



CURE CIVIL COMMITMENT NEWSLETTER

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FROM THE EDITOR

In America today, those who have been convicted of a sexual offense are singled out by government for ever more harsh and never-ending punishment. This trend began in the middle of the 1990s and has increased as the "war on drugs" is systematically being replaced by a war on sex offenders. This policy is enshrined in the 2006 Adam Walsh Act, in which a two-pronged policy of comprehensive registry requirements (SORNA) and civil commitment became the government's response to the crisis that the politicians and the media have manufactured and sold to the public. However, there are signs that not everyone is on board with this approach.

Last month, Maryland's highest court declared that the SORNA requirements constitute punishment in the form of both *de facto* lifetime probation as well as the ancient punishment of shaming, and that retroactive application of SORNA in Maryland is in violation of the *ex post facto* prohibition in the Maryland Constitution. While this ruling only applies in Maryland, it is encouraging that in *Doe v. Department of Public Safety and Correctional Services* a state's highest court has called these so-called "civil" remedies what they really are: punishment! Could this be a precursor of rulings to come? We can only hope that other states will take a page from the Maryland Court of Appeals and find both SORNA and civil commitment to be nothing more than thinly disguised punishment.

In this edition of the civil commitment newsletter we have articles by our readers on conditions of confinement in some of the states along with results from the survey that was published in the October 2012 issue. We are happy to announce that ccn@curenational.org is now accepting *Corrlinks* communications. If you have previously tried to add us and were unsuccessful, please try again. We will be sending out plain text versions of the newsletter over *Corrlinks*.

CCN is now available online to those of you with internet access. Please visit the Newsletter section on the National CURE website (www.curenational.org) to read our previously published newsletters in PDF format. This is particularly helpful for those on the inside who want to share CCN with those in the free world, or for those in the free world seeking to stay in touch with the latest developments. While this service is made available free to the general public, CURE is supported mainly by individual donations, and we need your support to keep going! Please contribute to our work today with your tax-free donation!

Thomas Chleboski
Editor

ONE YOUNG RESIDENT'S TOUR OF THE NEW JERSEY SPECIAL TREATMENT UNIT

Submitted by A Civilly Committed Patient in Avenel, NJ

I will start by explaining how the civil commitment process works in New Jersey. Before you are sentenced you go to the Adult Diagnostic Treatment Center (ADTC), New Jersey's sex offender treatment prison, for an evaluation to determine if you meet their criteria for treatment. If you do, then you stay there. If you don't – like most people who are committed here didn't – then the State says you don't need treatment and you go to regular prison. Yet, at the end of your sentence you still come here for the same treatment the state said you didn't need. How is it that we didn't need treatment at the start of our sentences but we now need it at the end?

Somewhere between 2 weeks before the end of your sentence and 2 months after, you are interviewed by two state doctors. These doctors are already biased against you simply because of your sex offense. Proof...? The only person in New Jersey history to be recommended by both doctors not to be committed does not have a sex offense conviction. The deck is stacked against you from the start. When the two doctors submit their reports to the judge, he orders you to come here in what is called pre-commitment.

When you arrive here you quickly realize something is very wrong: "I thought I was going for treatment," you think, "but this looks exactly like prison." Well, folks, that's because it is prison! Locked doors, barbed wire everywhere, lockdowns...the Department of Corrections runs this prison with an iron fist. This is not therapeutic; prison is never therapeutic. The extra privileges you get here – like food packages, video games, and electronics – are only a disguise. You cannot disguise a cesspool like a garden: we all recognize the stench.

Twenty days after your arrival you are entitled to a hearing in our very own courtroom... located in the trailer out back. Your public advocate will likely advise you to waive the 20 day hearing because he or she cannot create an adequate defense in 20 days. See the trap? An *adequate* lawyer could mount an *adequate* defense in 20 days – why couldn't they? If you follow your lawyer's advice and waive the 20 day hearing, you're stuck here for anywhere from 3

months to upwards of 3 years. During that time the state give you tests and evaluations designed to make a 'psycho' out of you. If you've had any treatment they use what you said against you. I have learned the only way to beat a sex offense problem is to be open and honest. How can we expect to get healthy and leave here if being open and honest isn't safe?!? Worse, they lie to persuade the judge. The funniest lie I've heard so far was perpetrated against a friend of mine: state psychologists testified that in 1976 he was convicted of two armed robberies – **yet he wasn't even born until 1986!**

The deck is stacked too high against you, and without your own doctor on your side you're toast. Since when did psychologists get the same legal clout as lawyers? Most feel forced to take a stipulation, which is saying, "Yes, you win, I am a *sexually violent predator*." After you have "admitted" to being a sexually violent predator, you enter the most ridiculous and hypocritical part of your stay: "treatment".

