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Judge delays predator trials

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A Jackson County judge is postponing trials that confine sexual predators for mental treatment until the U.S. Supreme Court decides a Kansas test case.

The law is too uncertain to proceed before then, Jackson County Probate Judge John A. Borron Jr. said in a June 25 ruling.

But elsewhere in Missouri, Kansas and at least 13 other states, judges are allowing the trials to go forward. Criminals designated as predators can be held for treatment indefinitely after they have completed their sentences, but the high court ruling next year might force retrials.

"Things are in a state of limbo until the Supreme Court decides the Kansas case," said Kansas City defense lawyer Sean O'Brien.

Once again, a Kansas case will carve boundaries between individual rights and society's rights to protection from sex offenders.

The ruling next year will have national implications, because other states copied the 1994 Kansas predator law after the U.S. Supreme Court ruled 5-4 that it was constitutional.

But that 1997 ruling also spoke of a need for prosecutors to prove that a sex offender could not control future behavior. Last year the Kansas Supreme Court cited that language when it overturned a Johnson County man's predator commitment.

The Kansas Supreme Court said jurors who found the man to be a sexual predator should have gotten instructions to consider whether he could control his behavior. Such instructions are not given in Kansas, Missouri or other states.

The Kansas Supreme Court ruling was appealed to the U.S. Supreme Court. Lawyers expect arguments late this year and a ruling in the

spring.

Meanwhile, six Jackson County sex offenders awaiting trial will remain confined at a treatment center within a Farmington prison. Their defense lawyers have not pushed for trials in hopes the Supreme Court's ruling will favor their clients.

Missouri law now says sex offenders can be designated predators if they suffer from a mental abnormality that makes them more likely than not to engage in future predator acts.

Defense lawyer Kevin Locke said it would be much harder for states to get predator designation if the U.S. Supreme Court ruled that states must prove sex offenders cannot control future behavior. "It would properly restrict the use of this law to the very few people in society who can't restrict their behavior," said Locke, who represents two clients awaiting trial in Jackson County.

Chuck Hatfield, counsel to Missouri Attorney General Jay Nixon, said the state legislature meant for the law to be applied more broadly.

"They intended this law to protect the public," he said. Treatment in confinement could help all sex offenders, even those who can control their urges, Hatfield said.

Most predator cases involve sex offenders who have served their prison sentences, but a few also involve people sentenced to mental treatment under less restrictive past laws.

O'Brien represents a confessed triple murderer, sadist and sexual psychopath who is awaiting trial as a predator. The man, William Barlow, was sentenced to state mental care 28 years ago. Through the years Barlow gradually improved.

For 13 years he left a St. Joseph mental center to work during the day. He became a supervisor at a sign company and worked alongside women. That ended last year after the state took action to designate

him a sexual predator. Now Barlow, 64, is confined at Farmington.

His client has already been in treatment for decades, O'Brien said, and there is no evidence he cannot control his behavior.

At a court hearing on Barlow's mental condition last year, Elle Sullivan, assistant attorney general, recounted the horror of Barlow's crimes. He is still diagnosed as a sadist, Sullivan said.

In 1956, Barlow was in the Army when he strangled a prostitute in Germany. He served more than eight years in federal prison for that crime. In 1971 he shoved a sharpened file into Joan R. Merritt's chest and killed her after he ran her car off the road in Independence. He later told a reporter that he did it while having one of his freeway fantasies about meeting women and hurting them.

In 1972 he stabbed Gloria Schuler to death for no apparent reason while she washed diapers in a Kansas City laundry. Years later, according to court testimony, Barlow earned favorable reports from state doctors and thrived at his job.

Now Barlow is among 33 persons inside the Farmington prison awaiting trial as sexual predators. Eighteen others there have been found to be sexual predators and are receiving mental treatment.

Kansas officials said they have 21 predator cases pending and 59 persons committed for mental treatment as sexual predators.

How fast those numbers increase, lawyers say, will depend on the U.S. Supreme Court ruling next year.

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