

# The Civil Commitment of Sexually Violent Predators: A Unique Texas Approach

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Numerous states have enacted statutes focusing on the civil commitment of sexually violent predators. The Texas statute, like many others, calls for the involuntary commitment of those with a mental abnormality—specifically in Texas, a behavioral abnormality—who are likely to engage in predatory acts of sexual violence. All of these states, except Texas, have passed legislation creating inpatient treatment for those persons committed. Texas, instead, has focused exclusively on the use of outpatient treatment and supervision as an alternative to the route of inpatient commitment. This article is focused on the development and implementation of the Texas statute with an emphasis on forensic assessment, expert testimony, and risk assessment.

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The civil commitment of sexually violent predators remains controversial within forensic psychiatry and psychology. Despite the controversy, legislatures across the United States have enacted statutes calling for the civil commitment of those individuals who have a history of sexual offenses who also suffer from mental or behavioral abnormalities. All of the states but Texas call for inpatient commitment in secure facilities. Texas, in contrast, has focused on an outpatient commitment model.<sup>1</sup>

There are currently 15 states with a statute allowing for the civil commitment of sexual predators: Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, South Carolina, Texas, Washington, and Wisconsin. The Mississippi legislature is currently considering enacting a statute. There have been variations on the commitment of sexual predators throughout the United States during the 20th century. Currently, Washington has the longest experience with the commitment of sexual predators.<sup>2</sup>

Washington's statute, however, was not the first to be reviewed by the U.S. Supreme Court. The first modern statute to be challenged in the Supreme Court was from Kansas and was tested in the land-

mark forensic case of *Kansas v. Hendricks*.<sup>2</sup> The Court in that case ruled that such statutes are constitutional, rejecting the double jeopardy and equal protection arguments made by the civilly committed sexually violent predator, Mr. Hendricks.

The 1999 Texas statute<sup>1</sup> calling for the civil commitment of sexually violent predators contains findings that set forth the reasons the legislature opted to enact such a law in Texas:

The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state [Texas Health & Safety Code (THSC), § 841.001].<sup>1</sup>

Then Texas Governor George W. Bush and the Texas legislature passed the Texas version of the statute following the Supreme Court decision in *Kansas v. Hendricks*.<sup>2</sup> The legislative action occurred in May 1999, and the implementation of the statutory scheme began on September 1, 1999, and has been in

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effect since that time. The overall design of the Texas statute is very similar to that of the statute in Kansas, but it varies in many ways from the Kansas statute and from those currently implemented in other states.<sup>3</sup>

The logic of these similarities is seemingly obvious. If the Kansas statute meets constitutional muster with the U.S. Supreme Court, then the Texas statute should meet the same threshold as well. The Texas legislature and governor, however, modified the procedures to be used beyond outpatient commitment.<sup>1</sup> There are psychiatrists in Texas, as in other states, who disagree with this new initiative. Some have expressed concern over the outpatient format compared with other states, the potential costs that could affect standard psychiatric programs, and the evaluation and treatment processes.<sup>4</sup>

### Texas Statutory Scheme

Kansas and other states with these statutes typically use a probable cause hearing system to justify holding the person facing commitment beyond the end of the prison term.<sup>3</sup> In most states, once a court has found that probable cause exists to believe that the alleged sexual predator has a mental abnormality that is likely to result in future acts of sexual violence, the detainment of the respondent is allowed.<sup>4</sup> The individual is held until trial on the petition for civil commitment. There is no probable cause hearing built into the Texas scheme, because the statute does not anticipate detaining the respondent in an inpatient facility.<sup>1</sup> Thus, the basic loss of liberty inherent in a typical inpatient commitment is not present. This is similar to the method of outpatient civil commitment in Texas. The Texas statute envisions trial of the civil commitment cause prior to the time the alleged predator is released from prison.<sup>1</sup> This is essentially accomplished through a process of referral and evaluations, which can lead to the filing of a petition for the commitment of the alleged predator.