Franz Kafka must have designed the treatment here. You are required to complete a sexual history questionnaire and pass a polygraph on it. I thought polygraphs are inadmissible in court? You are being treated for violent sexual problems. What if you aren't violent? What if you're not a "sex offender"? It is unjust and unfair to treat those who aren't violent, or those who aren't sex offenders, the same way as those who are. Each therapy group has about 12 people, with meetings twice a week, and has a weekly rotation of people to "take the floor" to do work. That means that each person has one week on the floor every four (4) months, which slows down progress and keeps people here. You will also have to take modules, which are groups that teach therapy concepts in an educational setting. Many people here come from poor educational backgrounds and cannot articulate therapy concepts in the exact way the therapist accepts – so they fail. This "say it like I do or fail" attitude further slows down progress and keeps people here.

The most important module is relapse prevention. There are five levels of relapse prevention, so assuming you get placed into and pass one every four-month semester that is an extra 2 years here. A lot of us believe treatment is only offered here at the bare-minimum level so that nobody can say this is Double Jeopardy and Preventative Detention. We could have the best treatment in the universe and this would still be double jeopardy and preventative detention. We are locked up in prison after we completed our sentences, costing the tax-payers \$125,000 per person per year for a future sexual offense that hasn't actually been committed!! This is like the movie *Minority Report* with psychologists instead of "pre-cogs."

KANSAS TASK FORCE TAKES ON CIVIL COMMITMENT

A Kansas task force convened for their first meeting on January 28 to study the state's civil commitment program at Larned State Hospital. In reporting by Dave Ranney of Kansas Health Institute News Service, the Chair of this new task force, Wes Cole, is quoted as describing the policy of preemptively detaining convicted sexual offenders who have already completed their prison sentences as "a burdensome program." The budget proposed by Governor Sam Brownback's office would dedicate \$17 million to the program in 2014 and another \$20 million the following fiscal year.

Records indicate that more than 250 individuals have been committed as *sexually violent predators* since the program began 18 years ago. In that time 4 men have been released while 16 people have died in custody at the Larned facility (meaning four times as many people have died in custody as have won their release).

The recommendations of this task force are due in June, and CURE strongly encourages all individuals in Kansas to participate in the task force's study. CURE will forward any comments you have for the task force if you write us at the National Office (please write "Attn: Kansas Study" on the envelope). We are happy to report that Rick Cagan, Executive Director of the National Alliance of Mental Illness-Kansas, is a member of the task force. Cagan has called attention to how precious mental health resources are being taken away from those with legitimate mental health needs and squandered to the tune of tens of millions of dollars on this civil commitment program to circumvent double jeopardy protections. "We've raised the concern that if this is going to be a correctional-type program, then it ought to be in the Department of Corrections," Cagan said. "The way it is now – as part of the mental health system – it just keeps taking up more and more resources." After having interviewed many of the patients in the program, Cagan has become doubtful of its effectiveness. "If you were to believe a fraction of the reports we've gotten from the residents out there, this is a harshly punitive program," he said. "I don't know that it's what you'd call therapeutic."

"No one is getting out. That's the problem," Cagan said. "A lot of frustration built up over the years because the program isn't constructive, it's punitive. And from the residents' and family members' point of view, getting sent there is a life sentence. It's not a quality program."

David Wiebe, the former Executive Director at the Johnson County Mental Health Center, has described the program this way: "The way it's set up, there's no back door. So the program keeps expanding and keeps taking more and more money out of the state hospitals' budget and the resources available to the community mental health centers." Wiebe goes on to suggest that the SVP program should properly be moved under the direction of the Department of Corrections. "Many of us

see it as more of a prison than an effective treatment program."

Former Superintendent at Osawatimie State Hospital, Stephen Feinstein, calls a spade a spade. "This isn't about rehabilitation. It's about keeping people locked up. It's a sham."

When asked to comment for this story, Dawn DeJarnett, Director of Sex Offender Management at the Kansas Department of Corrections (KDC) told National CURE that she did not know if a member of the KDC was participating on the task force and repeatedly referred us to the Larned State Hospital for further comment.

