



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 2 ethics credits course

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MEGAN'S LAW

With

**Jack Furlong, Esq.
Certified Criminal Trial Attorney**

And featuring

Robert Ramsey, Senior Instructor

Program description

The criminal and civil consequences that affect those defendants who fall with the ambit of Megan's Law can last a lifetime. This CLE program will alert you to the practical aspects of representing a client who is confronted with Megan's Law issues.

I. Introduction

- **Jack Furlong, Certified Criminal Trial Attorney**
- **West Trenton, New Jersey**

II. Historical development of “Avenel”, related laws, and sex offense policy

- **1970s NJ carved out a special correctional facility for sex offenders who were considered repetitive and compulsive – “Avenel” (now called ADTC – Adult Diagnostic Treatment Center)**
 - **Avenel was cutting edge to treat those with *paraphilia* – mental disorder wherein offender is predisposed to commit varying types of sexual offenses through compulsive mindset that was subject to treatment and could not be addressed in the usual prison system**
 - **Segregate sex offenders to minimize violence in prison**
 - **Treatment of sex offenders to prevent them from committing more crimes in the future**
- **Different parole scheme for those in Avenel – still in force today NJSA 2C:47-1, et seq.- any time client convicted of specified sex offense defendant must go for evaluation before sentencing resulting in narrative report to determine if someone is subject to Avenel treatment**
- **Avenel used to allow indeterminate sentence with statutory maximum – however not anymore**
- **Over time laws changed and rules of evidence changed to protect victims of rape, i.e. fresh complaint, victim's prior sexual activity, etc.**
- **Avenel was available for all types of sex offenders and who were evaluated that “I couldn't help myself” – offered to someone who has symptoms of *paraphilia* – broad range of sexual offenses and fetishes**
- **Changes to law and policies were based on recognition of rights of people and protection of people – reduce humiliation of victims who come forward and want to participate in the criminal justice process**
 - **With changes there was an increase in the number of offenders who were admitted to Avenel but not a related increase in treatment providers – equated to increased time period to be released from Avenel**

- **It was found that Avenel was not giving the parole eligibility that was being offered in the state correctional system – so most Avenel offenders “maxed out” on their sentence – this was different from what was initially experienced early on with Avenel offenders (back in the 1980s)**
- **Avenel offenders cannot get parole until the SCRIB gives affirmative determination**
- **State v. Howard, 110 N.J. 113 (1988) “Rule 3:9-2 requires the trial court to inform sex offenders of the possibility and parole consequences of a sentence to Avenel.”**
- **State v. Horne, 56 N.J. 372 (1970) – required interview before eligible for parole from Avenel – if denied sexual offense then person would be transferred from Avenel to state prison system and then parole board in state prison system would parole offender if they were eligible – without treatment completion (considered therapy refusal); if refuse to participate in program is waiver of right to contest therapist’s conclusion**
- **NOW - Will get commutation and work credits for parole purposes on Avenel sentence, may get minimum confinement status – most likely to do 5 years on a 7 year sentence**
- **If you plead guilty to enumerated sex crimes, then you must get Avenel interview – clinical interview with psychologist who has your discovery; if deny that committed the offense, then therapist would state offender is in denial then is not a viable candidate for treatment**

III. State v. Jesse Timmendequas (161 N.J. 515 (1999))

- **Avenel inmate on second pass**
- **Second offense more serious and symptomatic (kidnapping, sexual assault, molested young girl) – gets relatively light sentence – flat 7 years wherein he would max out at 5 – no parole supervision, no treatment requirement**
- **Paroled to Hamilton township and living with 2 other convicted sex offenders**
- **Most people in neighborhood knew they were sex offenders (Megan’s parents claim they were not aware of these individuals living in neighborhood)**
- **Megan Kanka went to home of Timmendequas**

- Such a significant case because child homicide with a sexual offense is not a usual offense circumstance when it is a stranger who is the offender
- Late July Megan disappears and there is a search for her, her body is later found in a shallow grave and investigators keep interviewing Timmedequas who finally confessed and led to body
- Victim was raped, strangled, and buried
- Defendant was facing death penalty – because he killed victim to avoid detection (aggravating factor)
- Impact of crime and trial on community:
 - Media was volatile
 - Public safety concern
 - Political movement to require registration of sex offenders so that in the future families would know who the sex offenders were in neighborhood
 - October 31, 1994

IV. Megan's Law – passed October 31, 1994

- RCNL – registration and community notification law
- Means that must go to police station and register with current address and license plate of car, etc. – for a minimum of 15 years must register
- Can petition court to be released from registration but must have evaluation and cannot have any further criminal offenses and not likely to pose a threat to community
- Yearly registration if not repetitive and compulsive; 90 day registration if repetitive and compulsive
- Community Supervision for Life (now called Parole Supervision for Life) – new parole component, 2C:43-1 – supervised as if on parole for 15 years after you conclude your normal sentence
- Registration – Doe v. Poritz, 142 N.J. 1 (1995) - Doe completed his parole and treatment and was not in trouble after paroled but law said repetitive and compulsive must register no matter if done with parole, etc, and no matter when the sentence was imposed
- Missouri v. Frye, 566 U.S. ____ (2012) and Padilla v Kentucky, 130 S.Ct. 1473 (2010) – it is ineffective assistance of counsel to not advise client of collateral consequences of a plea

