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Recent Developments: Kansas v. Hendricks: Involuntary Commitment of Pedophile Based in Part on past Criminal Conduct Found Constitutional

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Kansas v. Hendricks:

Deferring to the pronounced legislative intent, the United States Supreme Court, in *Kansas v. Hendricks*, 117 S. Ct. 2072 (1997), allowed the state discretion in defining statutory terms that have legal significance. In a five to four decision, the Court concluded that Kansas' civil commitment statute aimed at sexually violent predators satisfied substantive due process requirements. Relying on the non-punitive nature of civil law, the Court further held that the statute did not violate constitutional prohibitions against double jeopardy or *ex post facto* lawmaking.

In 1994, Kansas enacted the Sexually Violent Predator Act ("Act"). The Act was designed to target repeat sexual offenders who did not fall within the scope of the existing civil commitment statute. Leroy Hendricks ("Hendricks") was the first person Kansas attempted to commit under the new Act. Hendricks had a long history of sexual offenses, including his most recent conviction of taking "indecent liberties" with two thirteen-year-old boys. He had served nearly ten years of his sentence and was due to be released to a halfway house when Kansas filed a petition to commit him as a sexually violent predator. At trial, the jury found that Hendricks' diagnosis as a pedophile qualified as a "mental abnormality" under the Act. As a result, Hendricks was committed to the custody of the Secretary of Social and Rehabilitation Services until his

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pedophilia no longer presented a threat to society. Hendricks appealed claiming the Act violated the Due Process, Double Jeopardy, and *Ex Post Facto* Clauses of the United States Constitution.

The Kansas Supreme Court ruled in favor of Hendricks on his due process claim but did not address his double jeopardy or *ex post facto* claims. Kansas petitioned for certiorari to the United States Supreme Court and Hendricks filed a cross petition to reassert his double jeopardy and *ex post facto* claims. The Court granted certiorari on both petitions and reversed the lower court's ruling that there was a due process violation.

The Court began its analysis by emphasizing that an individual's constitutionally protected right against physical restraint can be overridden in civil proceedings by the state. *Kansas v. Hendricks*, 117 S. Ct. 2072, 2079 (1997). Additionally, the Court asserted that states have historically provided for civil detention of citizens whose behavior posed a threat to public safety. *Id.* at 2079 (citing 1788 N.Y. Laws, ch. 31). Involuntary

commitment statutes have consistently been upheld where they provide certain procedural and evidentiary standards. *Id.* at 2080 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

The Court acknowledged that civil commitment statutes have been sustained against constitutional challenges when the statutes required proof of a person's dangerousness and mental illness. *Id.* at 2080 (citing *Heller v. Doe*, 509 U.S. 312, 314-315 (1993); *Allen v. Illinois*, 478 U.S. 364, 366 (1986)). The Court believed that this substantive due process standard was met by the Act in question. *Id.* First, the Act requires a finding that the individual is dangerous to himself or others before commitment can take place. *Id.* at 2080. This condition of dangerousness is satisfied if the person "has been convicted of or charged with a sexually violent offense." *Id.* (citing Kan. Stat. Ann. § 59-29(a)(02)(a) (1994)). Second, the Act requires a finding of "mental abnormality" or "personality disorder" that makes it impossible for the individual to control his behavior. *Id.* at 2080 (citing Kan. Stat. Ann. § 59-29(a)(02)(b) (1994)). The Court felt that the Act sufficiently narrowed the class of individuals to those who are truly dangerous because of their mental condition. *Id.*

Hendricks claimed the mental disorders that would lead to commitment under the Act were not equivalent to a "mental illness," and therefore, his substantive due process rights were

violated. *Id.* The standard used under most involuntary commitment statutes, including Kansas' existing statute, is "mental illness" not "mental abnormality." *Id.* However, the Court refused to distinguish between the two terms, asserting that states traditionally have been charged with defining medical terms that have legal significance. *Id.* at 2081 (citing *Jones v. United States*, 463 U.S. 354, 365, n.13 (1983)). The Act defines a "mental abnormality" as a "condition . . . which predisposes the person to commit sexually violent offenses." *Id.* at 2077 (citing Kan. Stat. Ann. § 59-29(a)(02)(b) (1994)). The Court found no substantive due process violation in Kansas' choice of the term "mental abnormality" in the statute, and reaffirmed the jury's finding that Hendricks' diagnosis as a pedophile qualified as a mental abnormality under the Act. *Id.* at 2081.

