CURE-SORT NEWS

Volume 25, Issue 3 **Summer 2016**

10th Circuit Says No to Compulsory Testing

The Tenth Circuit in May made waves in United States v. Von Behren, when it invalidated the sexual history polygraph requirement of Von Behren's state-approved sex offender treatment program. The program was a prerequisite of Von Behren's terms of supervised release following a prison sentence. Writing for the court, Circuit Judge Seymour concluded that such a requirement compelled Von Behren to make incriminating testimonial statements in violation of his Fifth Amendment right.

Von Behren was sentenced to 10 years in prison and three years of supervised release following a conviction for child pornography. Near his release in 2014, his conditions of supervised release were changed to include successful completion of an approved sex offender treatment program. The Colorado Sex Offender Management Board (SOMB) requires programs, including Von Behren's program Redirecting Sexual Aggression (RSA), to subject its patient's to sexual history polygraph exams. The RSA required its patients to sign a contract allowing the program to report any illegal activity to authorities. Refusal to comply with all of RSA's conditions would result in dismissal from the treatment program and likely revocation of supervised release. The Court of Appeals put an emergency stay on the procedure only hours before Von Behren was scheduled to take the polygraph exam.

Unlike the lower court, the Court of Appeals held that the exam questions presented a risk of incrimination. At least three of the questions would require an individual to admit to having committed a felony. If answered 'yes,' the examiner could ask how many times. Though a 'yes' answer could not sustain a conviction on its own, it could help to narrow an investigation. The Court found that this level of self-incrimination is constitutionally impermissible.

Even so, incriminating questions may be asked as part of the rehabilitative process of supervised release. However, the government cannot compel someone to answer such questions, if the answers will be used to incriminate the individual. The Court found that Von Behren was given a Hobson's choice. Because he was required to sign an agreement that authorized his treatment provider to disclose his answers to authorities, he was left to decide between two impossible choices. . If he refused to answer, he would be kicked out of the program and in violation of his supervised release which could send him back to prison. The Court determined that this was compulsion. In addition, if he took the polygraph, his answers could be used against him. Thus, the Court resolved, the polygraph exam cannot be mandated as it is a government compulsion of self-incrimination.

Reported by the Office of the Federal Public Defender, Districts of Colorado and Wyoming

> **"Sex offenders are thought to suffer deficits in their capacity to experience empathy…"**
>
> **W. L. Marshall, et.al.**

Louisiana dropping Maximum from 85% to 75%

By Wayne Bowers

One of the strategies for years by lawmakers with a heavy tough on crime and law and order bent was increasing certain sentences to 85 percent. In other words, a person would not be eligible for parole until serving 85 percent of the sentence. Guidelines for earning good time to reduce the sentence time varies by states, but generally the ability to lower the time served doesn't kick in until the 85 percent is reached.

One reason this has been such a topic to follow is the fact so many charges of various sex offenses have been moved up to this level.

And facility programming to enhance a person's life and education is reduced or eliminated at varying levels by states until that top figure is reached. Bottom line is these laws just add more to making prisons into warehouses instead of the hypocritical term of

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Letters From Across the Nation

The following is an excerpt from letters we receive. We appreciate your interest, concern and feedback. We can't include every comment. The opinion printed below is that of the writer and does not necessarily reflect the views of CURE-SORT. This is an example of what we receive.

Raymond D. Irwin in Minnesota:

My main reason for this letter is to correct information in the previous issue and to give information of the MSOP situation. The article by Matt Clarke titled "Kansas Civil Commitment Under Scrutiny" in Issue 2, Spring 2016 newsletter, page 4 of this article, he states "Minnesota maintains a 700 person sex offender treatment program which began in 1985; **only one person** has been released since its inception. . . "

I have been imprisoned in the MSOP **since its inception**, which originated in St. Peter, MN, and was founded by Dr. Michael Farnsworth in mid-1994. In the past year and a half, about nine residents have gotten a provisional discharge. But only about three clients have received provisional discharges from MSOP, which was in the last year and a half. **But, not one person has ever been fully discharged from MSOP!** But by now, there are probably more who received provisional discharges that I am not aware of, since I quite keeping track of it.

