



## Kansas Civil Commitment Under Scrutiny

By Matt Clarke

The Sexual Predator Treatment Program, operated by the Kansas Department for Aging and Disability Services, is at the heart of a debate over whether civil commitment programs are truly designed to rehabilitate offenders convicted of sex crimes, or are thinly-disguised prisons intended to keep sex offenders warehoused once they have completed their sentences. Helping to fuel the debate is the skyrocketing cost of maintaining such programs, as new offenders are civilly committed but few are ever released.

Kansas Governor Sam Brownback has proposed increasing funding for the state's sexual predator program to an estimated \$22 million for fiscal year 2016-17 – an increase of more than \$6 million in just three years. According to the Department for Aging and Disability Services, around 250 offenders are currently in the civil commitment program and 10 to 15 more are added annually. Twenty-two offenders have spent at least 15 years in the program and over two dozen have died while in custody as of December 2014.

Critics claim such statistics are proof the state's Sexual Predator Treatment Program is, in reality, an effective life sentence for sex offenders – most of whom they say could safely be freed with minimal risk of re-offending. For example, the four offenders who have been released from the program thus far have not committed new crimes.

The civil commitment program is housed at Larned State Hospital, located roughly 125 miles west of Wichita. The hospital itself is under scrutiny for failing to address severe understaffing problems identified in a 2013 legislative audit. According to a follow-up audit released in April 2015 and emails obtained by the *Topeka Capital-Journal*, staffing levels fell below even the hospital's own standard for some units in the treatment program. The emails also described mandatory overtime required by the hospital for almost half of the 30 program employees.

The *Capital-Journal* also found that the staff vacancy rate among nurses and mental health technicians in the civil commitment program had actually increased about 8% since April 2013 when the initial state audit was conducted, to a vacancy rate of 38% as of mid-2015.

"Additionally, about half of the survey respondents reported that core staffing levels are only

sometimes or rarely met," the audit noted. "Further, about 35 percent of staff reported that there are rarely or never enough staff on duty during a shift to ensure safety of residents and staff. These survey results and staffing data indicate the program may not be maintaining its own minimum staffing goals on a regular basis."

Low wages and poor working conditions combined to create the pervasive, ongoing staffing shortages at the Larned State Hospital, according to Rebecca Proctor, director of the Kansas Organization of State Employees.

"No meaningful progress has been made since the 2013 legislative post-audit report," she said. "If anything, staffing shortages are higher today. Drops in core staffing result in massive amounts of forced overtime, impacting employee health/safety, patient safety, and the agency budget."

Former Larned counselor Tapatha Strickler, who worked with some 90 patients during her tenure from 2012 to 2014, explained the hospital has staffing problems because few medical professionals "are willing to bet their life and their license on working there." Strickler said she resigned because she felt the civil commitment program was unethical and believed only a handful of offenders are too dangerous to be released. Instead, she said, most are caught up in a "vicious cycle" due to organizational problems, because patients can be forced to repeat stages of treatment as punishment for uncooperative behavior or failing routine polygraph tests, prompting many to boycott the program out of frustration.

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# Letters From Across the Nation

The following are excerpts from letters we receive. We appreciate your interest, concern, and feedback. We can't include every comment. The opinions printed below are those of the writers and do not necessarily reflect the views of CURE-SORT. These are examples of what we receive.

### David in New Jersey

After serving 20 consecutive years throughout New Jersey's prison system, in 2000 at expiration of my criminal sentence, I was involuntarily civilly committed as a sexually violent predator.

Sadly sir, it's beyond my mental ability to adequately convey the fraud, knavery and corruption involved in this "treatment facility" where a minor degree in Social Work can have the individual insist on being called Doctor.

At any rate what discourages me is there doesn't seem to be a significant or centralized focus on those of us, who have fulfilled all punitive demand for our criminal trespass, yet still find ourselves imprisoned. Currently we're being held in a super-max building, with D.O.C. in charge.

### Chris in Texas

I am currently enrolled in the 9 month program here. After being confined for 21 years on a 30 year sentence, I really feel that a 9 month program is a waste of time and taxpayer money when TDCJ has had 21 years to work on whatever issues I may have surrounding my offense. We as offenders have to want to change and must realize the mistakes and errors that led to our confinement prior to our release or we are destined to return regardless of any programs we are put through.

