

Anyone can Incarcerate Anyone in Minnesota

A CIVILLY COMMITTED MAN STARTS THE PROCESS TO CIVILLY COMMIT A FORMER COP AND LAWMAKER

Daniel A. Wilson | April 1, 2022

Abridgment:

The most difficult part about writing this article was deciding when to use the term "incarcerate" or the term "committed." So for our purposes, the terms are interchangeable. As I write this article, Mr. Wallace, a man incarcerated to the Minnesota Sex Offender Program, has begun the process to incarcerate former police officer and lawmaker, Anthony Joel Cornish. Mr. Cornish has never been charged or convicted of a crime. However, there is an 81% probability that once the Petition for Civil Commitment is filed, Mr. Cornish will be incarcerated for the rest of his life. Mr. Wallace is using a little known law called the Minnesota Civil Commitment and Treatment Act ("MCT Act" henceforth). The MCT Act allows any adult to incarcerate any innocent person to the Minnesota Sex Offender Program (MSOP). A Judge once compared the MCT Act, as applied, to the Russian gulag Archipelago and the Japanese internment camps of World War II.¹ Similarly, a law professor called it a "Potemkin Village."² Professionals have been speaking out against the MCT Act for decades. Unfortunately, it will take citizens – not judges and professors – to change the legislation that governs the institution. Minnesotans have a duty to be aware of laws enacted by their local legislators and demand abolishment of any that are unconstitutional. I hope this article encourages Minnesotans to call for the repeal of the MCT Act because with this law anyone can incarcerate anyone in Minnesota.

The reader is encouraged to contact their local legislators to demand the repeal of the MCT Act (codified at Minnesota Statute 253D).

Reactions to this article can be sent to Daniel A. Wilson, PO Box 582, Pelican Rapids, MN 56572 or leave a message at (218) 351-1900 Ext: 106021

Minnesota Court of Appeals Judge, R. A. Randall, *In re Mattson*, 1995 Minn. App. LEXIS 805, Randall, J., concurring

University of Wisconsin law professor Gregory J. Van Rybroek, Ph.D., J.D. in *Karsjens v Jesson*, 11-cv-03659 (DWF/JJK), "Reply Expert Report of Gregory J. Van Rybroek, Ph.D., J.D.," p. 8

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My Background

In 2009, I got drunk and grabbed a 9-year-old girl's butt. She told the police four years later. In that four years, before I was convicted of 4th Degree Criminal Sexual Conduct, I got sober, married and we had a daughter. I served a two year prison sentence and was released in 2015. My daughter was four years old when I was released. She was beginning to ask about me. I began to mend the broken pieces of my family back together and thought I'd be with her soon. But only five months after my release, I found myself in a squad car on my way back to court.

"...his theatrics created the illusion that incarcerating someone requires a skillful attorney"

Upon entering the courtroom, I realized that I was not in *criminal* Court; but *civil* court. I was not being charged with another crime and this court was not inquiring about a criminal history. Instead, it was trying to determine "future behavior" for which there seemed to be no defense. This was a huge difference from my experience with the criminal Court.

I had a lot of respect for the criminal Court when I got into trouble as a juvenile. My parents taught me to dress nice and say yes ma'am and no ma'am to the Judge. The Court process was reasonably fair, and when I lost, I accepted the outcome because the court had proven my guilt beyond a reasonable doubt.

Conversely, everything sobering about the criminal Court was comical in the civil court. No matter how hard I tried, I could not conjure a rational argument that could defend future behavior. It was difficult to hide my apathy as the gravely obese County Attorney blustered on about what I *might* do in the future. Slouching in the docket, I answered his questions with a calm that was almost offensive. But as the judge nodded off, it became clear that I was not alone with my indifference.

It is impossible to produce evidence that would support a prediction of future behavior. Instead, the County Attorney had to rely on sensationalized rhetoric – not facts – to win his case. With his gaudy gestures and wide-mouthed surges, not only did he win, his theatrics created the illusion that incarcerating someone requires a skillful attorney. I was committed in April of 2017.

