

Uncivil Commitment

by

Matthew Feeney

One of the foundations of a civilized society is the concept that people who do wrong need to be held accountable for their crimes. What naturally follows from that precept is that once a person has successfully paid society back by serving their prison sentence, they have earned the right to be free and return home.

What would you think about a slick scam that legally circumvented such justice? A system where, after serving years in prison and mere days before being released, the state went back to a new court and a different judge to seek an additional sentence that would keep that individual incarcerated for the rest of their life? This is what the criminal justice system calls "civil commitment" and it is quietly still occurring in over 20 states¹.

If the moral injustice of this doesn't upset you, maybe this will help: Civil commitment costs state taxpayers between \$100,000.00 - \$268,000.00. Per year. Every year. *Per person*. For the rest of the inmate's natural life. In Minnesota, more people have died in civil commitment than been released. There are nearly 7,000 souls being held captive under civil commitment sentences in the 20 states that still have these laws, and because so few ever get released, this number only increases.

¹ According to the Association of Treatment of Sexual Abusers' website www.atsa.com, as of 2015 the 20 states with civil commitment laws were Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington and Wisconsin as well as the District of Columbia. The Pennsylvania law is unique in that it applies only to youth adjudicated for a sexual offense who are "aging out" of the juvenile justice system.

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Civil commitment is additional incarceration, often for an “indeterminate” period of time, after a person has served their entire prison sentence for a sex offense. People are housed in a prison-like facility with chain-link fences topped by razor wire and patrolled by uniformed armed guards, background checks for visitors, monitored phone calls & mail and numerous other restrictions. The only difference between a prison and a commitment facility is a prisoner has a scheduled release date.

These civil commitment laws were quickly passed starting in the late 1980’s as a knee-jerk reaction to several highly-publicized heinous sex crimes that fueled a volatile environment founded on fear, hatred and falsehoods. Like the failed “war on drugs,” this so called “war on sex offenders” is long overdue for major overhaul and reform.

Civil commitment is based on the false premise that it is possible to accurately predict whether or not someone might commit a future crime. Based on hypothetical predictions, the person is then considered guilty and imprisoned for life for crimes an algorithm predicted they might commit.

This is done by using actuarial tools and psychological tests that attempt to give scientific credibility to the fairy-tale art of predicting the future. These algorithms assign odds that portend to accurately predict the chances of an individual committing another crime in the future. If the odds are bad, the person is then deemed a “high risk” of reoffending and civilly committed.

But pretending to predict the future is junk-science. Instead of a crystal ball, the scientists use a battery of tests and actuarial tools with impressively confusing acronyms like the Static 99-R,

LS/CMI², MnSOST³, PCL-R⁴, MnSTARR⁵, Static 2002-R, Stable-2007, WASI-II⁶, MMPI-2⁷, MCMI-IV⁸, RRASOR⁹, VRAG¹⁰, SORAG¹¹ and the MSI-II¹². Even more impressively, these programs produce objective numbers, often to the hundredth power, which would lead an unsuspecting person to believe the resulting number must be unnervingly accurate.

One commonly used tool in Minnesota is the MnSOST version 3.1.2, which assigned one particular inmate a predicted recidivism rate of 83.17%. This means that out of 100 people with similar scores, this tool predicts 83 of them will commit a new sex offense sometime in the future. This is a significantly high number, as the average recidivism rate for typical inmates is 40-70%. Three months later an newly updated 4.0 version of the MnSOST was released. The same doctor used the inmate's exact same criminal history on the new version of the same test and the inmate's predicted recidivism rate dropped to 6.25%. Despite, or perhaps because of, this remarkably low number, the doctor went on the record to state the newest version of the MnSOST test was obviously not reliable in this particular case... and the inmate was eventually civilly committed. People are naturally biased towards believing objective numbers provided by a scientifically designed algorithm as "fact" despite the reality that one study found flipping a coin results in the same accuracy in predicting future offending as these "scientific" tests.

