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Newsroom

Horwitz Questions Proposed Change to Criminal Law

Dean Andrew Horwitz and AG Peter Kilmartin '98 disagree on changing criminal statute due to the prospective release of a convicted child murderer.

South County Independent: [*"Proposed changes too late to affect Woodmansee case"*](#) by Liz

Boardman/Independent Staff Writer



PROVIDENCE, March 24, 2011 - Attorney General Peter Kilmartin

[RWU Law '98] said proposed legislation changing the "good time" statute for prison inmates would not keep child killer Michael Woodmansee behind bars, but involuntary commitment to a mental health facility might keep him off the streets.

In 1983, Woodmansee agreed to a plea deal and was sentenced to 40 years, plus 10 suspended, for the murder of 5-year-old Jason Foreman of Peace Dale. But because Woodmansee was well behaved during his incarceration, he has shaved nearly 12 years off that sentence by earning good-time credit, which would allow for his release in August.

"We have a legitimate concern, based on the inspection of the sealed evidence in this case, that Michael Woodmansee would be a serious threat to others by reason of his mental state," Kilmartin said in a press conference at his Providence office on Tuesday.

Kilmartin said his office and prison officials would be pursuing Woodmansee's involuntary commitment.

If Woodmansee were to be released, he may be subject to sex offender registration, even though he was not convicted of that crime, Kilmartin said.

Kilmartin has asked legislators to file an amendment to the Sex Offender Registry and Notification Act - also known as the Adam Walsh Child Protection and Safety Act - that would extend registration and community notification to child killers, in addition to sex offenders.

"Committing murder of a child is just as heinous as child molestation and sexual assault," Kilmartin said. "We need to have a system in place that accounts for the whereabouts of such violent criminals so law-abiding citizens can have peace of mind."

The federal act provides for retroactive registration, Kilmartin said.

But Woodmansee would not be subject to any of the sweeping changes proposed by Kilmartin, state Sen. V. Susan Sosnowski (D-Dist. 37) of South Kingstown and New Shoreham and Rep. Teresa Tanzi (D-Dist. 34) of Narragansett, Peace Dale and Wakefield, Kilmartin said.

Sosnowski and Tanzi filed identical bills in the Senate and House on Tuesday.

"As a South Kingstown mother whose children were just a little younger than Jason Foreman at the time of this atrocity, I know the fear and anguish that gripped the community, but can only imagine the pain that the families continue to endure," Sosnowski said in a statement. "We have been working in cooperation with Attorney General Kilmartin since this issue came to light, and listening to the voices of those we represent in the community."

"I can promise that during the legislative process we will do everything we can to put this law under the microscope, make the changes necessary to ensure that justice is being served, and protect our community," Tanzi said.

Under current law, earned good time can be revoked only if the convict misbehaves in prison. The bill would extend that to the outside.

"Good-time behavior credits earned after the passage of this bill would not reduce the time to serve," Kilmartin said.

So if a convict served 28 years of a 40-year sentence because of good behavior, he could be returned to prison to serve the additional 12 years, if he did not meet certain conditions established prior to his release.

A new unit of the parole office, community supervision, would monitor those released on good time. The inmate would continue to serve any probation or suspended sentences he received at sentencing.

But even if the law passed prior to Woodmansee's release, it would not apply to him, according to Amy Kempe, spokeswoman for the Attorney General's Office.

That is because, if passed, it would not go into effect until Jan. 1, 2012, to give the state Department of Corrections time to put the measures in place, Kempe said.

Kilmartin also proposes limiting the categories of prisoners eligible to earn good time. Currently, only life offenders are ineligible, and sex offenders accrue it at a slower rate than other offenders.

Under the proposed legislation, those convicted of murder, kidnapping a minor, first-, second-, and third-degree sexual assault, first- and second-degree child molestation sexual assault, child pornography and first-degree child abuse would be unable to earn either good-time or program credits for attending counseling, treatment and educational courses.

Those convicted of first-degree arson, assault with intent to murder, or manslaughter also would earn the credits at a slower rate than other prisoners.

"Anyone currently serving a sentence [on the proposed prohibited list] would be entitled to credits earned to the date the legislation was effective," Kilmartin said. "But they could no longer accrue good time, and those convicted after the effective date would never have it available. Inmates would still have incentive to maintain good behavior. This information would still be used to determine parole eligibility."

Those that remain eligible for good-time credit would no longer automatically earn 10 days a month for good behavior and two days a month for working prison jobs, but could earn "up to" that amount, at the discretion of the director of corrections, Kilmartin said.

Kilmartin said the changes allow an inmate in solitary to accrue time more slowly than those in the general prison population.

"The current law is not fair to the general population, who are more susceptible to infractions," Kilmartin said. "It gives them the same amount of time as an inmate who is more isolated."

The bill also requires prison officials to notify the victim or victim's family 60 days prior to an inmate's early release.

Sosnowski and Tanzi said the legislation was "on the front burner," but they had no crystal ball to predict its future and there would likely be a good deal of debate over it.



Andy Horwitz, associate dean for academic affairs at Roger Williams University Law School, agreed that debate was likely. He questioned why sweeping changes are necessary.

"Why change policy due to one anomalous case?" **Horwitz said.** "It is a terrible way to make public policy."

Horwitz said the classes of inmates to be made ineligible are "almost always simply denied parole," so they would have little reason to maintain good behavior or to attend counseling or treatment.

"It sets up a much more dangerous situation for release, and it is more dangerous for those incarcerated and for correctional officers," **Horwitz said.**

The changes would likely be expensive, because it costs far more to keep a prisoner incarcerated than to supervise him in the community, **he said.**

At Tuesday's press conference, Kilmartin said the fiscal impact had not been determined, but the legislation provided a good balance between fiscal requirements and public safety.

"You can't put a price on that," Kilmartin said.

"The money has to come from somewhere," **Horwitz argued.** "To blithely say public safety is worth the expense is meaningless political pabulum."