### James in California

Requiring an identifier on all U.S. passports of citizens once convicted of sex crimes drives a stake through the heart of thousands of people. How this could be rationalized by a U.S. political party and President is beyond my imagination. Who will be the next targeted group is an obvious question as no one who has paid the price for a past violation of any law is safe. We are now the lepers of today's society! I pray that the courts will ultimately declare this law to be unconstitutional.

The Sex Offender Specific Treatment article by Dr. JoEllen Wiggington (Winter 2016) is an excellent introduction to the various treatment programs. In the 90's in California I was in a group that required full disclosure of past sexual history with no guarantee of immunity from further prosecution, demanding the use of polygraph to confirm adherence to all rules related to treatment, and utilized a

combative, group confrontational approach. I suffered through it for 4 months and escaped as my attendance was voluntary and not court ordered. Ninety percent of attendees were court ordered and complied under fear of a parole or probation violation which would return them to prison. Fear was the primary motivator, which was ultimately ineffective in rehabilitating people. Progress comes so slowly, even when the obvious is clearly visible. Future articles will offer much needed information on how some programs work well.

### Ken in Missouri

I am currently a mental health resident in the SORTS program. I am also nearing the end of a very long stay in treatment. I've watched this program start up and change five times over 16 years. What was started under draconian ways has now changed over the recent years to a positive growth type of therapy.

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## Sex Offender Specific Treatment

By Dr. JoEllen Wiggington  
Pacific Professional Associates  
Member of CURE-SORT Board

*EDITOR'S NOTE: As our mission is to promote the importance of counseling for the recovery of those who have sexually offended, when appropriate, a discussion will be held in our issue along this topic. This is the third article in this series.*

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As discussed in previous columns, sex offender specific treatment differs from more traditional psychotherapy in several key aspects. In traditional psychotherapy the client usually presents with specific problems. The client and therapist then explore the issues involved and collaborate on strategies to effect changes in thinking, feeling and behavior. In sex offender treatment, by contrast, there are issues commonly believed to be related to the initial offense or re-offending. These common factors give rise to strategies that can be identified as "treatment targets."

**See Treatment - Page 6**

**PLEASE NOTE: Check the date on your mailing label to determine if your membership due to expire. Also, Please let us know if your address changes—especially inmates—because your mail will not be forwarded.. Be sure to include your prison I.D. number to guarantee proper mailing.**

# Constitutional Law

By Roy L. Marcum and Norris Young

Along with factual and case specific arguments against civil commitment laws, there remain constitutional challenges to committing individuals after their time has been served.

In the New Jersey courts, one appellant, in a pro se supplemental brief, proceeding under the docket I.M.O. The Matter of the Civil Commitment of N.H.Y., SVP No. 37-00 A-2729-14T2, has presented the argument that: The New Jersey Sexually Violent Predator Act 30:4-27.24. et seq., is "Prohibited Class Legislation" in violation of the New Jersey State Constitution Article 4, Section 7 Paragraph 9 (3), which states:

"The legislature shall not pass any private, special or local law (3) providing for change of venue in civil or criminal causes. Such legislation is unconstitutional if it arbitrarily or capriciously distinguishes between members of the same class."

The Appellant further argues that a "Suspect Classification" is created by distinguishing arbitrarily among the class of persons convicted of felonies. Such classification would offend against the provision of the New Jersey Constitution stating:

"Prohibited 'Local' and 'Special' laws are those that rest on false or deficient classification, their vice being that they do not embrace all the class to which they are naturally related" Westlaw N.J.S.A. Const., Art. 4 §7 ¶9, note 7, pg 208.

The operation of the NJSVP-Act, the Appellant submits, arbitrarily distinguishes and creates a subclass among thus class of all persons convicted of sex offenses in New Jersey by selectively civilly committing some offenders and not others.

Lastly, the Appellant argues that the NJSVP-Act is equally offensive to the United States Constitution, Section 9 provision stating, "No Bill of Attainder or ex post facto law shall be passed." While consistently found not to offend against the ex post facto clause, N.H.Y. believes an argument can be made that SVP-Acts offend against the Bill of Attainder Clause, since these laws impose penalties by an act of the legislature, and against the Equal Protection Clause of the Fourteenth Amendment by selectively stigmatizing and punishing a select group of individuals.

