

sons predisposed to engage in specific criminal behaviors. In *Kansas v. Hendricks*,⁶⁹⁰ the Court upheld a Kansas law that allowed civil commitment without a showing of “mental illness,” so that a defendant diagnosed as a pedophile could be committed based on his having a “mental abnormality” that made him “likely to engage in acts of sexual violence.” Although the Court minimized the use of this expanded nomenclature,⁶⁹¹ the concept of “mental abnormality” appears both more encompassing and less defined than the concept of “mental illness.” It is unclear how, or whether, the Court would distinguish this case from the indefinite civil commitment of other recidivists such as drug offenders. A subsequent opinion does seem to narrow the *Hendricks* holding so as to require an additional finding that the defendant would have difficulty controlling his or her behavior.⁶⁹²

Still other issues await exploration.⁶⁹³ Additionally, federal legislation is becoming extensive,⁶⁹⁴ and state legislative and judicial development of law is highly important because the Supreme Court looks to this law as one source of the interests that the Due Process Clause protects.⁶⁹⁵

“Right to Die”.—Although the popular term “right to die” has been used to describe the debate over end-of-life decisions, the underlying issues include a variety of legal concepts, some distinct and some overlapping. For instance, “right to die” could include issues of suicide, passive euthanasia (allowing a person to die by refusal or withdrawal of medical intervention), assisted suicide (providing a person the means of committing suicide), active euthanasia (killing another), and palliative care (providing comfort care which accelerates the death process). Recently, a new category has been

⁶⁹⁰ 521 U.S. 346 (1997).

⁶⁹¹ 521 U.S. at 359. *But see* *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (holding that a state can not hold a person suffering from a personality disorder without clear and convincing proof of a mental illness).

⁶⁹² *Kansas v. Crane*, 534 U.S. 407 (2002).

⁶⁹³ *See Developments in the Law: Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190 (1974). In *Mills v. Rogers*, 457 U.S. 291 (1982), the Court had before it the issue of the due process right of committed mental patients at state hospitals to refuse administration of antipsychotic drugs. An intervening decision of the state's highest court had measurably strengthened the patients' rights under both state and federal law and the Court remanded for reconsideration in light of the state court decision. *See also* *Rennie v. Klein*, 653 F.2d 836 (3d Cir. 1981).

⁶⁹⁴ Developmentally Disabled Assistance and Bill of Rights Act of 1975, Pub. L. 94-103, 89 Stat. 486, as amended, 42 U.S.C. §§ 6000 *et seq.*, as to which *see* *Penhurst State School & Hosp. v. Halderman*, 451 U.S. 1 (1981); Mental Health Systems Act, 94 Stat. 1565, 42 U.S.C. §§ 9401 *et seq.*

⁶⁹⁵ *See, e.g.,* *Mills v. Rogers*, 457 U.S. 291, 299-300 (1982). On the question of procedural due process rights that apply to civil commitments, *see* “The Problem of Civil Commitment,” *infra*.