Although there is not a probable cause hearing requirement in the Texas statute, the statute calls for two levels of evaluation and review before a decision is made to proceed to court against any particular individual. The first step calls for a review by a group of people known as the multidisciplinary team, which is appointed jointly by the Executive Director of the Texas Department of Criminal Justice and the Commissioner of the Texas Department of Mental Health and Mental Retardation to review the records

of the person being considered for commitment.<sup>1</sup> The composition of the multidisciplinary team must be as follows, according to the statute:

- (1) two persons from the Texas Department of Mental Health and Mental Retardation;
- (2) three persons from the Texas Department of Criminal Justice, one of whom must be from the Victim Services Office of that department;
- (3) one person from the Texas Department of Public Safety; and
- (4) one person from the Council on Sex Offender Treatment [THSC, § 841.022].<sup>1</sup>

The multidisciplinary team then makes a decision either to refer the subject for an assessment to determine whether the person suffers from a behavioral abnormality or not to refer the individual for assessment.

Next, an assessment for a behavioral abnormality is mandated by the Texas law prior to a decision as to whether the alleged predator should be referred for review by the state body responsible for the filing of the petitions for commitment in these cases. Specifically, the law requires that the assessment for a behavioral abnormality determine:

...whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. The department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid in the determination [THSC, § 841.023].<sup>1</sup>

The expert providing the assessment is guided by definitions contained within the Texas law. A behavioral abnormality is defined as: "A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person (THSC, § 841.002)."<sup>1</sup>

A predatory act of sexual violence is defined as:

...an act that is committed for the purpose of victimization and that is directed toward: (1) a stranger; (2) a person of casual acquaintance with whom no substantial relationship exists; or (3) a person with whom a relationship has been established or promoted for the purpose of victimization [THSC, § 841.002].

The definition of behavioral abnormality is identical to the definition used in Kansas for mental abnormality.<sup>3</sup> The Supreme Court of the United States in *Kansas v. Hendricks* reviewed the Kansas definition of mental abnormality in depth and accepted the

definition as valid and within the province of the individual legislature to enact.<sup>2</sup>

The practice in Texas is that either a psychologist or psychiatrist conducts this assessment for behavioral abnormality as mandated by the statute. Generally, a psychiatrist conducts a clinical interview, if possible, reviews relevant records from the person's incarceration and psychological and psychiatric history, and performs various risk assessments. Typical examples of these include the Hare Psychopathy Checklist, Revised (PCL-R),<sup>5</sup> Static-99,<sup>6</sup> and the Minnesota Sex Offender Screening Tool Revised (MnSOST-R).<sup>6</sup> The records received for review generally also include an administered and scored Personality Assessment Inventory (PAI). Although the PAI is not a risk-assessment tool, it provides useful information. Each of these instruments has various strengths and weaknesses that have been considered in its use to achieve the desired goal. The Hare PCL-R for example was developed based on a fairly homogenous group of middle age white men in Canada.<sup>5</sup> Although the Hare PCL-R is not considered a risk-assessment instrument *per se*, it is typically used to highlight potential psychopathic tendencies.<sup>7</sup> This creates a need for consideration of whether the individual being assessed is a teen or member of an ethnic minority group. Similar concerns have been raised about the static nature of both the Static-99 and the MnSOST-R.<sup>8</sup> In part, some of the difficulty in the use of these assessments includes the awareness of the aggregate number of variables that can be altered over time. The PAI, although not specifically a risk-assessment tool, can be used to assist in ruling in or out suspected diagnoses. In Texas, as in other states, these assessment instruments have been determined to be valid tools for this purpose.

Once all of these have been completed, a written report summarizing the findings and opinions is completed. This report is most accurately described as a complete evaluation that uses a broad range of current approaches, based on researched and empirically studied, although not yet standardized, risk factors, with findings from the Hare PCL-R, Static-99, MnSOST-R, and PAI included as well. The report also includes factors that weigh against recidivism—that is, protective factors. It should be noted, however, that the statute itself does not specify any given approach to the assessment for the presence of behavioral abnormality, and each expert who performs these assessments is free to use the form of assessment

the expert wishes. The attorney representing the state in these matters then has the option of filing a petition requesting the civil commitment of the person, should the attorney representing the state make the decision to proceed with the commitment.<sup>1</sup>

The trial of these cases is not unlike most civil trials conducted in Texas. The legislature, however, because of the nature of the cases, opted to follow the Texas Code of Criminal Procedure, Chapter 33, in these trials.<sup>1</sup> The effect of this decision requires the state to prove its case beyond a reasonable doubt in court and requires a unanimous verdict for commitment of the person as a sexually violent predator. The legislature and the governor also provide the person who is the subject of the suit with additional rights, including:

