

The Politics of Sexual Psychopathy: Washington State's Sexual Predator Legislation

*Stuart Scheingold**
*Toska Olson*** and
*Jana Pershing***

I. INTRODUCTION

According to the State of Washington's Community Protection Act, an offender who has been "convicted of a sexually violent offense"¹ and has served the corresponding sentence may be subjected to a civil action in which a "court or jury"² determines whether the offender is a "sexually violent predator."³ If so, the offender is incarcerated until such time as it is concluded, in a subsequent civil action, that the offender is cured.⁴ We see this legislation as a distinct departure from the principles of determinant sentencing that the legislature embraced a decade ago.

The Sentencing Reform Act of 1981 established presumptive sentences for each offense, calibrated according to the seriousness of the crime and the criminal history of the offender.⁵ Probation and parole were also excluded by the 1981 legislation. The normative argument in favor of determinate sentencing is that insofar as the punishment fits the crime, the

* Professor of Political Science, University of Washington.

** Ph.D. candidates in Sociology, University of Washington.

1. WASH. REV. CODE § 71.09.02(1) (Supp. 1990-91).

2. *Id.* § 71.09.050.

3. *Id.* § 71.09.020(1).

4. The Community Protection Act consists of 14 separate parts; civil commitment is covered in Part X. The Community Protection Act imposes tighter constraints on sexual offenders by extending the category of sexual offense to such crimes as residential burglary and arson that are deemed to be "sexually motivated" (Part VI), by increasing the sentences for sexual offenses (Part VII and IX), and by notifying the community of and by registering sexual offenders who have served their terms and have been released (Parts I and IV, respectively).

5. WASH. REV. CODE § 9.94A.030-.460 (1989 & Supp. 1990, 1990-91). Sentences are "presumptive" in that judges may depart from the specified range when they find "substantial and compelling reasons" for an exceptional sentence. *Id.* § 9.94A.120. For three crimes—murder in the first degree, assault in the first degree with intent to kill, and rape in the first degree—no exceptions are permitted to the specified minimums. *Id.* § 9.94A.120(4).

criminal justice system will be affording offenders their just deserts. Criminologically speaking, determinate sentencing promises to contribute to deterrence by providing clear and predictable penalties.

From this perspective, the sexual predator legislation amounts to a reversion to indeterminacy. While the criminal sentence, per se, is determinate, the civil commitment provisions subject sexual offenders to an indefinite period of incarceration.

What are the principles that guide this return to indeterminacy? Taken at face value, *rehabilitation* would seem to be the goal of the civil commitment provisions that make available a treatment program to cure and reintegrate sexual offenders. Of course, rehabilitation was unequivocally rejected by determinate sentencing reformers, who considered it both discriminatory and ineffective.⁶ An alternative interpretation is that the sexual predator provisions lead in an *incapacitative* direction—that is, they are designed to predict which offenders are so dangerous that they must be more or less permanently institutionalized to protect the society. Either way, the sexual predator legislation amounts to a repudiation of desert based, determinate sentencing based on the principle that sentencing has to do with past rather than future crimes.⁷

How are we to account for this retreat from the principles of determinate sentencing? The retreat may be viewed as an isolated exception or as an indication of a shift in sentencing philosophies. Regardless of which approach best describes the retreat from determinate sentencing, our objective is to understand the criminological assumptions and political forces that drive the sexual predator legislation. This Article focuses on the political process and, in particular, on the role of victim advocacy. We also want to situate the sexual predator provi-

6. Greenberg and Humphries summarize the argument against rehabilitation as follows:

[R]ehabilitation was not merely a laudable goal that scientific research had unfortunately failed thus far to achieve, but something far more insidious—an ideology that explained crime in highly individualistic terms and legitimated the expansion of administrative powers used in practice to discriminate against disadvantaged groups and to achieve covert organizational goals (such as alleviating court backlogs and repressing political opposition).

David F. Greenberg & Drew Humphries, *The Cooptation of Fixed Sentencing Reform*, 26 CRIME & DELINQ. 206, 206-08 (1980).

7. ANDREW VON HIRSCH, PAST OF FUTURE CRIME: DESERVEDNESS AND DANGEROUSNESS IN THE SENTENCING OF CRIMINALS (1987).

sions criminologically—that is, to understand the criminological argument in favor of these provisions and to explore the societal implications of moving sentencing in this direction.