At least six who received Provisional Discharges were not clients of MSOP, but residents of a special needs program called Minnesota Alternative Program (M.A.P.), in St. Peter, which was a program created by Cambridge State Hospital in 1995 or 1996, not MSOP, for mentally and functionally impaired sex offenders. Though MSOP is falsely taking credit through the news media for all the above discharges, to show the court they are releasing clients!

Clarke's article also states over 10 people have died while in custody in the Missouri Civil Commitment Center since 1999, so I thought I would also inform you, since MSOP was created in 1994, 92 clients have died, with at least 15 of them dying within the past two years.

There are clients who have been in MSOP transition for 20 years who have been trying to obtain discharge, but Attorney General Lori Swanson fights their release, saying they are too dangerous to **ever** be released. She the same as says they were committed for the sole purpose of extending their prison sentence and **imprisonment** to a life sentence with a **life imprisonment**, which not only violates their constitutional rights, but also shows she is deliberately violating her oath of office.

We are still United States citizens, with those of us having our civil rights restored by the completion of prison sentences, as such, are entitled to full protection of the U.S. Constitiution! Minnesota legislators sponsor bills taking away our rights; then the governor signs it into law, knowing the law violates our constitutional rights prohibiting Bills of Attainder; ex post facto and double jeopardy laws! That also violates their oath of office.

By them always telling the media they want us kept locked up for life, the entire Minnesota government admits their intention in committing us. That is to extend our sentences to a lifetime of imprisonment! This proves their oath of office means nothing to them!

In 2013, 12 MSOP clients were approved to go to a lesser restrictive facility at Cambridge State Hospital. But Gov. Mark Dayton sent a letter (enclosed) to Commissioner Lucinda Jesson, ordering her to suspend these transfers, and to oppose any future petitions for Provisional Discharge.

I asked our attorneys in the class action lawsuit why they also have not named the State of Minnesota as defendants for the deliberate violation of the Constitution that prohibits aforementioned. Minnesota officials have repeatedly told the media we should never be released from MSOP, then pass laws to secure this threat. News articles of these statements would be proof a court requires; yet I have never seen any articles of these statements by these officials examined by anyone in any court!

They did get away with it, using the force of the Commitment Act, claiming it is for purposes only of providing treatment for sex offenders. By doing so, they hope to avoid running afoul of the 1939 US Supreme Court's ruling that commitment did not violate the double jeopardy clause because it was for treatment, and was not punitive! Now, the court has ruled it is punitive; as such, does violate the double jeopardy clause!

Kansas Attorneys Appointed

Some activity in Kansas recently finally brought some movement in various legal actions against civil commitment facilities. Two Wichita law firms have been assigned to handle the class action lawsuit filed by residents of the Kansas civil commitment facility. Graybill &Hazlewood and Depew, Gillen, Rathbun &McInteer will take the case filed in 2014.

In Minnesota, there has not been a ruling in the state's appeal of Judge Donovan Frank's order, and there might not be for some time yet. After the oral arguments in April, those final decisions can take from a year up to 18 months. The 8th Circuit Court of Appeals stayed Judge Donovan Frank's remedies to his June 2015 judgement that the Minnesota Sex Offender Treatment Program was unconstitutional until they hear the state's appeal.

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New Michigan Law Requires Registry Fee; Court Challenge Fails

Derek Gilna

A recently-enacted statute, Mich. Comp. Laws § 28.725a(6), requires registered sex offenders to pay a $50 annual fee to help defray the cost of the state's online sex offender registry. Offenders are required to pay the fee as long as they have to register, unless they are indigent.

"By requiring registered sex offenders to pay an annual fee to fund the registry website, law enforcement will be able to direct more of its resources to public safety," Gov. Rick Snyder stated.

Michigan is not the only state to attempt to collect a fee from sex offenders to fund their registries. Illinois, Ohio and Wisconsin charge offenders $100 per year, and Indiana charges $50 annually. Sex offenders in Michigan previously only had to pay $50 once; the newly-imposed annual fees are capped at $550.