Readers are encouraged to examine their states' constitutions and research their respective states' commitment laws for comparable applications of those states' (and the federal) constitutions. Authors may be contacted by Roy L. Marcum 144 or Norris Young 37, PO Box 905, Avenel, NJ 07001 or call at 877-574-9909.

**We are only young once, but we can be immature indefinitely.**

## CURE-SORT NEWS

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**CURE-SORT**  
P.O. Box 1022  
Norman, OK 73070-1022  
(405) 639-7262  
e-mail: [info@cure-sort.org](mailto:info@cure-sort.org)  
web: [www.cure-sort.org](http://www.cure-sort.org)

Editor and Publisher: Wayne Bowers  
Production Assistant: Ed Gundersen  
Ila Davis, Consultant

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## Kansas from Page 1

“Steven Islam, 43, convicted of child molestation in 1994, was civilly committed to Larned upon his release from prison in 2003. Even though he said he believes he will not reoffend due to the treatment he received for his diagnosed schizophrenia and a drug addiction, he still expects to die at Larned.

“When I first got here, I worked the program, but when people see that no one is going anywhere, they just give up. They realize this is our situation for life,” he stated.

Larned Superintendent Tom Kinlen said if all goes well, an offender should be able to complete the seven-phase treatment program in four to five years, though he admitted that 30% to 40% of patients refuse to participate. Further, according to the April 2015 follow-up audit, the vast majority of offenders – 211 of 243 – are only in the first four phases.

From 2012 to 2014, while Strickler worked at Larned, the sexual predator treatment program consisted of one to three hours of professionally-led group therapy weekly and a 30-minute session with a psychologist once every three months. At a state budget hearing in April 2015, Secretary of Aging and Disability Services Kim Bruffet said the standard for release from program is “virtually no risk” of reoffending. In testimony before a state House committee a month earlier, Kim Lynch, senior litigation counsel for the Department for Aging and Disability Services, defended the program as being constitutionally adequate.

“Maybe not everyone will receive a cure. It’s not an issue of whether there is a cure for things. It’s treatment and these are people receiving treatment,” she testified.

“If they’re still a threat to society, maybe we shouldn’t have this totally separate sexual predator rehabilitation and treatment program,” remarked Kansas State Rep. Marvin Kleeb. “They need to be part of the regular prison system.”

Lynch conceded that Kansas officials are closely watching a federal class-action lawsuit filed over Minnesota’s sex offender civil commitment program due to the ripple effect any judgment could have if it reaches the U.S. Supreme Court. Minnesota maintains a 700-person sex offender treatment program which began in 1985; only one person has been released since its inception, and the state failed to obey a previous court order to reform the program to provide additional treatment. [See: *PLN*, Feb. 2012, p.28].

A successful federal court challenge in neighboring Missouri over allegations that the state’s civil commitment center is actually a prison is also being scrutinized. Only a few people have been released from Missouri’s \$24 million-per-year sex offender treatment program, while at least 10 offenders have died in custody since it began in 1999. Missouri U.S. District

Court Judge Audrey G. Fleissig, in holding the state’s civil commitment process unconstitutional, wrote that it “suffers from systemic failures . . . that have resulted in the continued confinement of individuals who no longer meet the criteria for commitment, in violation of the due process clause.”

The constitutionality of Kansas’ Sexual Predator Treatment Program was upheld by the nation’s highest court in 1997, though Justice Anthony Kennedy noted the program would be unconstitutional if the treatment provided to offenders was “a sham or mere pretext” to allow additional punitive confinement. Despite his misgivings, Kennedy voted with the majority. See: *Kansas v. Hendricks*, 521 U.S. 346 (1997) [*PLN*, Aug. 1997, p.1].

“They [sex offender civil commitment programs] are not working in the way the courts were promised they would work,” observed Eric Janus, dean of the William Mitchell College of Law in St. Paul, Minnesota and an expert on civil commitment. “They were promised to be real civil commitment programs, but they’re not. If they’re not really civil commitment, then they’re really punishment, and that’s unconstitutional because those guys were already punished.”

According to a January 16, 2016 article in the *Kansas City Star*, only four sex offenders have been released since Kansas implemented its civil commitment program in 1994, while 28 have died.

“All this is, is a concentration camp and warehouse,” said Paul Blumenshine, 74, who was civilly committed at Larned after serving 20 years in prison for a sex offense. “The only way they get out of here is in a body bag.”