Our preliminary inquiry leads us towards two propositions that will be taken up in subsequent sections of this Article:

(1) The criminological literature does not provide any grounds for dealing with sexual offenders, as such, in an exceptional fashion. The evidence does not indicate that sexual offenders are any more likely to recidivate than are other offenders or, indeed, that they are readily distinguishable from other violent offenders. They do not seem to be any more amenable to treatment programs. Nor do the data reveal an increase in the incidence of sexual offenses that might justify calls for exceptional measures.

(2) It seems to follow, therefore, that the explanation for the Community Protection Act is political. Specifically, it seems attributable to two highly publicized sexual assaults and to the dedicated efforts of victim advocacy groups that were spawned by these appalling crimes. The work of the advocacy groups led to the appointment of The Governor's Task Force on Community Protection and subsequently to the Community Protection Act that was passed by the Legislature without opposition.

Assuming that this preliminary analysis is correct, our interest is in exploring at length how, why, and to what effect victim advocacy groups were able to muster so much influence.⁸

II. CRIMINOLOGY

Let us turn first to the criminological literature to see whether it provides a justification for excepting violent sex offenders from the general rule of presumptive sentencing. Only if violent sex offenders, their criminal records, and/or their treatment prognosis are *different from other offenders* would special measures seem to be warranted. Although acts of sexual violence may often be particularly horrifying, only if the offenders that commit such acts can be reliably identified

8. This work is preliminary in the sense that we have not been able to gather all of the quantitative data that we need nor have we been able to conduct interviews with participants in the policy process. Accordingly, the "findings" offered here are provisional and will serve as questions or propositions for follow-up research. The results of this research were presented at the 1992 Meetings of the Law and Society Association in Philadelphia, May 28-31, 1992.

does it make legislative sense to designate them as a special class.⁹ As we detail below, our reading of the relevant literature suggests that sex offenders look a lot like other offenders, whether judged by their criminal records or their amenability to treatment. Given the blurred boundaries of the sex offender category, it seems hard to defend the special treatment of sex offenders either legally or criminologically.

The first point to be made is that sex offenders are no more likely to recidivate than are other types of offenders. Bureau of Justice Statistics cited by the Governor's Task Force indicate that in 1989, about 42% of all released murders were rearrested; 51.5% of all released rapists were rearrested; 48% of all other released sex offenders were rearrested; and 66% of all released robbers were rearrested.¹⁰ Within these violent crime categories, rearrest rates are, thus, higher for robbery than for any other category.¹¹ If rearrest rates are used as the standard for determining special treatment for violent offenders, then robbery should be targeted as a more serious problem than sex offenses.

Nor do the available data suggest that crimes of sexual violence are increasing at a faster rate than other types of crime. A 1990 study examines delinquency rates among 1945 and 1958 birth cohorts so that changes in incidence and recidivism rates over time can be compared.¹² Incidence rates were significantly different for the second cohort; 1.6 times higher for overall crime and 3 times higher for violent index rates. When violent crimes are analyzed by offense type, however, the following cohort II to cohort I rate ratios are reported: "3:1 for homicide, 1.7:1 for rape, 5:1 for robbery, and almost 2:1 for aggravated assault and burglary."¹³ Thus, although all violent crime categories have increased over time, rape rates have not

9. It might be argued that crimes of sexual violence have such devastating consequences for victims and their families and friends that special treatment is warranted. Perhaps so, but this legislation does not impose heavier penalties for particularly objectionable crimes. Instead, it purports to target a class of offenders that are largely indistinguishable from other offenders, and it does so in a necessarily ambiguous fashion; thus, the legislation raises the serious, and apparently unavoidable, specter of false positives and false negatives. See Norval Morris, *Keynote Address*, 15 U. PUGET SOUND L. REV. 517 (1992).

10. GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION, FINAL REPORT, IV-4 (1989).

11. *Id.*

12. PAUL E. TRACY ET AL., DELINQUENCY CAREERS IN TWO BIRTH COHORTS (1990).

13. *Id.* at 276.

increased as much as the rates for homicide, robbery and burglary.