Sex offenders have complex registration requirements in most states, depending on their risk classification level, and must report any changes in their address, and sometimes their place of employment, to local law enforcement officials. Failure to do so can result in additional criminal charges.

Michigan's law, although quite specific regarding who has to register and how often, as well as the consequences for failure to comply with registration requirements, contains no provision regarding the consequences for failure or refusal to pay the $50 annual fee. However, according to the Michigan Department of Human Services, failure to pay the fee constitutes a violation of the state's sex offender registration statute, which is a misdemeanor offense.

The annual registration fee went into effect on April 1, 2014 and affects over 40,000 registered sex offenders in Michigan.

The registry statute was challenged in federal court, and on March 31, 2015 the court entered an order holding various provisions of the law unconstitutional, including geographic exclusion zones; a requirement to report and notify the registering authority after offenders begin to "regularly operate any vehicle" or establish "any electronic mail or instant message address"; a requirement to report all phone numbers used by an offender; and a requirement to report the license plate number, registration number or description of any vehicle regularly operated by an offender.

The district court also considered a challenge to the $50 annual fee requirement, but determined that because the fee was considered a tax under circuit precedent, it lacked jurisdiction to review that claim under the Tax Injunction Act, 28 U.S.C. § 1341. Both parties in the case have appealed to the Sixth Circuit, and their appeals remain pending. See: *Does v. Snyder*, U.S.D.C. (E.D. Mich.), Case No. 2:12-cv-11194-RHC-DRG.

Sources: www.legislature.mi.gov, www.wilx.com

(***EDITOR'S NOTE;*** Article from Prison Legal News March 2016, www.prisonlegalnews.org)

CURE-SORT NEWS

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WELLNESS FOR PEOPLE ATTRACTED TO MINORS

By Jim Prager

In April I went to Baltimore, MD, to learn more about wellness for people attracted to minors. Ironically April 22nd also happened to be the 25th anniversary of me being sentenced to prison for acting on that attraction. Russell Dick, chairperson of the Board of B4U-Act, shared 8 dimensions of wellness. I believe these 8 dimensions are important to each one of us regardless of our attractions or where we live.

1. **Emotional**-We all need to feel some degree of emotional health. When we are critical of ourselves or our situation it is very difficult to experience life as positive. This does not mean we live in a fantasy world where only good things happen, but we need some degree of positive feelings in life to move forward. Those of us attracted to minors can look in the mirror and see a loving and kind person.

2. **Financial**-I know all too well the stress of living in poverty. It requires me to make a gratitude list and remind me that not all is doom. The financial stress of living on the registry can feel overwhelming but we need to find support and make the best of any situation.

3. **Environment**-What is the quality of the air, water, and living area. I remember one of the prisons where the water tasted like sulfur. The water crisis in Flint, MI is a reminder of how important this can be. All of us need to strive to create the best environment we can and to focus on the positive aspects.

4. **Intellectual**-We all need to use our brains to grow and develop. This never stops for each of us. This can mean reading, writing, thinking critically about our situation, and always with a focus on making life better. Reading can provide us with ideas we can use to make life more fulfilling.

5. **Occupation**-My first job after prison was a dishwasher. This does not pay well or provide much stimulation but I viewed it as a start. Many people getting out of prison focus on getting a job, but we need to focus just as much on our goals and keeping the job we have so that something better in the future can happen.

6. **Physical**-It is important to take care of our bodies. This means getting enough sleep, healthy diet, and exercise. A healthy body allows us more opportunities to do the things we want. It is also important to accept our limits. As we age, it is important to come to terms with changes in our health and loving ourselves enough to do what is required to maintain good health.

7. **Social-Life** is too hard to go it alone. We need family and friends to share our lives with. I have often called friends our family of choice. I hope that our choices of friends and family will motivate us to make healthy choices.

8. **Spiritual**-One of the lessons of my prison experience was that I am not the center of the universe. This means I need to take into account how my behavior will affect others. Shortly before I left prison, a volunteer told me I was an ambassador. People on the outside will judge sex offenders based on our success. Each one of us needs to recall how connected we all are.

