

### U.S. Supreme Court Upholds Kansas Law Allowing Indefinite Civil Commitment of Sexual Offenders

In a 5-to-4 decision, the U.S. Supreme Court upheld a Kansas law that allows for indefinite involuntary confinement of sex offenders who do not meet the state's normal criteria for civil commitment for mental illness but are considered likely to engage in predatory acts of sexual violence.

The decision, issued June 23 in *Kansas v. Hendricks*, overturned a ruling by the Kansas Supreme Court that the Kansas Sexually Violent Predator Act is unconstitutional. The state court had ruled that the law does not satisfy the due process requirement that involuntary civil commitment must be based on a finding of mental illness.

The American Psychiatric Association filed an *amicus* brief in support of the Kansas Supreme Court ruling, arguing that the central figure in the case, Leroy Hendricks, was not mentally incompetent, there was no certainty he would commit another offense, and his confinement was simply a public safety measure with a strongly

criminal cast. APA said the law violates the essential principle of concern for the best interest of persons with mental illness that traditionally has been the central justification for civil commitment. In its brief, APA emphasized that medical diagnoses should not be improperly invoked to support involuntary confinement and that psychiatric hospitalization should be reserved for the proper care and treatment of patients.

Hendricks, now in his sixties, has a long history of sexual involvement with children. In 1984 he pleaded guilty to two counts of taking indecent liberties with two 13-year-old boys and was sentenced to five to 20 years in prison. The state dropped a third count and did not seek longer imprisonment under the state recidivism statute.

In 1994, when Hendricks was about to be released under parole-like terms, the state petitioned a court to continue his confinement under the new Sexu-

ally Violent Predator Act. The law requires the state attorney general to be notified of a sexual offender's pending release and to appoint a review committee to determine whether the offender meets the "sexually violent predator" standard. If so, the offender is confined to a secure facility by a qualified professional. A trial is then held in which it must be proved beyond a reasonable doubt that the defendant is a sexually violent predator.

The act defines sexually violent predator as "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence," including rape and various sex offenses involving children. The act does not define personality disorder, but mental abnormality is defined as a congenital or acquired condition "affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace." The act acknowledges that sexually violent predators do not have a mental disease or defect that makes them appropriate subjects for regular civil commitment and that they are not good subjects for existing modalities for treating mental illness.

A person who is found to be a sexually violent predator is committed to the custody of the Kansas secretary of social and rehabilitation services for "control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large." Persons so committed must be kept segregated from others who are civilly committed. They must be given care and treatment that "conform to constitutional requirements." Their mental condition must be examined and their status reviewed by the court once every year. A person who seeks release at the annual review and is considered by the court to no longer be a menace is entitled to a new hearing.

Hendricks was found to be a sexually violent predator and was sent to Larned (Kans.) State Hospital. He ap-

### Nationwide NMHA Survey Finds Strong Public Support for Equal Coverage of Mental Illness

A nationwide survey conducted for the National Mental Health Association found that an overwhelming majority of Americans believe that health insurance should provide the same coverage for mental health problems as it does for physical problems.

Sixty-one percent of those polled strongly agreed and 32 percent agreed that mental illness should have equal coverage. Support for mental health parity did not vary by age, income, region, or race. However, women were more likely than men to believe that their family might need mental health care and were slightly more likely to support mental health parity.

Support for mental health parity was not related to a respondent's belief that a family member might need mental health care: 61 percent of all respondents strongly supported parity, while 28 percent had a strong expectation that a family member would need mental health treatment.

Sixty-one percent of respondents also had some knowledge of the limits of their health insurance coverage for mental health treatments.

Opinion Research Corporation conducted the survey May 15-18. Respondents were a nationally representative sampling of 504 men and 505 women age 18 or older living in private households. The margin of error was less than 3 percent.

pealed his confinement, claiming that the act violates the Constitution's due process, double jeopardy, and ex post facto clauses.

In finding that the act violates due process, the Kansas Supreme Court declared that civil confinement must rest on clear and convincing proof of mental illness and dangerousness. The court said that it is not enough to have committed a criminal act and to have an antisocial personality disorder that sometimes leads to aggressive conduct. In passing the act, the court declared, the legislature's overriding concern clearly was to continue the segregation of sexually violent offenders from the public. "Treatment with the goal of reintegrating them into society is incidental, at best," the court said. "The record reflects that treatment for sexually violent predators is all but nonexistent." The court did not address Hendricks' double jeopardy and ex post facto claims.

