

Molester law holds no guarantee

TREATMENT: A system meant to keep sexual predators in hospitals also can set them free.

12:34 AM PDT on Tuesday, June 1, 2004

By MICHAEL FISHER AND LISA O'NEILL HILL / The Press-Enterprise

A child molester's claims that he faked remorse to fool therapists into recommending he be released from a state mental hospital is reviving criticism of a California law that allows convicted sex offenders to be involuntarily institutionalized after prison.

James Rodriguez, who pleaded guilty to molesting two Moreno Valley brothers in the 1980s, now says he is innocent of the charges that landed him behind bars for 13 years. After prison, Rodriguez was confined to Atascadero State Hospital, where he says he bluffed counselors into thinking he felt responsible for the crimes, which earned him positive evaluations from therapists.

"The only way out of there is to get a recommendation from the hospital and to show these people you are no longer a danger to yourself and to others I had to learn how to walk the walk and talk the talk as a child molester," said Rodriguez, 43, released last month from Atascadero. He now lives in San Diego County.

AP photo

James Rodriguez, a convicted sex offender, now says he is innocent of molesting two Moreno Valley boys in the 1980s.

Mental-health experts disagree about whether a patient can trick therapists, and if Rodriguez's claims reveal inherent flaws in the program that allows the state to commit convicted sex offenders to state mental hospitals after they have served their prison sentences.

"It's not hard to fool psychologists and psychiatrists, because in those treatment environments, they (patients) learn what they are supposed to say and how they are supposed to act," said Ted Donaldson, a clinical psychologist in San Luis Obispo who often testifies on behalf of sex offenders seeking to be released from Atascadero. "It's not that hard to learn to start talking about remorse."

But Jules Berstein, a clinical and forensic psychologist in Berkeley, doubts Rodriguez's claims.

"Any trained psychologist is not just listening to the words, they are listening to the music, evaluating eye contact, the person's body language," Berstein, who has treated more than 2,000 sex offenders jailed in Alameda County, said by phone.

"What is the genuineness of his remorse, the genuineness of his appreciation that he stole a child's innocence? You can't fake that."

The state Department of Mental Health said two psychologists who evaluated Rodriguez in 2002 opposed his release.

But one of those psychologists later changed his mind, joining three other evaluators who subsequently concluded that Rodriguez no longer fit the criteria of a sexually violent predator who was likely to repeat his crimes, according to Riverside County prosecutors.

Based on those evaluations, prosecutors did not seek to have Rodriguez recommitted, Supervising Deputy District Attorney Allison Nelson said by phone.

"We could not ethically or morally proceed," Nelson said. "The standard isn't whether he is cured or whether he completed the (treatment) program. The legal standard is whether or not the evidence establishes Mr. Rodriguez is substantially likely to reoffend in a sexually predatory manner. The reality is that four out of five doctors have not come to that conclusion."

Although Rodriguez now maintains he is innocent, prosecutors point out he pleaded guilty to sex crimes with a child, and he admitted at a 2002 court hearing to having sodomized a child.

Predator act

Under the Sexually Violent Predator Act, prosecutors can seek to have a convicted sex offender held at a state mental institution for treatment after his prison sentence.

To institutionalize the person, prosecutors must convince a judge or a jury every two years that the person remains a danger.

Since the law was enacted in 1996, the state Department of Corrections has referred more than 5,300 inmates for evaluation. Of those, 467 have been committed to a secured state hospital, said Nora Romero, spokeswoman for the state Department of Mental Health.

But roughly 60 percent of those patients refuse treatment, Romero said by phone.

"We can't force them to participate," Romero said.

"For one thing, they don't like the law. They don't believe they should be there. They don't believe it's constitutional."

Those who participate in treatment are taught to admit their crimes, express remorse and to recognize the circumstances that surrounded their offense, such as alcohol or drug abuse. They are taught to avoid such situations and cut the chance that they will commit more crimes, she said.

"The treatment program, it's not a cure," she said.

"It's about managing the risk of reoffending."

Donaldson described psychiatric treatment of sex offenders as an imprecise science.

"Even the most experienced evaluator does not know what sort of changes have to occur in treatment to affect recidivism," Donaldson said.

Howard Zonana, a Yale University professor of psychiatry, said studies show that 15 percent of convicted sex offenders commit new sex crimes within five years of their release from prison. That figure jumps to 25 percent to 40 percent over a 20-year span, he said.

"The prediction of future dangerousness is difficult at best," Zonana said.

"There are no ironclad guarantees."