

Matthew Feeney
1111 Highway 73
Moose Lake, MN 55767
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Judicial & Correctional Reforms in Minnesota

An Open Letter to MN Governor Walz and MN DOC Commissioner Schnell

by

Matthew Feeney

What's right isn't always popular and what's popular isn't always right.

Not many years ago, homosexuality was not only illegal, but it was grounds for government sanctioned discrimination; a person could lose their job, military career or housing simply for being gay. Last week the United States Supreme Court ruled such discrimination was unconstitutional. Alcoholism was once thought by professionals to be a result of poor self-control and lack of moral fortitude, while today addiction is now understood to be a complex condition that can be dealt with through cognitive-behavioral therapeutic programming. Likewise, people who commit sexual offenses have historically been deemed "wicked, immoral and depraved" and the only way society knew to deal with the issue was by locking them up for increasingly longer amounts of prison time. In knee-jerk reactions to some horrific local crimes, the Minnesota legislature made it even worse by perverting "Civil Commitment" into an superfluous punishment which ensures some individuals who commit sexual offenses are locked up for an "indeterminate" amount of time, a de facto life sentence. Until recently, any attempt to discuss reforming, updating or abolishing these "Draconian" laws has been a proverbial third-rail for any elected official. But the times, they are a changin' and the pendulum has to swing back to a more reasonable center. While *fair and equitable justice for all*, including persons who committed sex offenses, may not be popular, it's the right thing to do. Despite living in a throw-away society, no person is so broken that they can't be fixed. Having personally lived in and experienced Minnesota's Judicial and Corrections System (and now the Civil Commitment process) for the last 10 years, I'm writing in order to propose a few constructive suggestions for incorporating reforms involving more contemporary best practices such as Restorative Practices into our existing judicial systems and penal policies.

Create a Sex Offender Only Prison

While segregation may seem like a step back from forward-thinking systems, I can personally attest to the stereotypical issues faced by persons who commit sex offenses (often referred to as "CHOMOS" by inmates in Minnesota; aka "Rippas" or "Skinners" in Massachusetts) living within general population. There is a constant tension being a person with a sex offense living amongst other felons who ascribe to the juvenile belief that degrading others will somehow make them feel better about themselves. Notwithstanding extortion, physical assaults, blackmail and even murder, the daily derogatory insults directed towards people charged with sex offenses is dehumanizing and demoralizing. While on an out-state Writ, the Lieutenant at the receiving jail actually gave me a direct order to lie about my sex offense charges and say that I had a "DWI." After respectfully explaining I refuse to lie, he placed me in their Special Housing Unit (SHU). I'm glad I had the integrity to not lie, because 3 days later there was

an article about my case in the local newspaper (complete with photo) that made the rounds of the SHU.

Now contrast that with my life over the last 6 months living at the Minnesota Sex Offender Program (MSOP) in Moose Lake, where everyone is a Sex Offender. The relief of living among people who won't belittle or assault you because of your charge is palatable. But for having personally experienced this, I wouldn't have thought such a thing would make that big of a difference, but it truly does. Removing that specter of fear and unknowing means you no longer always have to be on your guard. Having lived in both environments, I am now a strong proponent of creating a Sex Offender Only DOC prison facility in Minnesota. The easiest way to do that would be to turn the MSOP-ML facility (1111 Highway 73) over to the DOC. This facility was built to prison specifications and has the same (if not more) modern security features and cameras than the newest existing DOC facility. The DOC could then reclaim much needed space within their Moose Lake Correctional Facility (1000 Lakeshore Drive) that is currently leased out to MSOP-DOC and revert it back to general population housing.

Positive Motivation for Treatment

It's the classic adage of "the carrot or the stick." While both will probably get an ass to move, the stick causes unnecessary pain and suffering and long-standing ill-will for the mule. I voluntarily started treatment prior to being incarcerated. My PSI report noted I was amenable to treatment. I wanted treatment. Until my DOC caseworker at Moose Lake literally pushed a piece of paper in front of me saying I had to sign it to attend the MSOP Sex Offender treatment program on Unit 8 or else I'd automatically get "360 days" added to my sentence. That is a big stick. An extra year of incarceration for not doing treatment. An extra year that the state has to pay the \$40,000.00 bill for – and that's just for ONE inmate who says no. And this Extended Incarceration ("EI") happens if the inmate refuses to start treatment, OR if they get kicked out of treatment, OR if they start and then quit treatment. I personally know of several individuals who got kicked out of treatment 3 times, adding 3 years to their original sentence at the additional cost of at least \$120,000.00 (per inmate) the State paid for their incarceration. More recently, DOC has reduced the penalty for refusing MSOP-DOC treatment from 360 days to 6 months... but this is still ridiculously costly both in additional prison time and money and it leaves a very unfavorable impression in the inmate's mind about treatment.