- (1) the right to an immediate examination by an expert; (2) the right to appear at trial; (3) the right to present evidence on the person's behalf; (4) the right to cross-examine a witness who testifies against the person; (5) the right to view and copy all petitions and reports in the court file; (6) the right to be examined by their own expert, and for that examination to be compensated at a reasonable rate; (7) the right to a trial by jury; and (8) the right to assistance of counsel, and if indigent, court appointed counsel [THSC, § 841.144–5 and § 841.061].<sup>1</sup>

After the presentation of the evidence at trial, the jury is called on to decide whether the person is a sexually violent predator, subject to instructions from the court. As of October 2002, there have been 15 jury trials of this genre in Texas. Each of the defendants stipulated and agreed that he had been convicted of at least two requisite sexual offenses and suffered from a behavioral abnormality that made him likely to engage in predatory acts of sexual violence.

Nothing in the Texas statute prohibits the state from using experts in addition to the expert who performs the initial evaluation for the behavioral abnormality. In fact, the persons who are the subjects of the lawsuits seeking their commitment have argued that, for there to be a commitment in Texas, there must be an opinion from a medical doctor.<sup>1</sup> The persons against whom commitment is sought argue that Article I, § 15(a) of the Texas Constitution requires a medical doctor's opinion before there can be a commitment. Although this section of the Texas Constitution was enacted prior to the enactment of the civil commitment of sexually violent predator legislation, this provision of the Constitution has been applied repeatedly to traditional civil commitments of those of unsound mind. For this reason,

more forensic psychiatrists may be used in Texas cases than in other jurisdictions with these laws.

If the trier of fact decides that the person is to be committed as a sexually violent predator, the court decides what the terms and conditions of that commitment should be. The statute provides some specific instructions to the court in this regard:

If at trial . . . the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The outpatient treatment and supervision must begin on the person's release from a secure correctional facility or discharge from a state hospital and must continue until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include: (1) requiring the person to reside in a particular location; (2) prohibiting the person's contact with a victim or potential victim of the person; (3) prohibiting the person's use of alcohol or a controlled substance; (4) requiring the person's participation in a specific course of treatment; (5) requiring the person to submit to tracking under a particular type of tracking service and to any other appropriate supervision; (6) prohibiting the person from changing the person's residence without prior authorization from the Judge and from leaving the state without that authorization; (7) if determined appropriate by the Judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Art. 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone; (8) requiring the person to notify the case manager within 48 hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person; and (9) any other requirements determined necessary by the Judge [THSC, § 841.081–841.082 ].<sup>1</sup>

Although this list of requirements is a long one, it is important to remember that the person is not being sent to a secure facility, as the predator would be in all other states with sexual predator commitment laws. This is the unique part of the Texas statute: it allows reintegration into the community as a part of the treatment and supervision of the sexual predators who are committed. In this sense, the Texas statute is at the forefront of developments in this area of the law nationally and provides another option for those states considering the enactment of laws for civil commitment of sexually violent predators.

The Texas legislature built in an enforcement provision, should a person who is committed as a sexu-

ally violent predator violate the terms and conditions placed on him. The statute allows for subsequent criminal prosecution of those persons who fail to comply with the requirements placed upon them. Violation is considered a third-degree felony under the criminal laws of Texas.<sup>1</sup> At the present time, there have been three convictions under this statute.

### The Statute Under Attack: The Current Status of the Law in Texas

Obviously, the U.S. or Texas Supreme Court has not reviewed the Texas statute. Trial courts in Texas have, however, issued some rulings affecting the statute. In January 2001, the district court heard a declaratory judgment action that had been filed by all of the persons against whom petitions had been filed seeking their commitment as sexually violent predators. The court made findings of fact and conclusions of law, which included the following:

(1) Chapter 841 of the Texas Health and Safety Code was adopted and added by Acts 1999, 76th Legislature, Ch. 1188, § 4.01 (effective September 1, 1999), to address a serious threat to the general safety and welfare of the citizens of the State of Texas.

(2) The threat is caused by the likely engagement in repeated predatory acts of sexual violence by a small but extremely dangerous group of persons convicted and sentenced for more than one sexually violent offense, and who suffer from a behavioral abnormality making those persons likely to engage in a predatory act of sexual violence.

(3) Notwithstanding that there are those who would have addressed the risk differently whether in gross or in detail, the Chapter 841 solution is shown to be fair, efficient and effective in the limited time the statute has been in effect.

(4) Chapter 841 is not punitive in nature or effect, and is Constitutionally valid.