Another problem with excepting sex offenders from the determinate sentencing scheme is that they are a diverse group not readily distinguishable from other criminals. Sex offenders are often involved in other types of crimes, including violent, as well as nonviolent, nonsex crimes. Washington State data for 1990 indicate that 25% of adults convicted of felony sex offenses had prior criminal histories.¹⁴ But note that 44% of these offenses were nonviolent, nonsex offenses; 16% were violent, nonsex offenses; and 44% were felony sex offenses.¹⁵ The data for juvenile sex felons in Washington are somewhat different but present the same mixed picture.¹⁶

Similarly, a national self-report longitudinal study of violent offending reveals that most juvenile offenders are not pure sex offenders.¹⁷ Only 4% of the juveniles were involved in multiple serious violent offenses. The researchers found that for "most serious violent offenders, involvement in serious violent behavior was short-lived (one year)"¹⁸ and "few serious violent offenders specialize in serious violent offending."¹⁹

14. WASHINGTON STATE SENTENCING GUIDELINES COMMISSION, A STATISTICAL SUMMARY OF ADULT FELONY SENTENCING 1989 (1990).

15. *Id.* at Chart 5.

16. 44% of committed juvenile sex felons had prior criminal histories. 49% were nonviolent, nonsex offenses; 18% were violent, nonsex offenses; and 33% were felony sex offenses. *Id.* at Chart 11.

17. Delbert S. Elliott et al., *Self-Reported Violent Offending*, 1 J. INTERPERSONAL VIOLENCE 472, 493 (1986).

18. *Id.* at 506.

19. *Id.* More broadly, the insufficiency of simply labeling an individual as a sexual predator is reflected in research that reports the demographic, motivational, and prior criminality and heterogeneity of sex offenders. A study conducted on rapists and child molesters suggests that these two types of sex offenders should be studied separately in subsequent research. See David Tingle et al., *Childhood and Adolescent Characteristics of Pedophiles and Rapists*, 9 INT'L J.L. & PSYCHIATRY 103, 115-16 (1986). Although research establishes that both groups are demographically diverse, the only research finding that is similar for both rapists and child molesters is that one-third to one-half of the offenders experienced sexual abuse during childhood. In general, rapists are characterized as having adolescent and childhood conflicts involving aggressive behavior. No common characteristics among child molesters were found except that the majority reported closeness to their mothers.

Similarly, with regard to sexual homicides, research indicates differences in the motives of serial sexual and single sexual homicide offenders. A study conducted in response to research on the role of violent fantasies in sexual homicides found that 86% of serial sexual homicide offenders were characterized as having violent fantasies as compared to only 23% of single sexual homicide offenders. Robert Alan Prentky et al., *The Presumptive Role of Fantasy in Serial Sexual Homicide*, 146 AM. J. PSYCHIATRY 887, 890 (1989). The researchers speculate that serial sexual homicide

This diversity has made it difficult for researchers to develop causative theories about sex offending,²⁰ thus raising questions about the Task Force's assertion that "clinical predictions about the likelihood of future dangerousness can be reliable when based on empirical evidence and developed according to rigorous standards."²¹ We read the literature as indicating that such predictions are much more difficult. Given the variations among sexual offenders and the lack of explanations to account for their behaviors, prediction would seem to be a rather chancy enterprise.

The available research also raises questions about the effectiveness of treatment programs that will be made available to sexual predators under the civil commitment provisions. According to a review by Furby, Weinrott and Blackshaw,²² of forty-two treatment studies, clinical treatment has not been demonstrated to reduce recidivism rates for sex offender populations. They argue that claims to the contrary are misleading; recidivism rates only appear lower for treated groups than for untreated groups. Their essential point is that criteria for admission to treatment programs are based on factors such as the sex offender's admission of responsibility for his or her crime and stated desire to reform. Sex offenders who meet these criteria would probably have lower recidivism rates than offenders who do not meet admissions criterion regardless of treatment.²³

offenders may have lost their inhibitions in acting out violent fantasies and point to the possibility of the use of violent fantasy incidence as a secondary intervention technique.

20. Prentky, *supra* note 19, at 887-91.

21. GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION, FINAL REPORT IV-4 (1989).

22. Lita Furbey et al., *Sex Offender Recidivism: A Review*, 105 PSYCHOL. BULL. 3, 22-27 (1989).

23. Critics of the Furby, Weinrott, and Blackshaw review, including the members of the Governor's Task Force, object that the review did not include current studies that have been properly designed; in addition, critics argue that the studies did not employ appropriate treatment methods. The Task Force cites an article by Marshall and Barbaree as demonstrating that "[a] recently reported follow-up study of a behavioral treatment program for selected offenders found that treatment significantly reduced recidivism." GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION, FINAL REPORT IV-7 (1989) (citing William Marshall et al., *The Long Term Evaluation of a Behavioral Treatment Program for Child Molesters*, 26 BEHAV. RES. THERAPY 499, 499-511 (1988)). But that article precedes the Furby, Weinrott and Blackshaw review by one year, and also examines only one type of sex offender, child molesters, therefore limiting the generalizability of the study findings. The strength of the Furby review is that it examines studies of several types of sex offenders instead of just one type. They caution that research "results from a sample representing one specific type of