Compare this to the "carrot" philosophy of many other states like Massachusetts. During intake orientation, all Massachusetts inmates are presented with a recruitment presentation extolling the benefits and virtues of *volunteering* for their Sex Offender treatment at the Bridgewater Treatment Center (BTC). Inmates who volunteer for this treatment program are provided a piece of paper, but this is a written contract that promises upon successful completion of the Sex Offender treatment program they will become eligible for special privileges like work-release programs (Minnesota specifically precludes any sex offender from participating in ANY programming that decreases one's sentence, including work-release, CIP/Bootcamp, STS, etc.). Massachusetts also awards their inmates participating in positive programming such as Sex Offender treatment by granting the inmate "earned good time" – 10 days credited every month off of their sentence while they're actively in treatment. In Minnesota, it doesn't matter whether an inmate is taking advantage of positive programming opportunities or literally sleeping all day long - everyone gets the exact same 1/3 credit. Minnesota needs to look at rewarding those who are working hardest to change their lives by reducing their time

served in prison. Offering such tangible benefits and rewards to those people is not only a great motivator to get inmates actively involved in their own rehabilitation, but it helps reduce the cost of overall cost of incarceration the state pays, both in dollars spent for the inmate's current sentence and in future savings. Positive programming not only improves the quality of life for the paroled inmate, it also reduces recidivism – which means the state is less likely to have to pay for a return visit.

ECRC Violates Due Process

As currently run, the DOC's End of Confinement Review Committee (ECRC) is a bad joke. While I understand the rights of victims may include submission of personal impact letters to the board, my board accepted highly prejudicial and derogatory letters written by multiple other non-involved parties which were directly solicited by my victim's mother. Conversely, the board did not give me the ability to acquire positive support letters from friends and family to mitigate the deleterious letters, leading to a biased and one-sided view.

Despite the ECRC board agreeing this was not my actual "end of confinement" (I have a 5 year sentence to serve in Massachusetts), the board denied they had the authority to be able to review me again after my Massachusetts sentence. An updated review prior to actual release is crucial as the DOC psychologist in the ECRC meeting said the biggest thing I could do to reduce my risk level was to complete treatment, which I plan to do in Massachusetts. Yet the current ECRC's risk level assessment won't be reassessed to take that into account, resulting in an unnecessarily higher level of supervision costs upon my eventual release.

The ECRC lists several potential "mitigating" factors, including the mitigating factor of not offending or engaging in high-risk activity for several years while having access to potential victims. I was told I didn't qualify for this factor because an openly gay man abstaining from sexual activity in prison isn't around "potential victims" and thus this doesn't qualify as an indicator of positive behavior. According to the local Police Officer on the ECRC board, because all inmates are adults, there are not potential victims and sexual activity between inmates is not illegal "as long as no one tells". I literally had to explain to a licensed Police Officer that PREA ("Prison Rape Elimination Act") laws mean no inmate is ever able to provide consent to *any* sexual activity, and that prison is indeed full of "potential victims." The transcript of this conversation makes for an eye-opening read.

Likewise, I know many cases of people whose "numbers" provided by various tests indicate a certain presumptive risk level, yet the ECRC board doesn't believe that low number and "special concerns" those individuals to a higher risk level. Ironically, I have never heard of a person's presumptive level being lowered by the ECRC board. Using pseudo-science to invent an objective number that can accurately predict a person's future recidivism rate is impossible, and yet that is the fundamental starting point for an inmate's risk level, and it only gets worse from there. Higher risk levels means instead of regular parole, those inmates are now subject to Intensive Supervised Release ("ISR"), which equates to greatly inflated supervision costs.

Remove MSOP-DOC treatment programming from DOC facilities.

Former MSOP-DOC treatment supervisor Zach Cambell told the entire Unit 8 treatment unit that "Completion is no longer a goal of this treatment program." During the 3 years that I participated in

this program, no one was ever promoted to Phase 3. Despite being billed as a "3-5 year treatment program", in the last 7 years only one person has graduated. This was only after the inmate was assigned a lowest presumptive "Level 1" by the ECRC board that the MSOP-DOC treatment team felt safe enough to give this individual a "Phase 3" and a token "Completion" certificate all on the exact same day... only days before his release from prison. As of today's date (3 years after I left the program), there is still no one at MSOP-DOC in Phase 3.