(5) Chapter 841, its procedures and effect on sexually violent predators is civil as opposed to criminal, even though the Respondent is afforded far greater protection in the course of litigation than the average civil litigant.

(6) Of the 3000 persons considered for commitment, petitions are filed against less than 1 percent.

(7) The Respondents receive Court appointed counsel on a timely basis—namely once a petition is filed against them.

(8) Chapter 841 does not require scienter to commit a predator.

(9) Chapter 841 is neither intended to deter nor does it act as a deterrent. No punitive purpose is intended or served by Chapter 841 commitment.<sup>1</sup>

As was the case with *Kansas v. Hendricks*, the trial court ruled that the statute is constitutional.

## Discussion

The American Psychiatric Association has expressed valid concerns about the enactment of sexually violent predator statutes. The Texas statute addresses many of those concerns and eliminates some. The specific concerns include the following:

- (1) Is the mental abnormality requirement that includes antisocial personality disorder and other disorders not included in DSM a sufficient basis for the mental illness requirement of long-term civil commitment?
- (2) Is pedophilia a mental disorder that justifies involuntary civil commitment?
- (3) Does evaluation of sex offenders require special knowledge and techniques?
- (4) Why is the literature on recidivism so conflicting or unclear? Are the predator statutes a legitimate effort to provide treatment or merely a pretext for preventive detention?
- (5) Is involuntary civil commitment at the end of a penal sentence an appropriate legal remedy for offenders deemed likely to recidivate [Ref. 9, p viii]?

The first listed concern was considered in Texas at length. The legislature attempted to address this point by using the term behavioral abnormality in the definition rather than mental abnormality. This was an attempt to tie the inappropriate sexual behavior more closely to the mental component of the disorder that requires the new statutory involuntary civil commitment. Accordingly, the diagnosis of pedophilia is a mental disorder with such a behavioral component. The third concern, that of special knowledge being required of the evaluators, was also addressed. In Texas, the standard civil commitment criteria require that a physician be involved in the process. This language was consistently applied to the sexual predator legislation. This aspect of the Texas law may result in more direct medical professional involvement in the commitment procedure. The fourth concern, that of the conflicting findings in the literature in this area, has become a very important one. Clearly this is an evolving and dynamic source of information. All reports state that sexual predator laws should be sensitive to current and future data that could properly influence the performance of these evaluations. Finally, the fifth consideration, adding a legal remedy at the end of the penal sentence, is the essence of all such law. By definition, these commitments are a response to a growing national trend toward sexual offender recidivism.<sup>10</sup>

The clinical evaluation attempts to provide all of the relevant information to the judge and jury in each case. This approach further attempts to identify the

risk factors for recidivism, as well as those that are referred to as protective factors—those that weigh against recidivism based on the current research.<sup>11</sup> Those include intrafamilial acts, abstinence from chemical dependency, and fewer collateral nonsexual offenses. This allows the judge and the jury to decide for themselves the issues presented to them with all relevant scientific information. This, it is hoped, places the discussion in the arena of an ethical and appropriate clinical evaluation, which all forensic psychiatrists strive to provide in a wide variety of forensic areas.

On a fundamental level, this approach makes the process of the civil commitment of sexually violent predators one that meets the standards that guide the profession. As more states pass these statutes and because the U.S. Supreme Court has upheld the decision in *Kansas v. Hendricks*, courts will continue to look for input from forensic psychologists and psychiatrists in the process. This approach attempts to provide a fair process of presenting opinions to courts and juries. It is not solely a question of the forensic psychiatric community's performing work assigned by the legislative bodies across the United States. Realistically, avoiding consulting and testifying in sexually violent predator commitment cases is unlikely to stop the passage of new statutes or the further process of commitment of those individuals deemed to be sexually violent predators. Instead, the most effective method of enhancing the quality of this work may be for the forensic psychiatrist to remain involved, while focusing on providing such opinions in the most reasonably balanced manner allowed by current knowledge.

In this sense, the use of the DSM diagnosis of Pedophilia or the diagnosis of Antisocial Personality Disorder for the civil commitment of sexually violent predators becomes an issue for the judge or jury to decide based on the evidence presented in court. The Task Force of the American Psychiatric Association expresses reluctance in associating sexual disorders with offenders who are traditional psychiatric patients.<sup>9</sup> The work of Dr. Dennis Doren<sup>12</sup> points to the high levels of sexual recidivism among rapists and extrafamilial pedophiles. This higher level of risk of recidivism creates a higher risk of violence and terror not only for the public in general, but also for each physician who is asked to make subsequent referral recommendations on these individuals during their time in whatever setting. The proper clinical use

of this legislation has the additional advantage of providing a useful alternative for those treatment clinicians who often struggle with decisions concerning medical treatment, therapy, and placement alternatives.