The U.S. Supreme Court reversed the state court ruling, finding that the act's definition of mental abnormality satisfies substantive due process requirements. Writing for the majority, Justice Clarence Thomas said the court has consistently upheld involuntary commitment statutes that detain people who are unable to control their behavior and thereby pose a danger to the public health and safety, provided proper procedures and evidentiary standards for confinement are followed.

The court found that the Sexually Violent Predator Act unambiguously requires a precommitment finding of dangerousness either to one's self or to others and links that finding to a determination that the person suffers from a mental abnormality or personality disorder. The court said it generally has sustained a commitment statute if the statute couples proof of dangerousness with proof of some additional factor, such as mental illness or mental abnormality. These additional requirements serve to limit confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control, the court declared.

Chief Justice William Rehnquist and Justices Sandra Day O'Connor, An-

tonin Scalia, and Anthony Kennedy joined with Justice Thomas in the majority opinion. Justice Stephen Breyer wrote a dissenting opinion, in which he was joined by Justices John Paul Stevens, David Souter, and Ruth Bader Ginsberg. Justice Breyer argued that the Kansas law constitutes punishment

because it does not "fit the nonpunitive civil aim of treatment" and therefore is invalid on ex post facto grounds. However, three of the four dissenting justices agreed with the majority opinion that the state's definition of mental abnormality satisfies substantive due process requirements.

## 75 Percent of Insured Americans Now Enrolled in Managed Behavioral Health Care Programs

Approximately 168.5 million Americans, or 75 percent of those with health insurance, are enrolled in some type of managed behavioral health program, according to a survey conducted last January by *Open Minds* newsletter, which covers the behavioral health care industry. Of that number, 149 million are enrolled in specialty managed behavioral health programs, and 19.5 million receive behavioral health benefits through internally managed programs in health maintenance organizations (HMOs).

The 1997 enrollment reflects a 19 percent increase from 1996, when the figure was 141.6 million. Value Behavioral Health had the highest enrollment among behavioral health companies, 24.4 million, representing almost 11 percent of the insured population and 14.5 percent of the total managed behavioral health market share.

Four types of managed care organizations were surveyed: HMOs, specialty managed behavioral health organizations, employee assistance programs, and provider-sponsored integrated delivery systems that provide managed behavioral health services.

The survey indicates that of the 168.5 million Americans in managed behavioral health programs, 39.2 million are in utilization review programs, 38.9 million are in risk-based network programs, 32 million are in non-risk-based network programs, 28.3 million are in employee assistance programs, 19.5 million are in programs managed internally by HMOs, and 10.7 million are in integrated employee assistance-managed behavioral programs.

Total annual revenue for the managed behavioral health industry is esti-

mated at \$3.46 billion in 1997. Risk-based network programs, which at \$60 have the highest annual cost per enrollee, account for \$2.33 billion of the total. Utilization review programs, with the highest enrollment but the lowest cost, \$4.80 per enrollee, account for only \$188 million.

Revenue in HMO internally managed programs, with an annual cost per enrollee of \$27, is estimated at \$526 million. Integrated managed behavioral health-employee assistance programs, at \$19.20 per enrollee, account for \$205 million in revenue, and non-risk-based network programs, at an annual cost per enrollee of \$14.40, account for \$461 million. Employee assistance programs, at \$9.60 per enrollee, account for \$272 million.

Value Behavioral Health had the largest enrollment in utilization review programs (6.8 million) and non-risk-based network programs (9.7 million). Merit Behavioral Care Corporation, the second largest behavioral health company with a total enrollment of 18.6 million, had the largest enrollment in stand-alone employee assistance programs (5.9 million), integrated employee assistance-managed behavioral programs (2.5 million), and risk-based network programs (8.3 million).

Other leading managed behavioral health companies are Human Affairs International, with an enrollment of 15.9 million, Green Springs Health Services, Inc., with 15 million, and United Behavioral Health, with 11.3 million.

The survey results were summarized in the May 1997 issue of *Open Minds*. A report of the survey is avail-