

# an inch from murder - weblog

True Crime News, Discussion - Sex Crimes Involving Missing and/or Abducted Persons, Sexual Child Abuse, Sexual Predators, Survivors, Victims, Sex Offender Registries

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May 31, 2005

## Outrage follows cop child abuse sentence

TAUNTON — Taunton police officer David Smith walked into Taunton District Court 10 months ago, facing charges of molesting his adoptive daughter.

He walked out earlier this month an ex-cop but a free man, despite admitting he assaulted the child nearly every night for a year shortly after she came into his home at age 7.

In a deal that has been blasted by child advocates and those who counsel rape victims, Smith, 58, was put on what is called pre-trial probation for four years. That means the charge will be dismissed if he stays out of trouble during that period.

That means Smith walks away with no criminal conviction and will not be required to register as a sex offender. He is also expected to be able to keep his pension, which a conviction would have stripped from him.

"It's an extremely lenient sentence that doesn't serve to protect the community and its children and it sends the wrong message that people can do this and get away with a slap on the wrist," said Janice Pothier-Pac, director of community and emergency services for New Hope, a rape crisis and sexual abuse organization serving southeastern Massachusetts.

But Bristol County District Attorney Paul F. Walsh Jr. said there was a reason the case was handled the way it was: To protect the child and her future.

"Everything has to do with the health, the safety, the security and the welfare of that little girl," Walsh said. "The trauma to her would have been unconscionable."

He said the child — now 11 — as well as the state Department of Social Services and her caretakers agreed to the way the case was handled.

Crafting the disposition that would allow Smith to keep his pension is part of an agreement to provide the victim with child support, Walsh said.

"She has now a therapist, she has people at DSS, all of whom believe this was in the best interest of the child to do it this way. This was not done over her objection or the objection of DSS. They all agreed this was the way to go."

However, psychologists and counselors who work with rape victims and children say the decision to let Smith walk free may send the wrong message.

"What message does this send to the child? What message does this send to other offenders? That we are not raising the bar and you can get away with it?" asked Jetta Bernier, chairman of the Massachusetts Child Sexual Abuse Prevention Partnership and executive director of Massachusetts Citizens For Children, a child advocacy group.

Smith is one of dozens of people in Bristol and Plymouth counties who have been charged or faced trial in the past year for molesting children.

In Massachusetts, there were 1,126 reported cases of children being sexually abused in 2003, according to the U.S. Department of Health and Human Services Administration and

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the state Department of Social Services.

In many cases, **the suspect is someone close to the child.**

**According to the U.S. Justice Department, in 90 percent of the rapes of children younger than 12, the child knew the offender.**

Convicted rape and sexual assault offenders serving time in state prisons report that two-thirds of their victims were under the age of 18, and 58 percent of those said their victims were 12 or younger, according to the Justice Department.

Walsh said each case is unique.

"I think there should not be, when it comes to tailoring justice, a one-size-fits-all philosophy," Walsh said. "We ... look at the impact on the victim, the likelihood of conviction."

But Smith's case stands out both because of his position in the community as a police officer for 27 years — and the vulnerability of the child.

The victim in the case was a foster child adopted at age 7 by Smith and his then-wife.

It was to be a stable home for a child who needed love.

But accusations of marital infidelity led to the breakup of the Smith marriage and Smith's estranged wife moved out of the house — and the state — leaving the child behind.

It was at that time, authorities said, that Smith, now alone to care for the girl, began abusing her.

Prosecutors said Smith admitted to sexually abusing the child for more than a year while she was 7 and 8. The abuse stopped when he married his third wife in 2001, prosecutors said.

The abuse involved her touching his genitals, sometimes with her feet, every night for a year, according to prosecutors. Walsh said there was other improper touching, but declined to go into detail except to say "it was significant."

Smith was charged after he told a counselor about the abuse. He later repeated the admission to state police and resigned from the department last July after his arrest.

For the child, the abuse and the case has meant upheaval.

"A family she trusted has now violated that trust," said child advocate Jetta Bernier. "She had already come from foster care and that was hard enough, but now this trauma is going to have repercussions in her life."

For the community, the allegations and adjudication has been met with shock.

Pothier-Pac said the way the case was disposed of failed those in the community.

"This decision doesn't do justice for the severity of the crimes committed and for someone who has committed a violation of trust. Police officers are in positions of trust, and I'm sure he used that with the victim. And then to not be held accountable for the behavior is unbelievable," Pothier-Pac said.

Mary Lauby, executive director of Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence, said problems always arise if a suspect is a police officer.