It should be noted, however, that legislatures and governors undertake these policy considerations across the United States as they consider the passage of these statutes in their various forms—many of them with the assistance and guidance of the Task Force Report of the American Psychiatric Association.<sup>9</sup> The legislatures and governors who have opted to pass these statutes have chosen not to examine all of the concerns of the Task Force Report. Moreover, the U.S. Supreme Court upheld the commitment of Mr. Hendricks in *Kansas v. Hendricks*, and the diagnosis in that case was pedophilia.<sup>2</sup> Essentially, the forensic psychiatrist who practices in this arena is now left in the role of providing as ethically balanced an approach to the judge and jury as is possible, and that approach should include the use of the full array of available information tools. The empirically guided clinical assessment emphasizing risk and protective factors facilitates the psychiatrist's task.<sup>8</sup>

### Conflicting Literature on Recidivism

The use of actuarial instruments to predict risk of recidivism is, indeed, a controversial topic within the forensic community.<sup>13</sup> There appears to be two camps of opinions regarding the use of actuarial assessments as a means of predicting sexual recidivism. The focus of the criticism is on the question of whether the actuarial assessments can provide a scientifically accurate measure of risk of sexual recidivism. More succinctly, the criticism is that these actuarial instruments lump individuals into broad categories and ignore the individual characteristics of each case—that is, they compare apples and oranges simply because they end up with the same score on one of the actuarial assessments.<sup>6</sup>

Throughout the states with civil commitment statutes focused on sexually violent predators, courts have reached widely varying conclusions regarding the admissibility of these actuarial assessments.<sup>14</sup> The conclusion reached by the court varies based on what standard of admissibility is applied by each jurisdiction. Wisconsin, for example, uses a flexible-relevance standard that often results in the admission of the actuarial assessments. Some states, however, use the *Frye* standard<sup>14</sup> developed by the federal

courts before the rendering of the *Daubert*<sup>15</sup> decision by the U.S. Supreme Court. In Texas, however, the Texas Supreme Court has adopted a different standard.

In *E.I. DuPont de Nemours and Co., Inc. v. Robinson*,<sup>16</sup> the Texas Supreme Court set forth the criteria to be used by courts when exercising their gate-keeping function in regard to expert testimony:

- (1) The extent to which the theory has been or can be tested;
- (2) the extent to which the technique relies on subjective interpretation of the expert;
- (3) whether the theory has been subject to peer review and/or publication;
- (4) the potential rate of error for the theory;
- (5) whether the theory is accepted as valid by the relevant scientific community; and
- (6) whether non-judicial uses have been made of the theory.<sup>16</sup>

Presently, the ruling from a Texas Court concerning the admissibility of expert testimony in cases involving the civil commitment of sexually violent predators is applicable at the trial level only. A *Robinson* hearing has been held at the trial court level, but a decision has not been rendered.<sup>15</sup>

The forensic psychiatric community should be cautious when setting a level of expectation that may be excessively high when making predictions of probabilities of recidivism. The California courts ruled on this very issue in *Tarasoff v. Regents*.<sup>17</sup> In that traditional civil commitment case, forensic psychiatrists were asked to use all available data, including their clinical judgment, to make a rational and reasoned decision concerning the relevant future risks. The California Supreme Court indicated that although its opinions might not be perfect, forensic psychiatrists as a professional group should use their best judgment in making these decisions.<sup>17</sup> The actuarial data, in this sense, represent an additional source of information, that although not the answer to the entire question at hand, can certainly be an aid in the decision-making process.<sup>17,18</sup>

### Legitimate Effort to Provide Treatment

The Task Force of the American Psychiatric Association in their report questions whether the civil commitment of sexually violent predators is a legitimate effort to provide treatment or merely a pretext for preventive detention.<sup>9</sup> It is on this issue that the Texas scheme clearly breaks from the other states with civil commitment statutes focusing on sexually violent predators. The outpatient model in use in Texas eliminates the concerns of using the statute to detain those who would be released from prison

without treatment or supervision.<sup>1</sup> Clearly, in these cases, the individual is still released from the locked setting. This is an inherent component of the outpatient process. However, one must remain mindful of the potential for coercion in any of these assessments. This potential seems to have been an aspect of the Task Force's concerns regarding ethics.