I met Mr. Wallace a few years ago so I know a little about his story. He was convicted of a crime of a sexual nature in 1985. After his conviction, he served a three year sentence. While in prison, he voluntarily completed sex offender treatment and never committed a sex offense again. When he got released, he got married, had children and started his own company. 30 years after he served his sentence, he got arrested for growing Marijuana and was subsequently incarcerated under the MCT Act.³ If Mr. Wallace is serious about committing Mr. Cornish, and the court is objective to the case, there is a good chance that Mr. Cornish will be incarcerated for the rest of his life – despite his innocence.

³ The MCT Act is codified at Minn. Stat. § 253D. (Notice: All references to Minn. Stat. § 253B henceforth are justified per Minn. Stat. § 253D.07 Subd. 2)

What is the Minnesota Civil Commitment and Treatment Act?

Lawmakers enacted the MCT Act in In 1994. Under the MCT Act, A person can be incarcerated if he or she is found to be a “Sexually Dangerous Person” (SDP) or have a “Sexual Psychopathic Personality” (SPP), or both. 89% of the men and women committed in Minnesota have met the SDP criteria.⁴ A person will be considered SDP if they have engaged in *emotionally* harmful conduct on at least two occasions and have a “mental dysfunction” that makes them “highly likely” to be emotionally harmful again in the future. The “emotional conduct” does not have to be physical,⁵ the term “mental dysfunction” has no medical meaning, and the assessments used to determine “highly likely” are inherently faulty.⁶ In addition, there is no need to prove that the person has an inability to control his or her sexual impulses.⁷ In fact, the language in the statute is so vague that the American Psychiatric Association stated that commitment should be, “vigorously opposed.”⁸

“...over 90 detainees have died attempting to complete the program even though the Deputy Director of the facilities admitted that it cannot be done”

Once a person is committed, they are held captive in a facility surrounded by three layers of razor-wire fencing.⁹ The state maintains two facilities in Minnesota – one in Moose Lake and one in St. Peter. Collectively, these facilities are called the *Minnesota Sex Offender Program*.

The MCT Act is Minnesota’s application of what is known as “Sexually Violent Predator Civil Commitment” (“SVP Commitment” henceforth). 21 other jurisdictions in the United States operate their own version of SVP Commitment. However, Minnesota is one of the easiest to get captured by and one of the most difficult to be released from. Most states with SVP Commitment laws commit people who are so mentally ill that they are dangerous to themselves or others. They then release them once they are no longer a danger.¹⁰ However, Minnesota lawmakers use the MCT Act to commit people who are not mentally ill.¹¹ Most states offer a program that if completed, will allow individuals to be released. Officers at the facilities also claim to provide such a program. However, over 90 detainees have died attempting to complete the program even though the Deputy Director of the facilities admitted that it cannot be done.¹² In fact, Minnesota Court of Appeals Judge, R. A. Randall, asserts that the allusions to treatment are a guise to justify the detention.¹³

⁴ “SVP Civil Commitment of S.O.s” by James Nobles, *Office of the Legislative Auditor*, (2011), p. 25

⁵ Minn. Stat. § 253D.02, Subd. 7a

⁶ Melissa Hamilton, *Adjudicating Sex Crimes as Mental Disease*, 33 Pace L. Rev. 536 (2013), p. 542

⁷ Minn. Stat. § 253D.02, Subd. 12 (b), and “SVP Civil Commitment of S.O.s” by James Nobles, *Office of the Legislative Auditor*, (2011), pp. 24, 25

⁸ “SVP Civil Commitment of People Convicted of S.O.s in the United States,” Trevor Hoppe, et. al., *UCLA: Williams Institute*, (2020), p. 2 quoting, “Dangerous S.O.s: A Task Force Report of the American Psychiatric Association,” *American Psychiatric Association*, (1999), p. 173

⁹ Minn. Stat. § 253D.07, Subd. 4

¹⁰ *Kansas v Hendricks*, 521 U.S. 346, 368-69

¹¹ Variance Request Application for Rule 9515.3030, Subp. 2. Psychiatric evaluation

¹² *Karsjens v Jesson*, 11-cv-03659 (DWF/JJK), Trial Transcripts, Vol. XX, p.4633, v.3-8

¹³ *In re Linehan*, 544 N.W.2d 308, 326, Randall, J., dissenting

Mr. Cornish need NOT be a “Sex Offender” to be Incarcerated to the Minnesota Sex Offender Program.