- **must know within Megan's law terms of community supervision for life, as well as registration requirements – cannot travel, cannot move, cannot live with certain people with children, etc.**
- **sexually violent predator – go to special facility within Avenel; offender stays and are never paroled**
- **look at priors that can affect registration, parole supervision, and sexually violent predator designation**
- **Wetterling Act (federal law similar to Megan's Law) – Crimes against Children and the Sexually Violent Offender Registration Act**
- **NJSA 2C:7-2 – amended after Wetterling Act – if convicted of aggravated sexual assault or sexual assault involving force or coercion, 15 years to be released from Megan's law registration is no longer available**
- **The Walsh Act: organizes sex offenders into 3 tiers – different from NJ tier system**
- **NJ Tier System:**
 - **3 tiers – tier 1 being the least dangerous with tier 3 being the most dangerous**
 - **Tier 1 – must update whereabouts every year with 15 years registration; only register with police where you live, work or in school**
 - **Tier 2 – register for 25 years, registration would depend on offender's types of offenses and then would notify specific agencies and organizations**
 - **Tier 3 – door to door notification with certain radius of person's house; lifetime registration**
- **Entitled to challenge tier 2 or tier 3 designation – to determine whether designation is appropriate – Sex Offender Risk Assessment Scale (SORAS) – later changed to Registrant Risk Assessment Scale – In Re C.A., 146 N.J. 71 (1996)**
- **Secret proceeding**
- **Try to knock down various assessment factors in order to change tier**
- **Constitutional amendment that allowed tier 2 offenders to be put on internet**
- **Most prosecutors tend to stay away from tier 3 notification because of resources that are expended for notification**
- **Most sex offenses are committed by people the victim knows**

- **Electronic monitoring – minimal use in NJ because of resources used to monitor**
- **Sex Offender Management Unit – parole officers who are assigned to monitor sex offenders; they can recommend a parole violation but can also require electronic monitoring**
- **Civil commitment - \$115K per year for sexually violent predator**
- **Special treatment unit at Avenel – 400 offenders**
- **Offenders remain indefinitely – sexually violent predators**
- **Annual review hearing where state must prove by clear and convincing evidence – rules of evidence are supposed to apply**
- **Difficult politically for judges to release these types of offenders**

V. Dealing with different offenders

- **Guilty, Innocent, Guilty but in denial – types of offenders**
- **Guilty says I did it but get me the best deal and tell me all the consequences so that I can make an informed decision, i.e. parole supervision, prison, etc.**
- **Innocent – typically bad matrimonial situation, mistaken identification, teen is aggravated with adult and makes accusations – duty to really look at file, identify alibi witnesses, look to whether victim has lied before, look to credibility of victim**
- **Guilty but in denial**
- **Significant number of people are innocent factually**
- **Simplest criminal event, i.e. sexual touching of underage, is now a life sentence situation as a 2nd degree Endangering, for example, with registration and community supervision, cannot get a job, civil liability (NJS 9:1-1, 2A:14-2.1)**
- **Victims know of the consequences of a sexual offense – consider the consequences in determining whether to pursue offenses, considering consequences for the families of the defendants – not the defendants themselves**
- **Attorneys should consider whether victim or victim's family is hesitate to proceed – if take plea, then plea to something without prison, CSL, and registration**

VI. New Jersey policies and laws

- **No reduction in sex crimes in NJ with development of laws**
- **No less prosecutions of sex offenses**
- **Talk therapy with drug treatment – seem to lessen sexual urge**
- **Improved therapeutic techniques will reduce recidivism**
- **Vast majority of all sex offenders were victims themselves**
- **Megan's law – people are not safer because someone's picture is on the internet as a sex offender; people must watch their kids**
- **Current state of affairs:**
- **Inability of states to determine whether they are going to comply with SORNA Act (Sex Offender Registration and Notification Act) – centralizes database in Washington, DC**
- **SORNA is offense specific – no basis of tiers**
- **15 years in NJ to get off database – other states have different time frames**
- **No consistency among states on grading of offenders, i.e. tier designations**
- **SORNA requires states to adjust their tier schedules in order to get federal funding**

VII. Miscellaneous notes

- **State v. Lark, 319 N.J. Super. 618, 627 (App. Div. 1999)**
- **In NJ – everyone has an affirmative duty to report if you have evidence of child sexual offense – report to DYFS**
- **State v. Giorgianni, 189 N.J. Super. 220 (App. Div. 1983)**