RSOL Conference opening in September

RSOL members will gather in Atlanta on Sept. 16-18 for its annual conference to share plans and strategy to continue challenging laws across the nation that have become evasive and punitive despite statements of it being done in the name of safety.

"New life requires both forgiveness and confession. For offenders to be truly whole, they must confess wrongdoing, admitting their responsibility and acknowledging the harm done."

Howard Zehr

Nevada CURE Founder Passes Away

Pat Hines, founder of Nevada passed away in July. She was one terrific lady and went peacefully, in her sleep!

"Pat and others kept working for years to find someone to lead NV CURE. When they were about to give up, John Witherow came along. Pat was able to see NV CURE become the force they hoped it would be," Charlie Sullivan, director of National CURE, said.

Also, word was received through a database correction of the death of Stephen Curtiss, who had been a resident at the Cherokee Mental Health Institute in Cherokee, IA

Another person who passed away is James R. Glenn, who was a resident at Coalinga State Hospital in Coalinga, CA.

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

Travails of Parole for Those with Sex Offenses

By Jim Prager

This is based on the story of a man currently on parole in New Jersey, but it could be just as true in Texas, California, Ohio or anywhere. Parole authorities treat those with sex offenses differently than any other class of offenders. Why is this the case and why do we allow this to continue?

The individual in New Jersey has trouble reading and claims that his rights were violated by not understanding the sex offender registry form. From my experience on the registry it is easy to make a small error which has consequences. According to Amy Borror of the Ohio Public Defenders Office 3,000 sex offenders are in Ohio prisons for failure to register.

When parole or police check to insure that an individual is living where he claims, do they come in civilian clothes or uniform? Is the goal to attract attention to the parolee or do a residence check? Is the goal to shame the parolee, encourage neighborhood outrage, or community safety? The same truth holds for those in civil commitment. A 52 year old man in Missouri reportedly hung himself over being violated and returning to civil commitment.

Individuals on parole and their families need to accept some degree of monitoring. I recall viewing my two years on parole as still incarcerated. That view helped me cope and everyone on parole needs to develop a means of accepting the limits of supervision. This does not change the need for adult parole to avoid acting on the assumption that all registrants will commit new crimes. Everyone reacts to the expectations that are placed on us. When those expectations encourage growth, people respond in healthier and law abiding ways.

From Page 2 **Civil suits**

Frank's remedies include giving all 700 plus residents of that program independent risk assessments by the end of 2017.

In Missouri at its latest remedies hearing with attorneys of the class action and the Missouri Attorney General's office, a retired state judge was named to be the Master to monitor the settlement of the September 2015 unconstitutional decision by Judge Audrey Flessing of the Sex Offender Rehabilitation and Treatment (SORT). Certain guidelines will be determined to set time limits on a resident's stay in the facility to five or six years and the use of recent and current assessments of the residents for their annual evaluation.

These guidelines will be presented to the judge at a fairness hearing in November and once a final decision on the guidelines is made, the details will be implemented in days afterward.

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.

This column will continue the exploration of "Treatment Targets" modeled on the work of Marshall, Marshall, Seran and Fernandez (2006) in *Treating Sexual Offenders, An Integrated Approach*.

After presenting their autobiography, clients focus on denial and minimization exercises from Morin and Levenson's (2002) workbook, *The Road to Freedom*. The workbook identifies and explains five types of denial: denial of the facts, denial of intent, denial of the impact (on victims and others), denial of responsibility and denial of the need for treatment.

challenged. I agree with Marshall et al's approach: "We tell them we are going to help them identify the factors (internal and external) that put them in a position to be 'falsely" accused and "wrongfully" convicted, so they can then develop strategies to avoid putting themselves in a position to be falsely accused again."

Up next time: Coping Skills.

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**. Contact SORT if no email and we'll contact him.