² Level of Service/Case Management Inventory

³ Minnesota Sex Offender Screening Tool (versions 3.1.2 and 4)

⁴ Hare Psychopathy Checklist - Revised

⁵ Minnesota Screening Tool Assessing Recidivism Risk

⁶ Wechsler Abbreviated Scale of Intelligence, 2nd edition

⁷ Minnesota Multiphasic Personality Inventory, 2nd edition

⁸ Millon Clinical Multiaxial Inventory, 4th edition

⁹ Rapid Risk Assessment of Sexual Offense Recidivism

¹⁰ Violence Risk Appraisal Guide

¹¹ Sex Offender Risk Appraisal Guide

¹² Multiphasic Sex Inventory, 2nd edition

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The United States Supreme Court has ruled that civil commitment would be illegal, *but for* the fact their intent is not to punish but to provide treatment. The problem comes when these facilities offer an "endless" treatment program that can never be completed. Without a successful treatment completion in their records, the prediction numbers created by those actuarial tools never go down and the person remains incarcerated forever. Studies have shown that treatment longer than 36 months becomes detrimental and counter-productive. There are civilly committed people in Minnesota who have been continuously engaged in psychological treatment programs for over 20 years, with still no hope in sight.

Needing to provide treatment in order to remain constitutional, MSOP struggles to invent new class material, including "Cinema Therapy" (which had clients watching *Tom & Jerry* cartoons) and calling prison yard & recreational time "therapeutic hours" and clients scrubbing toilets & showers as "vocational training." With a high staff turnover rate, clients are forced to start over every time they are assigned a new primary therapist. This results in having to endlessly repeat courses and eventual loss of all hope. And remember, this is being done at a cost approximately 5 *times* that of prison.

Ironically, when civilly committing someone, the state is saying that an individual has a mental illness that makes them incompetent enough to live in society. If a person is truly mentally ill, they should receive treatment instead of prison. But the state wants it both ways, saying people who commit sex offenses are sane enough to serve their entire prison sentence, then suddenly become so mentally disabled they must be warehoused for life via civil commitment.

Some people passionately proclaim the old adage "*once a sex offender, always a sex offender... there is no cure.*" If that were true, why are we wasting hundreds of thousands of

dollars a year pretending to "treat" these individuals? According to the Department of Justice, people who commit sex offenses actually have one of the lowest recidivism rates, 5.6% (compared with 40-70% for other crimes). Just like a recovering alcoholic can manage to live life without drinking, 95% of those who committed a sex offense in the past can manage to live a crime-free life and return to become a productive part of society.

People may ask "*What do we do with the statistical 5.6% who may reoffend?*" The answer is simple: Do what we already do and use the judicial system that's already in place. Charge the person with a new crime and, if convicted in a court of law, give him a rational sentence following the state's approved sentencing guidelines, which already factors in additional time for prior offenses. Sentence them to prison with a known "out date" instead of paying millions to warehouse him for life for potential future crimes.

I hear the mobs screaming, "*We can't just let sex offenders go free to do whatever they want!*" You're absolutely right. But remember, most of these people have already completed their entire prison sentence. Everyone who has ever committed a sex offense already has their DNA and fingerprints listed in a national database. They are subject to parole, probation, Intensive Supervised Release (ISR), yearly sex offender registration (SOR), travel restrictions, GPS monitoring and/or conditional release (often for life). Each of those conditions include extreme restrictions that govern where they can live and work. These people committed a crime and served their time... now they deserve a chance to become productive members of society.

Even the pre-crime division in the fictional movie *The Minority Report* was unable to accurately predict the future. No one should be locked up for future crimes some computer program forecasts they may someday commit. Despite the fact our justice system is supposedly

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founded on the basic premise of “innocent until proven guilty,” civil commitment is pre-emptive punishment for future crimes a person has not committed, and that’s simply not allowed under the United States Constitution.

There is a pending Federal class action case entitled *Karsjens, et al. v. Harpstead, et al.*,¹³ where the presiding Judge Donovan Frank called Minnesota’s civil commitment “Draconic” and “unconstitutional” (unfortunately he was overruled by the 8th Circuit Court of Appeals). To date, only 1 man has ever been fully discharged from Minnesota’s state run program.

In *Sullivan v The Government of the United States of America*¹⁴ England’s High Court of Justice blocked the United States’ extradition request, specifically ruling Minnesota’s civil commitment law is “a flagrant denial of his rights enshrined under Article 5.1” of the European Convention on Human Rights (ECHR).

Judge Randall, former Justice on Minnesota’s Court of Appeals eloquently stated: “As a husband and a father, I could be persuaded that preventive detention of sexual predators, despite being a violations of the Bill of Rights, is good public policy. It is just that as a judge, I hate lying about it.”

Let’s quit lying about it and let these men breathe.

For additional information on civil commitment, please visit www.cure-sort.org or www.ajustfuture.org. For specific information about stopping Minnesota’s civil commitment program, visit *endMSOP* at Facebook, or email endMSOP@gmail.com.

¹³ Federal District Court File No. 0:11-cv-03659

¹⁴ Case No: CO/1672/2011