A class-action lawsuit, challenging Kansas’ sex offender civil commitment program, filed in 2014, remains pending.

Sources: *Kansas City Star*, <http://cjonline.com>, [www.ksl.com](http://www.ksl.com), *Associated Press*, <http://mental-health-facilities.healthgrove.com>, [www.lakeexpo.com](http://www.lakeexpo.com)

(**EDITOR’S NOTE**; Article from Prison Legal News March 2016, [www.prisonlegalnews.org](http://www.prisonlegalnews.org))

### Patrick in Wisconsin

I will soon join you in the free world ☐ HOMELESS! Yes my agent told me I will have GPS placed upon my person then set free HOMELESS. Don’t be surprised if you see me on the news because I recently wrote Gov. Scott Walker asking if I could stay by him till I find a place (no response). I will obtain bright orange pants and top white ☐HOMELESS SEX OFFENDER☐ on it and run around downtown Milwaukee, then walk around the courthouse for ---- and giggles. I want to bring national attention to people like me who cannot participate in any reentry programs offered in the entire state!! Point being, I wanted to thank you for all your newsletters, they helped me. I believe we all have a calling, ☐a purpose,☐ and as a paralegal will fully exercise my right to freedom of speech.

# Toledo Meeting

## Addresses Justice Issues

By Jim Prager

**The Toledo (OH) Prison Awareness recently hosted a week of events to look at what happens in our prisons. One of the points was why people should care about what happens in our prisons. Those of us who are incarcerated, have been incarcerated, or loved ones in prison know the pain of our prison system. This is true whether it is a sexual crime or not. It is critical to take every opportunity to let people understand the inhumane and unfair treatment which goes on every day in our prisons.**

Our event started with 2 showings of Edgar Baren's film Prison Terminal: The Last Days of Private Jack Hall. This film documents the last few weeks of this prisoner's life and the bonds between him and fellow prisoners who took care of him. One person shared that it had not occurred to her that people grow old in prison. We know different. Two victims of crime shared their story and how the impact of a crime made their lives different. I think it is important to realize both sides of crime. On Wednesday retired Michigan Circuit Judge William Buhl spoke about utilizing restorative justice principles in our courts.

He spoke passionately about how this is less adversarial without winner and loser. Restorative justice puts a great deal of emphasis on treatment vs. punishment and healing vs. revenge. Judge Buhl spoke at two classes of the University of Toledo on this topic as well. provided an An opportunity was provided for Anthony Bouyer to show a documentary on the school to prison pipeline. Also featured was a Citizens Circle which is a support group for people out of prison. The day concluded with a presentation on juvenile justice.

The last day focused on our registrant population. Amy Borror from the Ohio Public Defender's Office shared information regarding the Sex Offender Registry in Ohio. She indicated that currently around 3,000 people are incarcerated in Ohio for failure to register. This is considered a new crime rather than a technical violation. This is an interesting number especially when one considers the goal of the Ohio Department of Corrections is to reduce the prison population. Amy also indicated that she is hearing increasing acknowledgement that the registry is not working as intended by the legislature. Whether this will lead to any action is unknown but at least something positive to build on as we move forward.

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## Six members pass away

Six people who have been on our mailing list have passed away since our last issue. They are Eleanor Miller, Nancy Moran, Gaelord A. Overton, Harry Cain, Charles Brand and Steven A. Ehrlich.

Ms. Miller was a diligent advocate for justice and prison reform for many years from her home in Paw Paw, MI, and was a long time board member of Michigan CURE.

Ms. Moran, who had been an advocate for prisoners in the Baltimore, MD, area, had passed away at an earlier date and we had not been informed.

Overton, Cain, Brand and Ehrlich were detainees at the Rushville civil commitment facility in Rushville, IL

**Our thoughts go out to the family and close friends of these people.**

**There are two things that everyone must face sooner or later; a camera and reality. A smile is a big help in both instances.**

## Resources

We are pleased to offer the following resources. Donations accepted to cover cost of postage and printing. Mail donations to the CURE-SORT address noted on Page 3.