"When the system is judging one of its own the system has to be transparent and held to an even higher standard. There can't be two standards of justice," Lauby said.

She said the way the case was handled gives the appearance that there are two standards of justice.



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"That's the message to the public and the victim. She was assaulted by someone she should have been able to trust and if you are an insider you can do these things," Lauby said.

Walsh said he understands the community's concerns but they are surpassed by his concern for the child.

He said if the case went to trial, the child's psychological and counseling records could be introduced by the defense and he worried about her mental health on the stand.

"She would be victimized on that witness stand," Walsh said.

The end of the Smith case came quickly earlier this month.

Taunton District Court Judge Francis L. Marini on May 2 placed Smith on pre-trial probation for four years, a deal that was worked out behind closed doors by Assistant District Attorney Joan Fund and Smith's attorney, Daniel M. Rich of Norton. Under pre-trial probation, Smith does not admit any guilt, Rich said.

If Smith gets arrested again or violates his probation, the case will go to trial and he could face three years in prison.

Smith was also ordered by the judge to undergo sex offender counseling, stay away from the girl and pay child support. **His probation is set to end May 1, 2009.**

Walsh said the agreement reached will provide the child with counseling and child support.

Smith was arrested and arraigned last July after he admitted to authorities he had sexually abused a young girl for more than a year.

Smith, with no criminal record, is officially classified as a first time offender — a background that played into the way the case was handled.

A spokesman for the prosecutor's office said since Smith had no record, it was likely — based on state sentencing guidelines — he would have been given a six-month jail sentence. Since he already served that amount of time awaiting the case outcome, he would have been free.

While Smith is officially a one-time offender, those in the field of child advocacy and rape crisis counseling said there aren't safeguards to prevent a recurrence of the behavior.

Experts point to statistics that show those who sexually abuse children don't stop.

The average pedophile will victimize 244 children in their lifetime, according to the Massachusetts Children's Trust Fund, a child advocacy group working to prevent child abuse and neglect.

"Imagine if someone robbed a bank 244 times. The police would issue an all out bulletin for someone like that," said John Iacoboni, a spokesman for the Children's Trust Fund.

Elizabeth Englander, a professor of psychology at Bridgewater State College who specializes in crime and violence issues, agreed. "The big gamble in this is whether he will reoffend. Predicting this kind of behavior is uncertain," she said. She also said the sentence sends a message to other offenders.

"Other potential pedophiles may be watching this could see it as a license that you could get away with it," Englander said.

As the way the case was handled continues to be debated, Smith is now trying to get his \$38,400 a year pension.

Walsh said he expects the state will take steps to garnish that pension — once it is approved — for child support for the child.

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Although Walsh has said he expects part of that to be used to support the victim, Paul J. Slivinski, executive director of the Taunton Retirement Board, said he is unaware of any such agreement. However, there have been cases where Department of Revenue liens for child support have placed on pensions, he said.

The board has tabled indefinitely any action on Smith's application for a pension.

Once a pension is awarded, a person can do whatever they want with it, Slivinski said.

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Posted by Nealus at May 31, 2005 02:52 PM

## Comments

As I read this story of this little girl, I was filled with disgust, pain and compassion for her. Not only of what had been done to her, but what's not being done for her. For everything that she went through. No, I do not consider the fact that he may never do it again, but only the fact that he did it ONCE! It seems as though the judicial system only worked for him and not her and other children who suffer from these offenses. She should be provided any/all therapy, financial support, etc. for as long as she needs it from the place that handed her over to him in the first place. Why should she receive money from him for child support? He's not her father, he never was. He should have no ties to her at all. He should be rid from her life! As for him, why isn't he at least being sentenced with as many years as the soldiers who took naked pictures of those Iraqi/Palestinian men who were captured?! They were officers, men/women who were given the jobs to serve and protect! WHY?!!! The judicial system is so wrong for giving this man a slap on the wrist. While they are letting him go free, they should know that they are giving themselves a bad name and reputation. Why risk all that for one sick person. Here in this story it was said that they didn't want to victimize her! She already has been, and a whole lot more than just that! It also states that since he had a clean record, he would be charged as a first time offender. Okay! So in other words, a person caught with drugs on their possession would be given more time than him. What's wrong with this picture....the judicial system is doing all that they can to clean the streets of drugs than child sex offenders! What's more important to us, a drug addict/burglar violating our homes or a sex offender (cop) violating our children?! I love my children so much and understand my responsibility to protect them and speak up for them in any/every situation. That's why if there will ever be any time I could give my opinion/comment, I would do it in a heart beat!

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Posted by: [Erica](#) at June 15, 2005 07:03 AM

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