A more recent study, the Sex Offender Treatment and Evaluation Project (SOTEP) of California, meets the criterion of a properly designed treatment program that is not met by many studies. SOTEP was acclaimed at a New York Academy of Sciences international conference on sexual aggression as a possible model for other states interested in implementing treatment programs for sex offenders.²⁴ Although less serious offenders were admitted to the treatment program, after a five-year follow up period comparing treated and untreated sex offenders, recidivism rates were not significantly different. The SOTEP project directors state that a significant reduction in recidivism rates must be achieved to legitimate the costs involved in maintaining the treatment program. The estimated cost of a SOTEP reoffense is \$211,000.²⁵ The SOTEP analysis concludes by recommending that the economic costs involved in treating sex offenders be compared to the social costs of the actual threat of violent crime to the general public.

Insofar as the criminological literature does provide some guidance, the sexual predator legislation strikes us as unresponsive to that guidance. In particular, we are puzzled by the way in which the civil commitment provisions define predatory crime as "acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization."²⁶ This would seem to exclude family members and acquaintances although the data indicate that "other known persons and fathers emerge as the principal alleged offenders in sexual assault related incidents" against the children of Washington.²⁷ Stranger-related assaults are reported as infrequent in number. In short, the definition does not include family members, who have been demonstrated to be the predominant offenders in child molestation cases.²⁸ Of course, to include family members would have

offender will not necessarily be applicable to another specific type nor would they be applicable to a population including multiple types." *Id.* at 4.

24. CALIFORNIA DEP'T OF MENTAL HEALTH, SEX OFFENDER TREATMENT AND EVALUATION PROJECT 6 (1989).

25. *Id.* at 38.

26. WASH. REV. CODE § 71.09.020 (Supp. 1990-91).

27. GOVERNOR'S JUV. JUST. ADVISORY COMMITTEE ET AL., CRIMES AGAINST CHILDREN: SPECIAL CHILD ABUSE REPORT 5 (1988).

28. This same point is made in another article cited by the Task Force. See GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION, FINAL REPORT IV-2 (1989) (quoting Richard J. Gelles & Murray A. Straus, *Is Violence Toward Children Increasing?*, 2 J. INTERPERSONAL VIOLENCE 212 (1987)). Gelles and Straus underscore the threat posed by parental abuse of children. It is perhaps also worth noting that the

made the bill more intrusive and politically more controversial. In criminological terms, however, it seems to follow that the reach of the legislation should be extended to crimes within families.

III. POLITICS

Victim advocacy groups played a pivotal role in the political process that spawned the Community Protection Act. Members of the groups "Friends of Diane" and "The Tennis Shoe Brigade" actively lobbied for change in the state's criminal justice system. The Governor's Task Force on Community Protection was created in response to public outrage over several gruesome crimes committed by repeat sexual offenders. Ida Ballasiotes and Helen Harlow, relatives of victims, became symbols of, and spokespersons for, the activists' grievances and were central members of the Task Force. The Task Force's policy recommendations were responsive to victim and activist testimony and to the emotions of the public.

Gary Nelson, chair of the Senate Law and Justice Committee, was quoted as saying that the sexual predator bill was "for the victims of the crimes" and that it was a "tribute" to them.²⁹ Indeed, public furor ensured that the bill never became an object of legislative wheeling and dealing and that it went through both houses virtually without opposition.³⁰ The Task Force recommendations were closely adhered to when the legislators drew up their proposals. Marlin Appelwick, chair of the House Judiciary Committee, acknowledges that some kind of bill would have been passed given the public temper on the

