, states with these laws are spending an enormous amount of money confining relatively few sex offenders, while releasing many dangerous sex offenders back into the community with inadequate control.

The impetus for civil commitment laws, of course, is the fear that freed sex offenders will assault again. But the data on sex-offender recidivism is unclear. For instance, a Justice Department study of 9,700 sex offenders released from prison nationwide in 1994 found that their overall re-arrest rate was much lower than that of other released convicts. Most experts, however, say that like sex crimes in general, sex-offender recidivism is vastly underreported. Still, the available evidence shows that sex offenders have a reoffense rate lower than all other serious criminals except murderers.

What's worse is that once these civil commitment laws are enacted, they're almost never repealed or reconsidered.

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If you would like to present news about your region, please be sure to contact Dominic Dispenza, at dadcon1959@yahoo.com.

The editor will be happy to report on events and news items from all areas of the state.

Doing More Than Their Time

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If New York is foolish enough to go down this path, then its law should allow some sex offenders to be initially treated and supervised in community-based centers rather than sent to prison-like hospitals. Having community-based treatment centers, which are usually less expensive than hospitals, will also ensure that an effective and safe discharge system is available for offenders sent to hospitals.

Research shows that treatment can reduce sexual recidivism. And offering treatment in prison to sex offenders soon after conviction is far more effective than delaying treatment until the end of their prison terms. Delay allows sex offenders to rationalize and minimize their crimes and to avoid confronting their harmful attitudes and behavior. The possibility of post-prison commitment could critically impair prison treatment because inmates will fear that anything they disclose to therapists in prison will be used to confine them under these new commitment laws.

Most sex offenders will return to the community, including a relatively small group readily identifiable as dangerous. The scarce resources squandered on committing a few sex offenders indefinitely would be better spent aggressively managing these high-risk offenders in the community after their release from prison. Intensive supervision by specially trained parole officers with light case loads, combined with mandatory treatment, periodic polygraph testing and real-time tracking through global positioning systems can reduce sexual recidivism. Sex offender management courts can enhance effectiveness by adding judicial participation and oversight.

Everyone agrees that we have a moral obligation to prevent as many sex crimes as possible with the resources available. Only a public policy based on sound research can accomplish this important goal.

About the authors: *John Q. La Fond, a former professor of law at the University of Missouri, Kansas City, is the author of "Preventing Sexual*

Sexual Violence: How Society Should Cope with Sex Offenders." Bruce J. Winick is a professor at the University of Miami School of Law.

The editor would like to thank Dr. Krueger for getting permission from the New York Times to print this article.

National Alliance for the Mentally Ill, New York State Chapter's 24th Annual Education Conference will be held in Westchester

The first morning's focus will be on mental health and the criminal justice system. Of special note is the Friday Morning session that will address the topic of "The Mental Health and Criminal Justice System: Dark Clouds and Bright Spots." There will be a panel presentation Civil Commitment of Sexually Violent Predators: "Where Are We Now and Where Do We Want to GO?" **NYS ATSA Vice President Richard Krueger, MD will be one of the presenters**, along with Deborah Gross, MD, President, NYS Psychiatric Association; Steve Harkavy, Esq., Deputy Director, NYS Mental Hygiene Legal Services, First Department Al O'Connor, Esq., Deputy Director NYS Defender Association.

Registration for this conference can be made with NAMI-NYS, 260 Washington Avenue, Albany, New York 12210.

For more information, please call (518) 462-2000 or (800) 950-3228.

Notes from the President

Dear Colleague:

I have attended most of the ATSA Conferences since 1994. This year's conference "Effective Practice to Informed Policy: Navigating Winds of Change" which was held in Chicago was especially exciting. Not only is Chicago a great city to visit but it was clear that the interested professionals have related to effective research and treatment of sex offenders not only in the United States but globally. There were over 1500 professionals in attendance and the quality of most of the speakers was excellent. Issues related to Public Policy as it relates to the supervision and management of sex offenders in the community was clearly a major theme. With the recent passage of the Adam Walsh Protection and Safety Act and the impact it will have on future state legislation, it is critical that all professionals involved in the treatment and supervision of sex offenders be kept abreast of the impact this will have on victims, families and the sex offenders. While we all applaud efforts to protect our children, when new laws are passed without prior research the result could well be that children are less safe than before.

I am especially concerned about the media and lawmakers promotion of the ideas that all sex offenders are the same. The concept of "stranger danger" seems to be the primary theme. This despite the fact that the research continues to support that most children are abused by people with whom the child and family have a pre-existing relationship. In addition, while it sounds politically correct to push for tougher laws and sentencing for sex offenders, it may be the end result is that less victims come forward or it becomes

more difficult for prosecutors to convict sex offenders than what have we really accomplished.

The Adam Walsh bill will clearly have an impact of the identification and prosecution of juvenile offenders. Some states already have passed laws that result in registration of juveniles. Many professionals have a mixed reaction to this type of registration. Clearly stated by ATSA- "Registering children and publicly labeling them as sex offenders for life risks a number of significant harms. These could range from educational discrimination to ostracism to vigilantism. It is not difficult to see how subjecting children to public stigmatization and possible ostracism, barriers to education, and occasional vigilantism could impede development. Including children under registration and notification policies offers no broad protections to the public because children with Sexual Behavior Problems simply are not a high-risk group, especially if provided with appropriate treatment. In short, applying these policies to children will likely do more harm than good, and the Task Force believes this is an onerous policy." With research suggesting juveniles are at much less risk for reoffending, under this bill they would be subjected to the same under-researched requirements that presently promote labeling, stigma, and victimization in adults.

I would encourage all of you who are working with sex offenders in NYS to stay abreast of the issues related to community notification, registrations and civil commitment.

Best wishes,

Kenneth J. Lau, LCSW
(klau@fordham.edu)
NYSATSA President

**New York State Alliance of
Sex Offender Service Providers**

**New York State Association for the
Treatment of Sexual Offenders**

**P.O. Box 3115
Albany, New York 12203-3115**

**Alliance/NYSATSA Annual
Conference 2007—Call for
Presenters**

Next year’s Alliance/NYSATSA Conference is already in the planning stages and will be hosted in the Dutchess County region. Tentative dates are May 3-4 OR May 10-11. Please save these dates! We should have the date finalized by the time the next newsletter comes out.

We are also seeking presenters for the conference. Please send your proposals to: Sharon Doane at sharondoane@hotmail.com

**The New York State Office of
Mental Health (OMH), Division
of Forensic Services, Bureau
of Sex Offender Management,
is recruiting to fill Social
Worker, Psychologist and Psy-
chiatrist positions.**

The positions will be located in Albany, Marcy, and Ogdensburg in New York State.

Minimum Qualifications:

Licensed Psychologist: Current New York State License to practice psychology.

Associate Psychologist: A doctoral degree in psychology AND EITHER completion of a one year, full time clinical internship or traineeship OR one year of psychology experience in a clinical setting under the supervision of a licensed psychologist.

Social Worker1

Licensure and current registration as a Licensed Master Social Worker (LMSW) or Licensed Clinical Social Worker (LCSW) in New York State.

Licensed Master Social Worker 2:

Licensure and current registration as a Licensed Master Social Worker (LMSW) or Licensed Clinical Social Worker (LCSW) in New York State AND one year of past-master’s degree social work experience.

Psychiatrist 1

Application Procedure:

Qualified and interested candidates may contact Dawne Amsler at copldea@omh.state.ny.us or 518-473-8216. Please fax a resume to 518-474-3605 for consideration.