Daniel Larson has never been arrested or convicted of a crime, yet he has been incarcerated for over 44 years. If Larson is released, he will be on the sex offender registry alongside convicted sex offenders simply because of his former incarceration status. In addition, he will be required to register with the Bureau of Criminal Apprehension for the rest of his life even though he is not a convicted sex offender.¹⁴ This shows just how powerful a misplaced label can be – especially one so sensationalized by the media.

“Daniel Larson has never been arrested or convicted of a crime, yet he has been committed for over 44 years.”

Convicted sex offenders are labeled as sex offenders for the same reason murderers and thieves are labeled. These labels alter the social status of the person who committed the crime; announcing to the world that they have broken the law. Once the person has served their sentence, however, their rights are restored and hopefully so is their social status.

Sex crimes are horrific. They have a traumatic impact on victims and communities. The moment someone chooses to commit a *sex crime*, they make a choice to become a *sex offender*. The label is well deserved. The sex offender label should never be applied to innocent people. But that is precisely what Minnesota lawmakers are doing.

The name of the facility – *Minnesota Sex Offender Program* – implies that everyone committed is a sex offender. However, the Minnesota Department of Human Services (DHS) – the department charged with operating the facilities – does not even have the jurisdiction to sanction criminal activity. However, they are somehow allowed to run a facility with a name that uses a term that is unrelated to the scope of their authority.

The term “sex offender” is used to describe someone who has committed a sex crime.¹⁵ When it comes to the MCT Act, however, there is no *sex offense* involved. In fact, there is no *crime* involved.¹⁶ The MCT Act never refers to respondents as “sex offenders” because the MCT Act targets a broader demographic: Minnesotans.

The Act only uses the term “sex offender” in two specific ways: when referring to the name of the facilities people are sent to once committed and when referring to “sex offender treatment” in the Department of Corrections.¹⁷ Innocent people receive the title of “sex offender” upon entering the *Minnesota Sex Offender Program*, whether they have a sex offense conviction or not. Detainees are even forced to wear identification cards with “**Minnesota Sex Offender Program**” printed in big bold letters.

Most of those committed under the MCT Act have a sex offense conviction. But a sex offense conviction is NOT a common denominator among the committed. In fact, 12% of those committed under the MCT Act have no criminal record at all.¹⁸ Although 88% *do* have a criminal record, 0% are committed *because* of that record. They did not need a sex offense conviction to get incarcerated

¹⁴ Minn. Stat. § 243.166, Subds. 1b (c); 6 (d) (4)

¹⁵ *Black's Law Dictionary*, 11th ed. (2019), p. 1299

¹⁶ *In re Mattson*, 1995 Minn. App. LEXIS 805, Randall, J., concurring

¹⁷ Minn. Stat. § 253D.10, Subd. 2 (6)

¹⁸ “SVP Civil Commitment of S.O.s” by James Nobles, *Office of the Legislative Auditor*, (2011), p. 7

and neither does anyone else. However, assuring that the vast majority of those committed are convicted sex offenders creates the illusion that a sex offense conviction is required for commitment.

The practice of committing convicted sex offenders, coupled with associating the term “sex offender” with the facility where committees are housed, creates the illusion that a sex offense conviction is a prerequisite for commitment. This has effectively deceived the public, shielding Minnesota lawmakers from public scrutiny.

So What *Does* it Take to get Committed in Minnesota?

Most citizens in America are protected from incarceration by the Presumption of Innocence. Americans have the Constitutional right to be presumed innocent until the government proves every element of every allegation beyond a reasonable doubt. Despite this common sense approach to justice, Minnesota lawmakers have incarcerated nearly 850 citizens – not for a crime – but for speculation.¹⁹

Minnesota incarcerates more men and women per capita than any other state with SVP Civil Commitment.²⁰ In fact, for every 1 million people in Minnesota, 131 are living (and dying) under the MCT Act. This mass incarceration of innocent people is achieved by substituting the evidentiary standard of *beyond a reasonable doubt* with the *clear and convincing* standard.