**One Breath At A Time** by Ila Davis (\$17.50)

**Understanding Offending Behavior** by Stephen Price. (A collection of 9 of Stephens articles from previous newsletters) (\$4.00 for the set of 9 articles)

**When Someone on the Registry Moves Into My Neighborhood** (Member Price \$5; Non-Member Price \$10)

**SUPPORT GROUP:** Families & friends for those in civil confinement, contact Andrew Extein, MSW. Interested persons please e-mail: [CCN@curenational.org](mailto:CCN@curenational.org)

**No More Victims – One Man's Journey Into Sexual Offending and Recovery**, By S. Sands (Ed G), \$13.95 (does not include shipping). Request by e-mail to: [gunder788@verizon.net](mailto:gunder788@verizon.net) or [amazon.com](http://amazon.com).

# Too Soon to Fight Passport Mark

By Maria Dinzeo

OAKLAND, Calif. (Courthouse News) –

A federal judge refused to halt enforcement of a new law requiring sex offenders to be identified as such on their passports, saying it's too soon to fight what offenders say is "a scarlet letter."

Under the International Megan's Law to Prevent Demand for Child Sex Trafficking, passports issued to registered sex offenders whose crimes involved minors will contain an identifying mark. The form of the mark has not yet been decided.

The law also requires the Department of Homeland Security and the Justice Department to notify foreign governments when registered sex offenders are visiting their countries, and those departments will also receive notifications when sex offenders come to the United States from abroad.

Attorney Janice Bellucci, president of the civil rights group California Reform Sex Offender Laws, filed the [lawsuit](#) on behalf of the anonymous plaintiffs days after the bill was signed by President Barack Obama in February. The lawsuit compares the required mark to a "scarlet letter," and "an international travel blacklist."

Following a [hearing](#) last month, U.S. District Chief Judge Phyllis Hamilton on Wednesday rejected a motion to halt implementation of the law, saying that while domestic travel may be a fundamental right, there is no such right to international travel.

Moreover, she wrote, a timeline for implementation isn't even in the works at this point, and the State Department said it isn't prepared to start placing identifiers on U.S. passports. The department says its best estimate to begin marking sex offenders' passports is sometime around the end of 2016.

"Here, based solely on the statutory language, it is not clear, for example, what form the identifier will take, which citizens will be required to carry a passport with the identifier, or whether the identifier will appear on the face of the passport or will be readable only by a scanner," Hamilton wrote. "Thus, because significant steps must be taken before the passport identifier can be implemented; the court finds that plaintiffs' challenge is not yet ripe."

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## Treatment – From Page 2

Treatment typically consists of weekly group meetings of up to 9 (in California) clients with one or two therapists. The group duration is usually 60 to 90 minutes. Groups may be limited by offense type (exhibitionists, child molesters, pedophiles, etc.) or may include a range of offense types. There are benefits and drawbacks for each type of configuration. While clients may feel most comfortable in a group of offenders most like themselves, there is not always enough of one type of offender to populate a group. There are certainly similar challenges facing offenders of all types!

The group configuration is helpful in illustrating to clients that they are not alone, that others share their feelings and have similar experiences, and provides peer support for change and development. It also allows a forum for clients to challenge one another's thinking when needed, so the therapist can take a supportive role and preserve therapeutic alliances.

During group sessions, clients are encouraged to communicate freely while maintaining respectful boundaries. Appropriate behavior is modeled by the therapist or therapists. A variety of topics may be discussed including current challenges and concerns, but there is a focus on factors that have contributed to offending. Marshall, Marshall, Seran and Fernandez (2006) identify a number of areas for therapeutic focus (treatment targets) in *Treating Sexual Offenders, An Integrated Approach*.

One assignment a client may be given early in treatment is to compose and present to the treatment group an autobiography, which may include one's sexual history. The purpose of the autobiography is to reflect on various life experiences that influenced one's development and may have led to offending. For those who are falsely accused, the exercise can help identify the circumstances and factors that made the allegations credible enough to result in a conviction.

According to Yates, Prescott, and Ward (2010) a client presents his "life story" then other group participants and the therapist(s) ask questions and provide feedback, setting the stage for understanding the client's sexual offending behavior specifically. Morin and Levenson (2002) identify the sexual autobiography as one of the most important exercises in their book, *The Road to Freedom*, my personal favorite of the workbooks available for sexual offenders.

Additional treatment targets will be explored in future issues.

**There are two insults no human will endure:  
the assertion that he has no sense of humor and the  
doubly impertinent assertion that he has never known  
trouble.**  
Sinclair Lewis