If the DOC psychologist was correct in stating that the most significant means of reducing an inmate's risk level is to complete treatment, then being mandated by the DOC to attend a MSOP-DOC treatment program that literally cannot be completed is a violation of due process and common sense. I was "administratively discharged" when I was transported to Massachusetts for trial and my three years of treatment are given no consideration and count for nothing in reducing my risk levels because there was no functional "completion." Despite completion being the only way to reduce risk levels, the ECRC board and DOC administration doesn't seem to be aware (or care) that they're mandating inmates to a treatment program where completion is simply not possible as it is not a part of that MSOP-DOC program.

Furthermore, the cost of MSOP treatment within DOC facilities is around \$144,000.00 a year per individual, considerably higher than regular DOC incarceration costs. This higher expense was justified by saying the greater the number of high-risk individuals who complete treatment at MSOP-DOC while incarcerated results in fewer individuals needing to be civilly committed for an "indeterminate" (life) sentence at MSOP-ML at the end of their sentence, thus in the long run, saving the state money. This reasoning only holds true if program completions are granted, which they're not. Thus the MSOP-DOC treatment program not only costs the state considerably more money than simple incarceration, with no completions being granted, no one's risk levels are able to be reduced and it's simply become a feeder-program for their main MSOP-ML facility. Since no one has completed the MSOP-DOC treatment program in many years, that means despite the state paying four times the cost of regular incarceration, not a single inmate actually reduced their risk assessment level numbers. Charging 4 times the money for a treatment program that cannot lower an inmate's predicted recidivism rate numbers is fraud.

On the other hand, the DOC has its own Sex Offender Treatment Program which is currently in use at several DOC facilities and which can be successfully completed in approximately 18 months. A completion from this DOC Sex Offender Treatment program counts towards lowering an inmate's risk level. So why is the DOC bifurcating inmate treatment options when the DOC already runs a reputable Sex Offender treatment program, including the possibility of treatment completion, which in turn lowers inmate risk levels... which is the ultimate goal of treatment (and incarceration in general).

Please consider the acquiring the MSOP-ML facility and turning it into a DOC facility for people who have committed sex offenses and where you provide DOC's Sex Offender Treatment program. This would make it a Sex Offender only prison facility, provide high quality SO treatment that can be completed, save money and free up MSOP-DOC (Unit 8) at Moose Lake prison for much needed traditional general population housing.

Civil Commitment is Being Abused

There are many reasons why the Civil Commitment process and MSOP-ML facility should be shut-down permanently. Only since Judge Frank's ruling (and slowing to a trickle since the Court of Appeals overturned that decision), MSOP has been telling the public that clients are now being provisionally discharged from their program, but there is a huge bottle-neck with a wait time of many years. Before prison I had a college degree, owned my own house, automobile, motorcycle and ran a successful company. Because I'm now at MSOP-ML, it will be years before I even qualify for any advanced educational opportunities, and if I ever do get close a provisional discharge, I'll have to get approval to do basic things like drive (much less own) my own car again. The MSOP Civil Commitment program never intended to discharge anyone, so they're trying to create new policies and paths where none existed before, and it's still a discouragingly long process that they're in no hurry to "fix." Being new to the MSOP-ML facility, it's scary and humbling to talk to individuals who have been held here for 44 years, or ones who have spent over 20 years here for a simple parole violation like using alcohol. I could provide an entire book of stories of individuals whose technical parole violations resulted in lifetime commitment.

The Civil Commitment program had its purpose at the time, but we are so far from the original intent of this program that it's scary. It's a fact that dolphins often get caught in nets intended to catch tuna. There are people stuck in here who never should have even been considered, much less pursued. Defense attorneys (mine included) are propagating false hope that stipulating to a Sexually Dangerous Person (SDP) in exchange for the State to drop the Sexually Psychopathic Personality (SPP) charge is a great deal, because it's easier to get out of here if you only have a SDP. This is not true and only encourages the State to over-charge in order to be able to offer an empty concession and secure a stipulation. It doesn't matter if you're committed as an SPP or an SDP or both, the fact is there is only one treatment program here at MSOP, and no matter how they get you in the door, no one is leaving any time soon.

