

involuntarily medicated, such as to restore capacity to stand trial.

Mr. Holman's volatile behavior when noncompliant with medication led the appeals court to rule that he was a danger to himself and others and to affirm the order of the district court. The other option the court considered in disposition of Mr. Holman was imprisonment. This plan of action, however, continued to place him at a risk to himself and the staff of the facility, as evidenced by his behavior while incarcerated. Placing him in the least restrictive environment for treatment is mandated by *Sell*, which supports supervised release in lieu of incarceration. Before the onset of symptoms, Mr. Holman was charged with drugs and weapons violations in which he was convicted. It could be argued that even if optimally treated, he might still be dangerous to others based on his legal history.

This case represents an extension of legally recognized situations that constitutionally permit involuntary psychiatric medications. While *Harper* provides the requirements for involuntary medication in prison and *Sell* outlines the requirements for involuntary medication to restore competence to stand trial, the present case outlines the guidelines for involuntary medication as a condition of supervised release. If this expansion continues, future cases may examine the use of involuntary medication for potentially dangerous patients in nonforensic populations as a condition for outpatient treatment upon release from a psychiatric hospital.

## Supervision for Convicted Sex Offenders

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### Abel Assessment of Sexual Interest Accepted as a Condition of Supervised Release of Sexual Offenders

The Abel Assessment for Sexual Interest (AASI-2), a screening tool for deviant sexual interests that mea-

sures visual reaction time, requires a test subject to view slides of clothed persons of varying ages and sexes, so that the person's level of sexual attraction can be rated. The length of time an individual views a particular slide determines the individual's sexual interest for different groups of people, both adults and children. The AASI-2 is widely mandated by U.S. courts as a condition of sex offender supervised release. Abel, penile plethysmography (PPG), and polygraph examinations are used to determine whether a sex offender is at heightened risk of reoffending.

In *United States v. Stoterau*, 524 F.3d 988 (9th Cir. 2008), Joseph Stoterau filed an appeal regarding the terms of supervised release ordered by the U.S. Central District Court of California. The court mandated that upon release from prison, Mr. Stoterau would be subject to Abel testing as a condition of his supervised release. Among several claims, Mr. Stoterau petitioned the Ninth Circuit Court of Appeals to remove the AASI-2 testing requirement. Mr. Stoterau argued that the district court had erred in mandating Abel testing without articulating on the record at sentencing its reasons for imposing such condition. He also contended that Abel testing is too unreliable to be reasonably related to the goals of supervised release.

#### Facts of the Case

In December 2005, Joseph Stoterau, then 26, met J.D. at a gay and lesbian support group. J.D. was 14 at the time. In July 2006, Mr. Stoterau introduced J.D. to rentboy.com, a website that advertises gay male escorts. Mr. Stoterau then persuaded J.D. to pose for nude photographs, with the understanding that they would be uploaded to the website "to make some money." Mr. Stoterau posted J.D.'s photographs along with his mobile phone number and acted as an intermediary between the young man and potential clients. The record indicates that Mr. Stoterau drove J.D. to his sexual encounters, gave him alcohol, and paid him a portion of the \$250 he charged, while keeping the rest for himself.

On August 4, 2006, officers from Immigration and Customs Enforcement executed a search warrant on Mr. Stoterau's residence and seized his personal computer. While examining the computer's hard drive, officials discovered images of child pornography. On October 30, 2006, in the United States District Court for the Central District of California,

Mr. Stoterau pleaded guilty to one count of transporting child pornography. He was sentenced to 151 months in prison followed by five years of supervised release.

As part of the conditions of supervised release, Mr. Stoterau would be subject to AASI-2 and polygraph tests. In addition, the court mandated that Mr. Stoterau would not have access to internet pornography, would have restricted communications with minors, could not utilize commercial mail services (such as a post office box), would not have employment activity with businesses that had regular contact with minors, and would bear financial responsibility for his psychiatric treatment during supervised release. Mr. Stoterau appealed the decision to the U.S. Ninth Circuit Court of Appeals, arguing, among several other claims, that the district court's mandated terms for his supervised release were an abuse of discretion. Mr. Stoterau specifically challenged the provision mandating Abel testing by arguing that the court infringed on his right to due process because it had not articulated the reason for imposing the test. Furthermore, Mr. Stoterau argued that the test was too unreliable to be reasonably related to the goals of supervised release.

*Ruling and Reasoning*

The U.S. Ninth Circuit Court of Appeals decided that the district court did not abuse its discretion since the conditions of Mr. Stoterau's supervised release were reasonably related to the goal of deterrence, protection of the public, or rehabilitation of the offender, and involved no greater deprivation of liberty than was necessary for the purpose of supervised release. The court stated that the Due Process Clause does not require a circuit court to specify its reason for mandating a term of supervised release, unless a significant liberty interest was at stake.

The court ruled that unlike PPG, chemical castration, or compelled antipsychotic medication treatment, Abel testing was a minimally invasive procedure and did not impede significant liberty interests,

as it did not involve significant manipulations or intrusions. Furthermore, the court opined that Abel testing did not impose a significant burden on the subject, as it only required showing a series of slides and monitoring the amount of time the subject's focus was on each slide. Therefore, a trial court is not required to express a distinct rationale in mandating Abel testing for individuals under supervised release. Moreover, the court reasoned that as protecting children from sexual abuse is a legitimate state interest, use of Abel testing is reasonably related to the goals of supervised release.

*Discussion*

In the case of *United States v. Stoterau*, the Ninth Circuit Court of Appeals clarified the scope of its previous ruling in *United States v. Weber*, 451 F.3d 552 (9th Cir. 2006). In that case, the court ruled that PPG testing of sex offenders under supervised release is an undue deprivation of a significant liberty interest, when less intrusive means of testing were available. In *Stoterau*, the court reaffirmed its previous ruling in *Weber*, proscribing unwanted intrusions and manipulations of individuals subject to supervised release. However, the court found that, unlike PPG testing, Abel testing is nonintrusive. In addition, the court concluded that despite concerns about the reliability of Abel test results, there is enough evidence to support the use of the AASI-2 in assessing an individual's sexual interest in children, which is reasonably related to the state interest of public safety.

The Ninth Circuit Court of Appeals' ruling that the AASI-2 does not significantly affect an individual's interest in avoiding unwanted bodily intrusions and manipulations has an additional consequence: courts can mandate Abel testing in supervised release settings without having to provide a rationale. This distinction further differentiates Abel testing from PPG and is likely to result in an increased use of the instrument as a condition of parole and probation for individuals charged with sex offenses.