Task Force cited this article in expressing its concern for the high levels of violence against children, i.e., over 750,000 cases of parent-child abuse reported nationally each year. The implication is that we have an increasingly urgent problem. Our reading of the Gelles and Straus article and of the legislation leads us in a different direction. As we see it, the principle points made by Gelles and Straus are that the level of violence against children has actually remained relatively constant and that very severe types of violence markedly decreased. Gelles & Straus, *supra*, at 217. Violence against children only *seems* to be higher because of a large increase in official reports—that is, an increase up to 10% per year beginning in the mid-1970s. *Id.* at 212. Their claim is, however, that these reports are actually a function of the enhanced capacity of the "community's social control apparatus." *Id.* at 214. As they see it, and most criminologists would probably agree, the national victimization surveys on which they draw provide a more accurate measure of actual abuse. *Id.*

29. Jim Simon, *Senate Sends Sex Offender Bill to House*, THE SEATTLE TIMES, Jan. 25, 1990, at C6.

30. Jim Simon, *Predator Bill: The "Victims' Lobby" Wins*, THE SEATTLE TIMES, Feb. 6, 1990, at A1.

issue. He admits, however, that Ida Ballasiotes's and Helen Harlow's perseverance made it difficult for legislators to reject this particular bill.³¹

Legislators involved in the political proceedings conceded that public outrage about the crimes and the fact that the accused were repeat offenders was a key factor in the passage of the Community Protection Act. Even the ACLU, which disapproved of the civil commitment and mandatory registration provisions because of concerns about their constitutionality, kept their objections quiet. The state chapter of the ACLU decided not to testify at the legislative hearings, concluding that "it would be counterproductive, with emotions running so high."³² Robert Stalker, the Task Force's civil liberties advocate, also remained quiet, explaining that according to his "political assessment[,] . . . there was no point in opposing this."³³

The bill's authors were concerned more with lobbyists who were agitating for even stronger measures than with arguments about civil liberties. Indeed, the Task Force's sexual predator recommendations turned out to be among the milder proposals. The Senate, for example, passed a bill providing for greatly reduced prison sentences for prisoners agreeing to castration. Legislators said they voted for the measure in response to constituents' demands.³⁴ According to Paula Jallison, administrative assistant to King County Prosecutor Norm Maleng, "Lots of people were trying to make it tougher . . . It was political suicide not to support [. . . the sexual predator legislation]."³⁵ Ida Ballasiotes and other activists attended the House voting sessions. Ms. Ballasiotes was quoted as saying "[w]e were watching to see if anyone opposed the bill. . . . We were prepared to publicize the names of those who voted against it."³⁶

The Community Protection Act was, in part, an offering to the victim advocacy groups and to a concerned public. The adopted provisions were directly responsive to the fears of the average citizen and to the pain of victims and their families.

31. *Id.* at A5.

32. Barry Siegel, *Locking Up Sexual Predators*, L.A. TIMES, May 10, 1990, at A1, A30.

33. *Id.*

34. *Id.* at A31.

35. Siegel, *supra* note 32.

36. *Id.* at A31 (Note: Ms. Ballasiotes has denied making this statement).

Activists such as Ida Ballasiotes and Helen Harlow seized the initiative provided by public outrage and apparently overwhelmed the political process.³⁷

Our preliminary research also indicates that the goals of victim advocacy groups are not confined to this particular legislation. Ida Ballasiotes has indicated that these organizations have a broader agenda, which is aimed at Washington's entire criminal justice system. Their long-term goals have not been specified, except for Mrs. Ballasiotes's assertions that the public thinks that the system as a whole "stinks" and that "the parole board is next on our list."³⁸ This determination to encourage far-reaching reform reveals that the issues at stake are broader than the Community Protection Act itself.

The prominent role of victim advocacy groups in the passage of this legislation raises interesting issues that are the subject of some considerable controversy in the criminological literature. There are those who see victim advocacy as a progressive force that can contribute to a healthy partnership between criminal process professionals and the communities that they serve.³⁹ Others believe that victim advocacy groups tend to stir up a kind of law and order populism that undermines civil liberties and diverts attention from the structural causes of crime.⁴⁰ We see our research as an opportunity to shed some empirical light on what is so far a largely theoretical controversy. Among the questions that we want to pursue are: To what extent was the influence of victim advocacy groups typical or idiosyncratic? What forces account for the political clout of these groups? We are also interested in learning more about the broader agenda of the victim advocacy groups. What principles do they stand for and what kind of criminal justice or other reforms do they favor?

37. We find it extraordinary, and meriting further attention, that so important a piece of legislation could make it through the legislature virtually without opposition. It is all the more surprising in that the civil commitment provisions can reasonably be seen as a retreat from the legislature's unequivocal commitment to determinate sentencing.