Again, I understand the difficulty in taking a stand for justice and equal rights for people convicted of Sexual Offenses. But the MSOP facility is wasting over 100 million dollars a year, and in these times of Quarantines and National Guard Deployments amid civil unrest, that's money that could be spent doing positive and constructive things in our neighborhood. Housing and treating individuals who have already completed their full prison sentence is a redundant waste of resources and is a major problem (and expense) that will only grow larger. The insanity needs to be stopped. The crimes people commit result in a predetermined amount of time to be served in prison. After their sentence is completed, that individual needs assistance in being assimilated back into society where they can once again become a productive member of their community, no matter what their crime may have been.

The Numbers Game: ECRC & Civil Commitment rely on Junk-Science tests

Once a prison sentence is complete, the law states that a person needs to be released. If an individual commits a new crime, they get the appropriate new punishment (plus existing enhancements). But locking up an entire class of citizens after they served their prison sentence for theoretical crimes some statistician's algorithm says they MAY someday commit is right out of a science fiction movie like *Minority Report*. No test can accurately predict the future, and people who believe in such junk-science numbers ignore the fact that many innocent people get locked up with the ones who may

commit a crime. The old adage that someone is "innocent until proven guilty" absolutely encompasses being "innocent until they commit a crime." Simply because society is scared of sexual crimes does not mean certain people should be locked up and the key thrown away to prevent potential future crimes. The DOC and MSOP rely on certain "tests" to try to predict recidivism rates, which is simply impossible.

My MnSOST 3.12 test predicted I had a 83.17% recidivism rate, which means, even if correct, that out of 100 people with my same history, 83 may commit a future crime. But what about the remaining 17 people who would absolutely never commit another crime – they're not going to commit a crime and yet they're locked up too! And when the "new and improved" MnSOST version 4.0 test came out, it showed my predicted recidivism rate was actually 6.25%. Which means 94 innocent people (including me) must be locked up in lifetime preventative detention in order to prevent 6 people from possibly committing another crime. The huge discrepancy in predicted recidivism rates provided by two versions of the same test (on the same individual with the exact same case facts) simply highlights how unreliable BOTH versions of any such tests are. There simply are no crystal balls, tea-leaves or horoscopes that can successfully predict how successful an ex-inmate is after incarceration.

Create New Positive Programs for Reintegration vs Blanket Onerous Restrictions

I do know that the more positive reinforcement and encouragement that's provided to an ex-felon, the greater the chances of that individual being successfully reintegrated into society. The County Attorney, in their own brief to civilly commit people, actually list some of the hardships, restrictions and ineffective supervision they inflict upon sex offenders. The state knows this type of intensive supervision is not cost-effective and causes undue stress by making it more difficult to successfully rejoin life and comply with these rules. They even cite their own mismanagement and inability to provide positive programming to reduce such stressors as further evidence that an individual should be civilly committed. Quoting directly from Washington County's petition for my civil commitment:

Sources of stress in the offender's environment: Post-incarceration adjustment is often a source of significant stress to offenders as they adjust to the less regimented aspects of daily living, while still conforming to the mandates of the court, supervised release, probation agents, and an often difficult social climate (especially in regard to sexual offenders). Offenders similar to Mr. Feeney often have difficulty acquiring employment and suffer severe economic hardships. Mr. Feeney's age and criminal record makes him a poor candidate for employment. In consideration of the above, Mr. Feeney's post-release living environment will be, more than likely, a source of considerable stress.

How deliciously ironic that the state cites the onerous restrictions inflicted upon sex offenders by the state itself causing unnecessary expectations and considerable stress among parolees; and instead of fixing the system by reducing or removing those stressors, the state cites their own failings as an actual reason to civilly commit sex offenders. How about changing the paradigm, and start using smarter and more directed restrictions for specific individuals and providing assistance and pro-social opportunities and programming to help inmates return to a normal life? The state proudly admits that the social climate for returning felons is difficult "especially in regard to sexual offenders." Nobody is asking for special rights for people who have committed sex offenses, merely the same rights as everyone else who has made big mistakes in their life resulting in a felony conviction.

Conclusion

In conclusion, our State's correctional and commitment system is broken and needs to be fixed, and voters have the unique ability to help make that change. It's not only the right thing to do, but it's become more urgently needed due to the State's financial situation, making this the ideal time to affect some of these long-overdue changes. I'm hoping you'll choose to be on the right side of history and do the right thing now to make much needed improvements to our systems that will have a positive long-term effect on our society.

Respectfully,

Matthew D. Feeney
Former DOC inmate #173012
Current MSOP detainee