



The Star-Ledger

Court weighs warnings about young sex offenders

Justices question merits of new juvenile risk scale for Megan's Law alerts

Tuesday, September 12, 2006

BY ROBERT SCHWANEBERG
Star-Ledger Staff

A new scale designed to assess the risk posed by juvenile sex offenders routinely exaggerates the dangers posed by children under 14, a deputy public defender told the state Supreme Court yesterday.

An assistant attorney general disputed that, calling the scale a valid "starting point" in helping prosecutors and judges determine whether a Megan's Law warning should be issued for a particular juvenile.

Such warnings can go to schools, day-care centers and youth groups in the case of moderate-risk sex offenders. The names and photos of high-risk offenders can be publicized worldwide via the Internet.

"This has only one goal, and that's to tell us who we have to notify," Assistant Attorney General Jessica Oppenheim told the justices. Ultimately, she said after the hearing, "the goal is to have fewer new victims."

But Assistant Deputy Public Defender Carol Sands argued the juvenile risk assessment scale relies on assumptions about adult sex offenders that fall apart when applied to young children.

"I'm really concerned about children under 14," Sands said. "I really think they are penalized by this scale."

The scale rates juvenile sex offenders on their offense history, anti-social behavior and social support and assigns a score of up to 28 points. The higher the score, the higher the risk.

Sands said it is stacked against young offenders, whose victims are likely to be other youngsters. No points are assigned if the victim is 16 or older, while having a victim under 11 carries two points, unless the age difference between victim and offender is less than four years.

Justice James Zazzali said that scale scores a 9-year-old who molests a 5-year-old as harshly as a 17-year-old whose victim is 5.

"Isn't there something unfair about that?" Zazzali asked.

"Your concern is valid," Oppenheim said. "We don't create these scales to meet the cases out at the edges." She said that is why the instructions for using the scale state that it is only "a tool" and that each case must be judged on its own facts.

The scale also assesses a point if the victim is male but none if the victim is female. Oppenheim said some research shows sex offenders who prey on others of the same sex are more likely to re-offend. Sands argued that penalizes boys who engage in sexual experimentation with their natural playmates -- other boys.

Yesterday was the first day of arguments during the court's new term, which officially began Sept. 1. The case before them involves a Warren County man, now 19, who was 12 when he used a douche bottle to give an enema to himself and his half-brother, then 6.

An appeals court concluded the act was experimental rather than sexual and blocked the prosecutor's office from sending Megan's Law notices to selected schools. The justices originally heard arguments last April but ordered more arguments after the new assessment scale for juvenile sex offenders was put into effect June 1.

Deputy First Assistant Warren County Prosecutor Howard McGinn said the young man, identified only as T.T., scores as a moderate-risk offender under the new scale for juveniles and an older one for adults.

Oppenheim said because T.T. is over 18, he should be scored using the scale for adult sex offenders.

Justice Barry Albin said that "makes no sense to me at all." Justice Jaynee LaVecchia added, "It almost seems we need a third scale" for juvenile sex offenders who have reached adulthood.

Albin also suggested the court needed more information, perhaps from a special hearing, about the validity of the juvenile risk assessment scale.

"It sounds as though experts should be testifying before a trial court," Albin said.

As usual, the justices reserved their decision.

Robert Schwaneberg covers legal issues. He may be reached at rschwaneberg@starledger.com or (609) 989-0324.

© 2006 The Star Ledger

© 2006 NJ.com All Rights Reserved.