38. Simon, *supra* note 30, at A1.

39. See generally JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* (1990).

40. See ROBERT ELIAS, *THE POLITICS OF VICTIMIZATION: VICTIMS, VICTIMOLOGY AND HUMAN RIGHTS* (1986); John M. Johnson, *Horror Stories and the Construction of Child Abuse*, in *IMAGES OF ISSUES: TYPIFYING CONTEMPORARY SOCIAL PROBLEMS* 5-19 (Joel Best ed., 1989).

As Christopher Rideout's article demonstrates,⁴¹ the Washington State Community Protection Act emerged out of a clash of discordant voices. Victim advocacy groups burdened by the raw pain of their losses demanded decisive action. Criminologists and criminal process professionals, while not unmindful of the agony of the victims, saw things differently. To them, as Norval Morris's contribution reveals,⁴² civil commitment programs have proven ineffective and abusive; indeed, they are more likely to cause harm than to do good.

The Task Force was charged with the responsibility for reconciling these discordant voices. It did so by introducing its own voice. In narrowing the focus of the sexual predator provisions to a discrete minority of the worst offenders, the Task Force sought to avoid a complete retreat from the principles of determinate sentencing. But in making an exception for a rather loosely defined group of offenders, the statute introduced the kinds of criminological inconsistencies that we have noted.

All of this is not to suggest that the Task Force proposal was a cynical exercise in least common denominator politics. Problem solving, when undertaken with the seriousness of purpose revealed here, is every bit as authentic as the outrage of victim advocacy groups and the skepticism of experienced professionals and criminologists. Indeed, responsible problem solving is an obligation that we quite properly impose on our political leaders.

Nor was the Task Force unmindful of the dangers of the state overreaching itself. As we have already pointed out, and as David Boerner's article makes clear,⁴³ the criminological inconsistencies in the legislation can be explained by the efforts of the Task Force to confine the sexual predator provisions to only the most egregious of the sexual offenders. The initial reports on the legislation suggest that the statute has been applied with moderation. According to the data presented by Tim Blood in this volume,⁴⁴ only a very small

41. J. Christopher Rideout, *So What's in a Name? A Rhetorical Reading of Washington's Sexually Violent Predators Act*, 15 U. PUGET SOUND L. REV. 781 (1992).

42. Norval Morris, *Keynote Address*, 15 U. PUGET SOUND L. REV. 517 (1992).

43. David Boerner, *Confronting Violence: In the Act and In the Word*, 15 U. PUGET SOUND L. REV. 525 (1992).

44. Timothy Michael Blood, *Proceedings Under Washington's New Statutory Scheme Providing for the Indefinite Involuntary Commitment of Sexually Violent Predators are Civil, not Criminal, in Nature*, 15 U. PUGET SOUND L. REV. 855 (1992).

proportion of the eligible sexual offenders have been subjected to civil commitment proceedings. This is consistent with other research suggesting that the partial autonomy accorded to criminal process professionals ordinarily buffers the system from the more extreme demands made upon it.⁴⁵

But the stakes of this legislation may be considerably higher than criminological consistency or the incidence of sexual violence. In the first place, the events leading up to the Community Protection Act seem to provide a clear example of what Albert Reiss has warned against: basing general policy on the public's reaction to extreme crimes and thus "mask[ing] the heterogeneity of events classed within them."⁴⁶ The result is to exaggerate the social costs of crime and to ignore its complexity. Secondly, the civil commitment proceedings seem illustrative of a growing tendency, explored at length by Stanley Cohen,⁴⁷ to erode the boundaries between the state and society. In this instance, the heart of the problem is the way in which the civil and criminal processes are fused by using civil commitment proceedings to evade the constitutional constraints imposed on criminal process. Most notably, this legislation can be seen as a step towards anticipatory social control: the sexual predator provisions incarcerate individuals for fear of what they might do in the future rather than for the crimes they have committed and for which they have already paid their prescribed debt to society. In short, irrespective of the good intentions of responsible policy makers and criminal process professionals, there are political forces at work that could generate serious, unintended, and dangerous consequences.

45. See STUART A. SCHEINGOLD, *THE POLITICS OF STREET CRIME* (1991).

46. Albert J. Reiss, *Public Safety: Marshalling Crime Statistics*, 453 *ANNALS AM. ACAD. POL. & SOC. SCI.* 222, 225 (1981).

47. See generally STANLEY COHEN, *VISIONS OF SOCIAL CONTROL* (1987).