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## COURT ASKED TO UPHOLD KANSAS SEXUAL PREDATOR LAW (*Kansas v. Crane*, No. 00-957)

The Washington Legal Foundation (WLF) has asked the U.S. Supreme Court to permit states to impose preventive detention sentences on dangerous sex offenders after they complete their original prison sentences. Preventative detention is designed to prevent recidivist sex offenders from committing additional offenses.

In a brief filed in *Kansas v. Crane*, WLF argued that society has a compelling interest in locking up individuals with personality disorders whose history of committing violent sex crimes makes it highly likely they will commit additional crimes if they are permitted to roam the streets.

States are free, of course, to impose prison sentences on those who commit sex crimes. The issue of preventive detention arises after those sentences have been served. Experience has shown that if sex offenders are released at the conclusion of their sentences, they are likely to repeat their offenses soon after release. A number of states have adopted legislation permitting public safety officials to detain convicted sex criminals, and to provide them with medical treatment, following completion of their prison sentences. The question arises whether such "preventive detention" violates constitutionally-protected rights to liberty.

The case before the Supreme Court involves an attempt by Kansas to impose preventive detention on a man who has been convicted of sex crimes, including an incident in which he kidnapped and attempted to rape a video store employee. The man, Michael Crane, served four years in jail for the video store incident. Following a lengthy hearing, a jury found "beyond a reasonable doubt" that Crane was highly likely to commit other sex crimes if released from custody; it thus determined that Crane should be detained and provided with medical treatment.

In its brief, WLF argues that when evidence that an individual is likely to commit additional crimes is overwhelming, the Due Process Clause of the 14th Amendment does not prevent society from taking all necessary steps to prevent such crime. WLF stated that it does not support giving government the right to round up law-abiding individuals based

solely on a fear that they may break the law at some future time. However, WLF argued, the Kansas law passes constitutional muster because it is carefully targeted: it only applies to a small segment of society that has demonstrated through past criminal conduct that it cannot or will not conform its conduct to societal norms.

WLF noted that the Supreme Court in 1997 rejected a prior challenge to the Kansas preventive detention law. The Court rejected that challenge in a case known as *Kansas v. Hendricks*. The Kansas Supreme Court nonetheless held that Kansas's efforts to hold Mr. Crane were unconstitutional because Kansas had failed to demonstrate that Mr. Crane was so mentally deficient that he was incapable of controlling his behavior. In its brief, WLF argued that the Kansas Supreme Court simply failed to heed the *Hendricks* decision; WLF argued that *Hendricks* affirmed the power of States to detain dangerous sex offenders deemed likely to repeat their crimes, without having to worry about whether the offenders commit sex crimes because they cannot help themselves or because they choose to do so of their own free will.

WLF filed its brief on behalf of itself, U.S. Representatives Todd Tiahrt and Jim Ryun of Kansas, the Allied Educational Foundation, the Stephanie Roper Foundation, and the Maryland Coalition Against Crime.

The Washington Legal Foundation is a pro-free enterprise law and policy center with supporters in all fifty states. WLF devotes a substantial portion of its resources working to achieve criminal justice reform and to increase the rights of crime victims.

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For further information, contact WLF Chief Counsel Richard Samp at (202) 588-0302.