The beyond a reasonable doubt standard guarantees a trial by jury for the accused. To establish guilt, that jury must weigh all evidence and testimony of the case until all doubt in the mind of each juror is removed. If even one juror believes the defendant may not have committed the crime the defendant would be found not guilty. That man or woman would then leave the Courtroom the same as he or she entered: *innocent until proven guilty*.

However, the clear and convincing standard – which is used for the MCT Act – is not so rigorous. The clear and convincing standard allows the *respondent* to be indeterminately incarcerated if the *petitioner* convinces the court that the proposed contention is “highly probable.”²¹ In addition, the respondent does not have a right to a jury trial.²² Instead, the respondent will have a bench trial in front of a judge where hearsay testimony and hearsay evidence is admissible.²³

Minnesota lawmakers are incarcerating citizens for baseless allegations, invented “mental dysfunctions,” and inherently faulty assessments observed by the clear and convincing evidentiary standard. This unconstitutional practice has incarcerated of hundreds of innocent men and women and has put millions of others at risk of life long incarceration.

¹⁹ *In re Linehan*, 544 N.W.2d 308, 326, Randall, J., dissenting

²⁰ “SVP Civil Commitment of S.O.s” by James Nobles, *Office of the Legislative Auditor*, (2011), p. x

²¹ The *respondent* is the person who the petitioner is trying to “commit.” The *petitioner* is the one trying to “commit” the respondent.

²² “SVP Civil Commitment of People Convicted of S.O.s in the United States,” Trevor Hoppe, et. al, *UCLA: Williams Institute*, (2020), p. 8

²³ “SVP Civil Commitment of S.O.s” by James Nobles, *Office of the Legislative Auditor*, (2011), p. 26

Writing and Filing a Petition to Commit Someone

Since the start of 2017, the Associated Press has tallied at least 90 state lawmakers who have faced public allegations of sexual misconduct.²⁴ Not all of these allegations resulted in criminal charges or convictions. However, of the four Minnesota lawmakers on that list, three meet the standard for commitment according to the MCT Act: Dan Schoen, Tony Cornish, and Jim Knoblach.²⁵ News reports alone provide enough information to commit former cop and Republican member of the House of Representatives, Anthony Joel Cornish.

The only thing protecting Mr. Cornish from being incarcerated for life is the arduous process required to file a Petition for Civil Commitment. But if Mr. Wallace is willing to take the proper steps to secure the commitment, there is an 81% chance that he will be successful.²⁶ While Mr. Cornish awaits his court hearing, law enforcement can house him with us even before the commitment is final.²⁷

STATE OF MINNESOTA DISTRICT COURT
 COUNTY OF BLUE EARTH FIFTH JUDICIAL DISTRICT
 Case Type: Civil Commitment
 Court File No: _____
 In the Matter of the Civil Commitment of
 ANTHONY JOEL CORNISH PETITION FOR CIVIL
 Respondent COMMITMENT
 STATE OF MINNESOTA)
 COUNTY OF CARLTON)

I. PERSONAL BACKGROUND.
 Petitioner, Mark S. Wallace, is an interested party in this matter. To the best of his knowledge, information, and belief, Petitioner respectfully represents:

- Respondent, Anthony Joel Cornish (Cornish) who was born on May 3, 1951. He is 70 years of age.
- Cornish currently resides in Veterans Center of Southminster, Minnesota as the purpose of civil commitment.
- Respondent's current address is:

Name	Relationship	Address
Mary Cornish	Daughter	Unknown

II. LEGAL CLAIMS

- The observations of Cornish's behavior that provide a factual basis for believing that he is a "sexually dangerous person" as defined in Minn. Stat. § 253D.02, Subd. 12 and in need of hospitalization are set forth below in section III.
- No suitable alternative to involuntary hospitalization exists for the reasons set forth below.

13. Petitioner to Minn. Stat. § 253D.114, I declare under penalty of perjury that everything I have stated in this document is true and correct. Executed on this 14th Day of the Month of April, in the Year of Our Lord Jesus Christ, Two Thousand Twenty Two, in Carlton County, Minnesota.

PRAYER FOR RELIEF
 WHEREFORE, Petitioner prays that the court commit the Respondent, Anthony Joel Cornish, as a sexually dangerous person to the Minnesota Sex Offender Program.

Dated: April 14, 2022 in the County of Carlton, Minnesota.

