



What Defenders Need to Know about Civil Commitment of Sexually Dangerous Persons

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Agenda



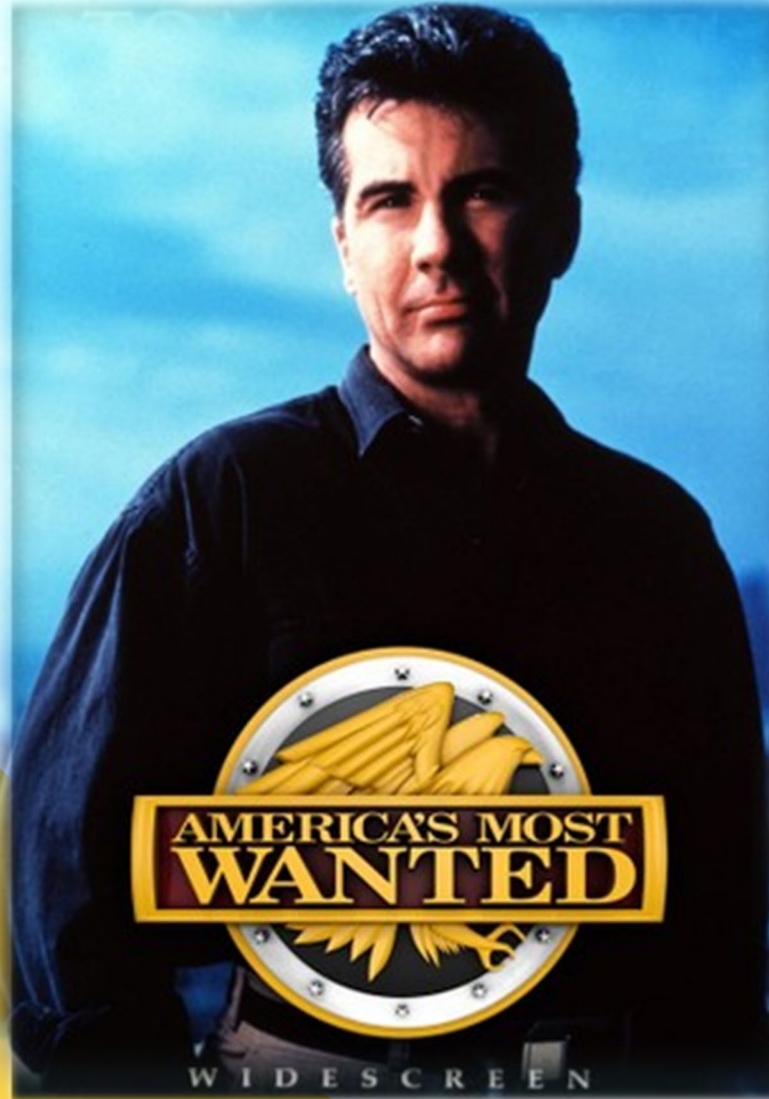
- Caveat!
- Introduction to the Adam Walsh Act, 18 U.S.C § 4248
- The “Prongs”
- What Happens in the BOP
- What Happens in Court
- So, You’ve Been Civilly Committed...
- Felony Practice Tips

Caveat!

- Since 2006, less than 230 men have been certified
- On average, 40-50 committed at a time
- Presently, only about 2-4 new certifications a year
- Takeaway: Do what's right for your case, not our theoretical, potential, maybe someday case



How Did We Get Here?



The Adam Walsh Child Protection and Safety Act of 2006

- Many states already had civil commitment, 20 now and D.C.
- *Kansas v. Hendricks*, 521 U.S. 346 (1997);
Kansas v. Crane, 534 U.S. 407 (2002)
- Enacted in 2006, allows for the indefinite civil commitment of “sexually dangerous persons”
- Initial wave and stay of proceedings
- *United States v. Comstock*, 560 U.S. 126 (2010): “Necessary and Proper Clause”

The Prongs: 18 U.S.C. § 4247(a)

- Prong 1: A person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.
- This person must be in the custody of the Attorney General or BOP
- No conviction required!
- Instant offense does not have to be a sex offense!
- FBI Agent (or Chris Hansen) is just fine!



The Prongs: 18 U.S.C. § 4247(a)

Prong 2:

- Suffers from a “serious mental illness, abnormality, or disorder”
 - DSM diagnosis?
 - Paraphilic (sexual) Disorder
 - A “serious functional impairment”
- As a result of which



Prong 3:

- The person would have “serious difficulty refraining” from sexually violent conduct or child molestation if released.
- Actual or attempted sexual offending
- Volitional control

What Happens in the BOP

- Identified as needing a “Walsh Review”
 - Process begins generally 2 years before release
 - Initial Screening for anyone designated with “Walsh Review”
 - Records review by SOCRB
 - Additional Screening → Transfer to Butner 1
 - Pre-Certification Report → SOCRB
 - Yea or Nay?
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What Happens in Court

- Certificate gets filed, FPD appointed, scheduling order
- Release is Tolled
- THIS CASE IS CIVIL
- Bench trial
- Battle of the Experts... and your client
- Hearing: Clear and Convincing
- All or nothing***



- Maryland Unit, North Carolina Unit at FCI-Butner 1
- Commitment and Treatment Program
- Separated from Gen. Pop.
- Limited Educational and Job Opportunities
- Two Mechanisms for release: BOP v. Court
- Conditional v. Unconditional



**So, You've Been
Civilly Committed...**

But Susanna and Joe, when should we really be worried???

- 🚩 Repeated, hands-on offending
- 🚩 Offending while on supervision
- 🚩 Offending after treatment
- 🚩 International Travel cases
- 🚩 Offense Supportive Attitudes

Felony Practice Tips
(Remember the caveat!)



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1. Psycho-Sexual Evaluations
 2. Presentence Report Becomes Gospel
 3. State v. Federal Custody
 4. Treatment in the BOP
 5. Institutional Behavior
 6. Give us a call!!

Felony Practice Tips
(Remember the caveat!)

What Comes Next?

Non-Hands on Production cases?

§ 549.93 Definition of “child molestation.”
includes any unlawful conduct of a sexual
nature with, or sexual exploitation of, a person
under the age of 18 years.

Questions??

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