No More Victims – One Man's Journey Into Sexual Offending and Recovery, By S. Sands (Ed G), $13.95 (does not include shipping). Request to: PO Box 1022, Broadalbin, NY 12025, or **gunder788@verizon.net or amazon.com.**

Washington Civil Procedures Are Similar

By Darnell McGary

In 1990 the State of Washington, the founding state of civil commitment for sexually violent predators, was enacted in response to an outcry of citizens responsive to two acts of sadism, the mutilation of a Tacoma boy, and the rape murder of a Seattle woman. The Washington statute is not for disease or defects, such as major mental illness. But it is for mental abnormalities such as chronic paraphilias or personality disorders. The act calls for cognitive behavioral therapy, a talk component to subside or cure the thinking disorder or pre-occupation. The traditional statute does not accommodate housing due to security and only providing traditional treatments for major mental health, schizophrenia, or equivalents. Plus the key to psychological health is to dispense medication in a short term environment.

The true fact of these statutes is they are not used properly and waste life expectancy. The civil label is not dispositive, for the statute not to be punitive it has to provide meaningful treatment, which most have failed to do, or had to be forced to comply. Where there is room for sex offender therapy in situations, the sexually violent predator act is not entirely for mental health purposes. It seems it houses "unwanted sex offenders," under the pretense or either, dangerousness or mental health, and most, if under the right microscope, would not be more likely than not to re-offend. They are confined only because their county of conviction has taken a "don't release stance to them," or a heinous act "sadism."

As evidence, if a person researched the law they would find individuals in civil commitment without paraphilias or major pre-occupation. In Minnesota they had Eric Terhaar, who was confined for 23 years, and here in Washington, my case fits his profile. An adolescent, no paraphilia, been in a less restrictive status without a recent overt act, prior successful treatment, and the only reason for my confinement is because it's indefinite. Terhaar, as I, had a non-violent conduct disorder leading to antisocial personality disorder (APD). See In re: Detention of McGary, 128 Wn. App.471 (2005) affirmed (2006). All the states have had problems with public juries, elected judges, and biased prosecutors, whom want you so bad they will harass you in their own facilities. Coming back from a state hospital where I was around women, my choice of crime, and treatment occurred in eight months for a non-related psychotic disorder, opened my eyes, especially after completing treatment and they still would not release. I have had two unconditional release trials which I was re-committed every time, and the evidence is not beyond a reasonable doubt. By the way, I am a chronic substance abuser, who does compulsive non-violent burglary that raped and robbed three times. Two states (Minnesota and Missouri) struck down for similar reasons, keeping people forever. It is not the treatment; it's the intentions of the states…

For those who don't know, the Adam Walsh Act sufficed, and it will not keep solely an antisocial personality disorder, which I was, so now it's placating other mental health problems, that treat short-term. See United States of America v. Wilkinson, 646 F.Supp.2d 194 (2009).

From Page 1 – **Louisiana reduces maximums**

correctional facilities. It seemed that the original intent was to cover some of the most heinous charges if they were not given life or even a death penalty. As time went by, and that segment of lawmakers found more ways to gain traction in their political life and using the strategy as a way to convince the public that safety was improved, more and more types of charges were given the 85 percent designation.

There are other reasons why state prisons have become extremely overcrowded, but the 85% law has been a major one. Prison budgets in states have exploded. Assistance to people preparing to leave has been minimal. And a sense of hopelessness and futility pervades in so many facilities.

Finally a state has begun to pull back on this legislation as Louisiana's legislature passed HB 802 in June that will reduce the maximum to 75% on certain laws that now stand at 85%. That doesn't mean all people with charges at that level will be included, as there is a guideline, but it is a start. Louisiana CURE director Checo Yancy told me the plan of their coalition is to challenge for further changes next session.

Another change in the law is a reduction in the number of parole board votes to gain a parole from unanimous to a majority. An additional part of the new law is to allow more people to participate in drug court instead of being prevented due to the sentence. And to top it off, a grant program will be developed to assist parishes to start and implement reentry programs for upcoming parolees as a requirement for parole is participation in such a program.

It is known state legislatures share information with each other. Hopefully this improvement will be expanded into other states, and that even Louisiana and others will look to go beyond the 75 percent threshold.