Mark S. Wallace
 Mark S. Wallace, PLO SE PETITIONER
 Electronically signed on 4/14/2022 1:33:33 PM

14. On April 1, 2022 the Petitioner returned the files of this case to the Blue Earth county attorney, Patrick E. McDonnell, who did not file good cause to file a petition pursuant to Minn. Stat. § 253D.

15. On April 1, 2022 the Petitioner submitted the facts of this case to three (3) members who did not respond.¹ (Minn. Stat. § 253D.07, Subd. 2 (d))

16. On April 1, 2022 the Petitioner submitted the facts of this case to Blue Earth County Human Services who did not do a petition concerning.² (Minn. Stat. § 253D.02 Subd. 2; 253D.07 Subd. 1 (b))

17. As an adult who has a specific interest in Cornish, Levi Mays Rajala is the Petitioner in this matter. (Minn. Stat. § 253D.07, Subd. 2 (a) (2) (b)(ii) Subd. 10 (1))

III. FACTUAL BACKGROUND

A. Cornish's History Of Sexual Offense Conduct

- Anthony Joel Cornish was a police officer from 1975 to 1990. He served eight years as a Republican member of the House of Representatives and traveled considerable distances in the state capital.³
- In 2017, Sarah C. Walker, a lobbyist at the capital, reported that Cornish made inappropriate comments towards her.⁴
- In 2017, Elin Mays Ojala reported that Cornish sent inappropriate text messages to her.⁵
- Cornish admitted that his behavior made others feel "uncomfortable, not surprised."⁶
- Cornish resigned on November 30, 2017 following several misconduct allegations.⁷

¹ Paul M. Rasmussen, 2220 Oakland Court, White Bear Lake, MN 55110; Mary Kanning, 5100 Eden Ave., Ste. 220, Eden, MN 55416; Rosemary Lindeman, 6052, Oakland Blvd S., Oakdale, WI 53757.
² Blue Earth County Human Services, 410 S. 5th St., Mankato, MN 56002-2206
³ Sen. Dan Schoen, Rep. Tony Cornish to Range Amid Sexual Harassment Allegations," by Dave Oshick, <https://www.pressconnect.com>, Pioneer Press, November 21, 2017, Updated: April 24, 2018.
⁴ Id.
⁵ Id.
⁶ Id.

⁷ "Cornish, lobbyist say Rep. Cornish sexually harassed them," by Sam Edler, APR News, November 19, 2017.

Example of the Petition for Civil Commitment expected to be filed by Mr. Wallace.

²⁴ "90 State Lawmakers Accused of Sexual Misconduct since 2017," *The Associated Press*, (2019)

²⁵ Senator Schoen resigned on 12/15/17, following allegations of sexual assault. Cornish resigned 11/30/17, following allegations of sexual harassment. Rep. Knoblach's adult daughter alleged that he inappropriately touched her.

²⁶ "SVP Civil Commitment of S.O.s" by James Nobles, *Office of the Legislative Auditor*, (2011), p. 37

²⁷ Ophelia May Blackheart, a transgender woman, arrived at the commitment facility in December 2020. She was not committed yet. She was being held pursuant to Minn. Stat. § 253B.07, Subd. 2b, awaiting trial. Not deemed to be a Sexually Dangerous Person (SDP) or a Sexual Psychopathic Personality (SPP), she was forced to live with those who the civil court did deem SDP, SPP, or both.

Although cases are usually investigated by an agency selected by the county board prior to a petition being filed – they do not have to be.²⁸ Any person who is interested in committing someone would first submit the facts of the case to the local county human services agency. If the agency does not find cause to investigate the case, the facts of the case would be submitted to the County Attorney.²⁹ Doing so gives local authorities “dibs” on the case. If neither of these departments investigate or file the petition, the interested person can file the petition with the information they have.³⁰ According to the MCT Act, any adult with a specific interest in the respondent and has knowledge of the facts can file a petition.³¹