This matter was raised vigorously in *Kansas v. Hendricks*. The U.S. Supreme Court reached the decision that the statute in Kansas was not a pretext for preventive detention but was instead a program geared toward the treatment of the committed sexual predator.<sup>2</sup> This is not, however, the only decision from the U.S. Supreme Court in this area. During the 2001–2002 term the Court considered a case from the state of Washington that focused on the implementation of the Washington inpatient treatment program and whether it was merely a pretext for preventive detention.<sup>19</sup> In *Seling, Superintendent, Special Commitment Center v. Young* the Court considered treatment compared with preventive detention. They decided, despite the criticisms leveled at the Washington inpatient treatment program, that it was a treatment program and not a pretext for preventive detention. The Court relied on *Hendricks* in making its decision, focusing on the treatment components of the statutes in question. The decision in *Seling* was eight to one, with Justice Stevens dissenting from the majority opinion of the Court.<sup>19</sup>

The Texas scheme, on its face, is less restrictive than that of the programs in Kansas and Washington, which have both been examined by the U.S. Supreme Court. In Texas, those who are committed are released into the community and not into secure inpatient treatment facilities with a complete loss of civil liberty and freedom.<sup>1</sup> Instead, they live in their own residences and are allowed to work and live within the community, subject to electronic monitoring and treatment requirements. This less restrictive alternative addresses squarely some of the concerns of the Task Force of the American Psychiatric Association in regard to these statutes' being a pretext for preventive detention.

The Texas law has in this sense attempted to develop an effective balance in the area of the civil commitment of the sexually violent predator. Outpatient supervision and treatment in all practical terms can lend itself to greater actual psychotherapeutic intervention. Some psychiatrists question treatment during incarceration. There can be an advantage to con-

ducting treatment in a setting where offenders have access to their potential stimuli. These interventions could be more effective if the sexual predator knew that there was an ongoing umbrella of observation following him during outpatient treatment and supervision. Clearly, there can be disadvantages as well. Primarily, by its very nature, an outpatient program does not maintain the same degree of prevention that an inpatient program would. The increased risks of reoffense are obvious. Also, the additional limitations placed on someone who is required to wear an electronic monitor are notable. A person who is not accustomed to a structured lifestyle may very well require active assistance with the transition process.

### **Removing Funding from Traditional Mental Health Programs**

As mentioned earlier, in testimony to the Texas Legislature, concerns were expressed about the possibility of the government's funding the civil commitment of sexually violent predator programs at the expense of traditional mental health programs. This is a very real and legitimate concern for those who practice clinical psychology and psychiatry. At this point, in Texas, there has been no evidence that funding has been taken from traditional mental health programs to fund the Texas civil commitment of sexually violent predator program. This is perhaps because of the greatly diminished cost of implementing an outpatient supervision and treatment program compared with the enormous fiscal cost of staffing and running an secure inpatient facility for housing and treatment. The Texas scheme reduces the potential burden on the taxpayer and does not force the state to choose between funding traditional mental health programs and those programs designed for the treatment and supervision of sexually violent predators.

### **Conclusion**

Controversy among forensic psychologists and psychiatrists concerning the civil commitment of sexually violent predators has not stopped states across the United States from enacting statutes calling for the treatment and supervision of these predators. The U.S. Supreme Court has ruled on the constitutionality of these statutes squarely in *Hendricks* and *Seling*.<sup>2,19</sup> Although it has the most recently enacted statute, Texas also has developed a unique statute in this area. The Texas statutory

scheme varies greatly from those in effect in the other states, especially in the area of the use of outpatient treatment and supervision. These variances in the Texas statute create a new way for jurisdictions across the United States to manage violent sexual predators. The Texas statute also reduces some of the concerns expressed by the Task Force Report from the American Psychiatric Association regarding the implementation of statutes allowing for the civil commitment of sexually violent predators. Empirically guided clinical assessments can provide judges and juries with information to aid them in their task of determining who meets the criteria of a sexually violent predator under each state's statutory scheme. These empirically guided clinical assessments when performed by qualified professionals can meet the ethical guidelines of the profession and be of relevance to judges and juries as well. The Texas experience provides fertile ground for the practicing forensic psychiatrist in the areas of risk assessment, forensic assessment, and expert testimony.

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