Next, the Court addressed Hendricks' cross petition claims. Hendricks argued that the Act established criminal proceedings and that its effect was to institute punishment. *Id.* He asserted the civil commitment proceeding was based on past conduct for which he had already been punished and was, therefore, in violation of the double jeopardy and *ex post facto* clauses of the Constitution. *Id.* The Court, unpersuaded by Hendricks' argument, found that the Act did not establish criminal proceedings. *Id.*

The Court proclaimed that a determination of whether a proceeding is civil or criminal is a matter of statutory construction. *Id.* at 2081 (quoting *Allen*, 478 U.S. at 368). The Court then

examined the history of the Act in order to ascertain whether the legislature intended the Act to be a civil proceeding. *Id.* at 2082. The Court relied on two facts in determining the legislative intent: (1) the placement of the Act in the probate code as opposed to the criminal code; and (2) the description of the Act by the legislature as creating a civil commitment procedure. *Id.* The Court explained that the stated legislative intent should be overridden only when clear proof exists that the scheme of the statute is punitive either in purpose or effect. *Id.* (citing *United States v. Ward*, 448 U.S. 242, 248-249 (1980)).

Evidence of a punitive purpose would exist if the Act furthered the main objectives of criminal laws. *Id.* The Court articulated that the two primary objectives of criminal laws are retribution and deterrence and that the Act did not further either objective. *Id.* The Act was found not to be retributive because it only considered prior criminal conduct as evidence to show that the individual had the requisite "mental abnormality." *Id.* Additionally, the Act did not function as a deterrent because the individuals committed have a "mental abnormality" that, by definition, prevents them from exercising any degree of control over their behavior. *Id.* Because of their mental condition, the threat of confinement was not a deterrent. *Id.*

Hendricks proposed other arguments tending to prove the Act was punitive, but each was similarly dismissed by the Court. Hendricks claimed that the use of

procedures under the Act normally found in criminal trials indicated that the Act was criminal not civil. *Id.* at 2083. In rejecting the argument, the Court stated that Kansas' decision "to provide some of the safeguards applicable to criminal trials cannot itself turn these proceedings into criminal prosecutions." *Id.* (quoting *Allen*, 478 U.S. at 372).

Hendricks also argued that the Act was punitive because it did not offer any legitimate treatment. *Id.* at 2083. In order for this argument to prevail, the Court stated that treatment for Hendricks' condition would have to have been available but failed to be provided by the state. *Id.* Additionally, if no treatment was available for a particular condition, this fact would still not be sufficient evidence to deem the Act punitive.

Id. The Court has "never held that the Constitution prevents a State from civilly detaining those for whom no treatment is available, but who nonetheless pose a danger to others." *Id.*

The Court did not find sufficient proof of a punitive purpose or effect to override the stated legislative intent that the Act was a civil proceeding. *Id.* at 2085. Because a finding that the Act was punitive was a prerequisite to the application of the double jeopardy and *ex post facto* clauses, the Court dismissed these claims.

The dissent, however, urged that there was sufficient proof to show a punitive purpose. *Id.* at 2092. For previously convicted offenders like Hendricks, the Act deferred the diagnosis that would have led to treatment until immediately prior to the scheduled

release from prison. *Id.* at 2093. The dissent believed that the delay of treatment and the failure to consider less restrictive alternatives was evidence that the Act's primary purpose was confinement and therefore punitive. *Id.* at 2094.

In *Kansas v. Hendricks*, 117 S. Ct. 2072 (1997), the Court gave deference to the Kansas legislature's stated intent for the Sexually Violent Predator Act and established a seemingly impossible standard of proof to challenge the "civil" label given to the Act. The Court refused to acknowledge

a distinction between a "mental illness" and a "mental abnormality," even though Kansas' existing civil commitment statute required a finding of "mental illness." The Act was admittedly created in order to circumvent the inflexible definition of this term. The Act was designed to cover a person who commits sexual offenses as a result of a predisposition, and is likely to commit them again if released from prison. With this decision, the required proof of dangerousness in the civil commitment proceeding can be

met merely by offering a prediction of recidivism based only on the fact that the person committed a sex crime in the past and does not need to be based on a finding that the person is currently a danger.

This case has provided the basis for a bill introduced in the Maryland General Assembly this session that would provide civil commitment as an option for detaining sex offenders. No doubt Maryland is the first of many states to follow the Kansas example.

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