According to the MCT Act, the petition must include the name and address of the proposed respondent and the name and address of the proposed respondent’s nearest relatives. The petition must contain “factual” descriptions of the proposed respondent’s recent behavior, where it occurred, and the time period over which it occurred. (Remember, only the clear and convincing standard must be met so it is not necessary to “prove” claims) Each allegation must be supported by observations of witnesses named in the petition. (Remember, hearsay is admissible) Petitions must be stated in behavioral terms and must not contain judgmental or conclusory statements.³² The petition must be accompanied by a written statement from an examiner stating that the proposed respondent should be incarcerated.³³ If the petitioner is unable to secure the written statement, they only need to include documentation that a “reasonable effort” was made to secure the statement.³⁴ The statement must be from an examination that took place within the 15 days preceding the filing of the petition. If the proposed respondent is in prison, the petition can be filed in the district court in the county where the conviction was finalized. If they are not in prison, the petition can be filed in the district court of the county where the respondent is present.³⁵

²⁸ On November 19, 2021, I called an experienced SVP Commitment attorney to ask him if I could, hypothetically, file a petition to commit my neighbor. He responded, “There is nothing in the law that prohibits it. I have received calls from people asking if they can commit a loved one. I tell them they can, but they contact the proper local agencies to investigate the case. If the agencies do not find good cause to take the case, the family member can file a petition in the district court.” See Minn. Stat. § 253B.02, Subd. 5; § 253B.07, Subd. 1 (a)

²⁹ Minn. Stat. § 253D.07, Subds. 1, 2; § 253B.07, 08

³⁰ Minn. Stat. § 253B.07, Subd. 2 (a)

³¹ Minn. Stat. § 253B.02, Subd. 10 (1); § 253D.07, Subd. 1

³² Minn. Stat. § 253B.07, Subd. 2 (b)

³³ Here are three “examiners”: Paul M. Reitman, 3230 Orchard Court, White Bear Lake, MN 55110, ph. (612) 508-9309; Mary Kenning, 5100 Eden Ave., Ste. 320, Edina, MN 55436, ph. (612) 239-9835; Rosemary Linderman, 6052, Gulfport Blvd. S., Gulfport, FL 33707, ph. (727) 409-9014

³⁴ Minn. Stat. § 253B.07, Subd. 2 (c)

³⁵ Minn. Stat. § 253D.07, Subd. 1

Conclusion

Our children do not deserve to grow up in fear that they could experience the same fate that I did. Minnesotans should call for the repeal of the MCT Act – not just to protect Mr. Cornish – but to protect their own Constitutional rights and the Constitutional rights of their children. My daughter is now 10 years old. She no longer asks about me; but, that is my fault. I committed a sex offense and deserve the abhorrent label of “sex offender.” However, I served my prison sentence and was released. I had not committed another crime and was incarcerated for “future behavior.” It is too late for me but if this article leads to the repeal of the MCT Act, I have done something for my daughter.

U.S. Supreme Court Justice, Antonin Scalia warned us after thousands of Japanese-Americans were confined to preventive detention following the attack on Pearl Harbor by stating, “You are kidding yourself if you think the same thing will not happen again...” He was right, and if we fail to repeal the MCT Act, the reader is fairly warned to beware because if someone has you, or someone you love, in their cross-hairs – remember: anyone can incarcerate anyone in Minnesota.

Acknowledgments

“Indeterminate incarceration could happen to anyone in Minnesota. If we do not stand up for other’s given rights, we’re in jeopardy of losing our own.”

– *Merry Schoon, OCEAN Director of Research*

“This issue of not needing a sex offense history to be committed in Minnesota is only one of many ignored, glaring concerns with Minnesota’s Civil Commitment system.”

– *Eric Janus, past President and Dean of the Mitchell / Hamline School of Law.*

“Minnesota is exceptional in this regard: you don’t need a sex offense conviction to get incarcerated. The low bar in Minnesota is unusual compared to other states.”

– *Trevor Hoppe, Assistant Professor of Sociology, University of North Carolina Greensboro*

“The points made in this article would have fallen on deaf ears seven or eight years ago, but now I think people are listening.”

– *William Lubov, Attorney at Law*

“The two biggest lies are that we’re here for a sex crime and that we’re here for a severe mental illness. Neither are true. Those who have a criminal history served their sentence. If we do suffer severe mental illnesses, where’s the current evidence? For those who do have a sex offense conviction, this is double jeopardy. For those who do not, this is preventive detention.”

– *Russell John Hatton, Raj, OCEAN co-founder*