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Recent Developments: Graves v. State: A Conviction in Another State of a "Sexually Violent Offense" May Not Be Used as the Predicate to Establish That a Person Is a "Sexually Violent Predator" in Maryland

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Graves v. State:

A Conviction in Another State of a "Sexually Violent Offense" May Not Be Used as the Predicate to Establish that a Person is a "Sexually Violent Predator" in Maryland

By Ryan N. Hoback

The Court of Appeals of Maryland held the statutory definition of a sexually violent predator does not include persons who are convicted of committing criminal acts in another jurisdiction that would constitute a sexually violent offense in Maryland. *Graves v. State*, 364 Md. 329, 772 A.2d 1225 (2001). In so holding, the court resolved an apparent incompatibility between the applicable Maryland statute and case law.

Garnell Graves ("Graves") pleaded guilty in the District of Columbia to a charge of indecent acts with a minor in 1992. He served four years of a two- to six-year prison sentence and was paroled in May of 1996. While on parole, Graves began residing with Leslie Horton and her eight-year-old sister in an apartment in Suitland, Maryland. Graves forced the younger sister to have vaginal intercourse approximately eighteen times in 1997.

A Prince George's County Grand Jury indicted Graves, charging him with child abuse, second-degree rape, and third-degree sex offense. On June 23, 1998, the State requested the trial court determine before sentencing whether Graves was a sexually violent predator pursuant to section 792(b)(4) by virtue of his District of Columbia conviction. A sexually violent predator is a person who is convicted of a sexually violent offense or has been determined to be at risk of committing a subsequent sexually violent offense.

On October 27, 1998, Graves entered an *Alford* plea to the charge of third-degree sexual offense. An *Alford* plea states the defendant "understandingly consent[s] to the imposition of a prison sentence even if he is unwilling to admit his participation in the acts constituting the crime."

On November 20, 1998, the Circuit Court for Prince George's County ruled Graves was a sexually violent predator under the statute. The trial court imposed a prison sentence of ten years with three years suspended and a five-year parole period with supervision. On February 18, 1999, Graves filed a motion for modification and reduction of sentence, asserting the trial court improperly considered his out-of-state conviction and unnecessarily exceeded the sentencing guidelines for his offense. The motion was denied.

The Court of Special Appeals of Maryland affirmed the trial court's determination that Graves was a sexually violent predator holding "out-of-state convictions may be considered in determining whether an individual is a sexually violent predator." The court of special appeals noted the statutory section concerning sexually violent predators specifically excluded reference to out-of-state convictions, but reasoned the "legislature intended a broad and sweeping registration of sexual offenders."

The court of appeals began its analysis by reviewing the history of the enactment of the applicable statute. *Id.* at 336-39, 772 A.2d at 1229-31. In 1995, the Maryland Legislature enacted Article 27, § 792 "Registration of Offenders." *Id.* at 336, 772 A.2d at 1229-30. The act "provided for sexual offenders, upon release from prison, to notify local law enforcement of [his or her] presence in the county where [he or she] intended to live." *Id.* at 337, 772 A.2d at 1230.

The court went on to note that in 1997 the Maryland Legislature expanded the sexual registration offender statute, in accordance with the 1996 amendments to its federal counterpart, and "established additional classifications of offenders subject to the statutory registration requirements." *Id.* at 338, 772 A.2d at 1231. The amended statute expanded the definitions for a "child sexual offender" and a "sexually violent offender" to include references to out-of-state convictions. *Id.* at 340-42, 772 A.2d at 1232-33. However, the court noted the

definition of a "sexually violent predator" omitted any reference to out-of-state convictions. *Id.* at 341, 772 A.2d at 1232.

Next, the court of appeals explained the two-pronged test for determining whether an individual is a sexually violent offender. *Id.* at 342, 772 A.2d at 1233. First, the court must determine whether the accused committed more than one sexually violent offense. *Id.* If the court resolves this question in the affirmative, it must next determine whether the person is likely to commit additional sexually violent offenses. *Id.* In determining the likelihood of a repeat offense, section 792(b)(3) permits the court to consider "any evidence" it considers appropriate, which would include prior convictions. *Id.*

The court next attempted to "identify and effectuate the legislative intent underlying the statute(s) at issue". *Id.* at 345, 772 A.2d at 1235 (*quoting Derry v. State*, 358 Md. 325, 335, 748 A.2d 478, 483 (2000)). The court first looked at the plain meaning of the words of the statute finding the "legislature specifically excluded reference to out-of-state convictions" when considering "whether someone qualifies as a sexually violent predator and the imposition of enhanced registration requirements." *Id.* at 346, 772 A.2d at 1235.

The court went on to review the background and procedural process of the enactment of the statute in an effort to show the Legislature carefully considered the words that comprised the current statute. *Id.* at 347-50, 772 A.2d at 1236-37. The court stated although the history of the statute supported the inclusion of out-of-state convictions in the definitions of "sexually violent offense," "sexually violent offender," and "sexually violent predator," the bill was rewritten before enactment only retaining reference to extraterritorial criminal acts in the definition of a "sexually violent offender." *Id.* at 348-50, 772 A.2d at 1236-37.

In addition, the court explained that to read the definition of a "sexually violent predator" to include out-of-state convictions of sexually violent offenses would require an "interpretative insertion of words and phrases into the statutory language which the General Assembly consciously and deliberately removed from the definitions 'sexually violent predator' and 'sexually violent offense.'" *Id.* at 350, 772 A.2d at 1238. Moreover, the court opined even if the legislature omitted references to out-of-state convictions by mistake, the court is incapable of "correcting 'an omission in the language of a statute even though it appeared to be the obvious result of inadvertence.'" *Id.* at 351, 772 A.2d at 1238 (*quoting Coleman v. State*, 281 Md. 538, 547, 380 A.2d 49, 55 (1977)).

Graves v. State is critical to Maryland case law because it reestablishes the notion that courts cannot fix the perceived mistakes of the Legislature. Out-of-state convictions may not be used to determine whether a defendant is a sexually violent predator even when the perceived mistake has the potential to put at risk those who are typically afforded special protection from sexual criminals, such as women and children. Upon the legislature falls the sole responsibility of allowing Maryland courts to consider extraterritorial offenses in determining whether an accused is a sexually violent predator. They alone have the power to amend the statute thereby ensuring greater public safety.