SURVEY RESULTS

We would like to thank everyone who took the time (and stamp) to respond to the survey in our October issue of the Civil Commitment Newsletter. One of the goals of the survey was to get feedback from those in civil commitment on certain questions that have been raised in our advocacy work. We received 80 responses and have tabulated the data we have received thus far. Nearly a quarter of respondents are in Illinois (19). The state with the second largest response was Minnesota (15), followed by Missouri (10) New York and California (9 each), and Massachusetts (6). In addition, we heard from people in New Jersey, Wisconsin, Kentucky, Washington and Virginia. We wanted to share some highlights from those results with our readers.

We were very interested to see if it might be possible to confirm the anecdotal trend we have observed that gay men are being disproportionately targeted for civil commitment. The data would seem to confirm that. While 65% of respondents identified themselves as straight, 11% self-identified as gay while another 23% stated that they were bi-sexual.

Virtually every respondent was diagnosed with one (or a combination) of the following:

- Pedophilia
- Paraphilia NOS
- Personality Disorder NOS
- Antisocial Personality Disorder

This is interesting because it is arguable that every single disorder on this list - the prosecutor's go-to grab bag of disorders - is either too nonspecific to be legitimate, or does not demonstrate the volitional impairment necessary to qualify someone for civil commitment.

We also found that our readers are well-educated. 28% of the respondents were college graduates, three of whom have a Master's Degree and one a Doctorate. Many of the others reported that while they had not earned a college degree, they had completed some college education.

The average age of the respondents was 48 years old. The youngest respondent was 26 while the oldest was 79. Five of the respondents were in their 70s, eight were in their 60s, twenty-nine were in their 50s, and seventeen were in their 40s, sixteen in their 30s and four in their 20s.

It is also interesting that the vast majority of respondents reported having a victim under the age of 18. While 20.8% reported having adult-only victims, 79.2% stated that they had at least one victim under the age of 18. In other words, 4 out of 5 of those who responded to the survey who are in civil commitment had a victim under the age of 18.

While a staggering 92% of respondents were represented by a public defender/court appointed attorney only 6.3% had a private attorney. And one respondent represented himself (*pro se*) in his civil commitment hearing.

Over half (45) of the respondents described themselves as voters, while 28 people indicated they were not voters (including two who didn't realize they were allowed to vote). Many of the non-voters indicated that they either encountered obstacles to voting in their jurisdiction, or that they were ineligible to vote as a result of probation or parole status. Still, it is encouraging that nearly two-thirds of those responding to our respondents are making their voices heard by participating in the electoral process.

Finally, we want to thank each and every one of you who took the time to write thoughtful responses to the question about what you wanted to say to Congress and the public. While space prohibits us from publishing all the comments we received, those sections were, perhaps, the most important part of the whole survey, because CURE *will* be sharing those responses with Congress and the public in our effort to bring attention to the problem of the civil commitment of so-called "sexually violent predators." We promise to give voice to your words as we continue to advocate for change.

CONSTITUTIONAL VIOLATIONS IN NORTH DAKOTA

Recently a young man civilly committed as a sexually violent predator in the North Dakota State Hospital had his attorney-provided legal documents confiscated by staff. Jon Nesheim has been civilly committed for the past 8 years based on a misdemeanor conviction. On February 26, 2013, Mr. Nesheim received a visit from one of his lawyers. During that 3 hour visit, he was provided legal documents from his lawyer that had been checked by security for contraband and were clearly marked 'LEGAL-CONFIDENTIAL'. As soon as the attorney left the facility, the legal documents were confiscated and reviewed by hospital staff, in clear violation of Mr. Nesheim's Constitutional rights. To add insult to injury, the staff then denied Mr. Nesheim access to counsel to inform him of the confiscation of these confidential and privileged documents.

In a letter to the hospital director objecting to this clear violation of his client's rights, the attorney noted that every time a resident at the State Hospital tries to stand up for his rights, their story is quelled and a different set of facts finds its way in front of the Attorney General, State's Attorney, or the Court. He also observed that he was curious how the State Hospital would justify its actions to the Attorney General when documents marked 'LEGAL-CONFIDENTIAL' are exchanged between attorney and client during an attorney-client meeting and then confiscated and read by staff. He concluded that this blatant interference with residents' access to attorneys and the courts must stop.

Staff at the North Dakota State Hospital not only approached a well-recognized boundary, they blatantly violated attorney-client privilege and the protection it affords. This is not something that can simply be resolved by returning Mr. Nesheim's documents at this point. It is unconscionable that a United States citizen would have his constitutional rights so brazenly violated by a government entity.

His attorney noted that he could understand that the anxiety level around the North Dakota State Hospital is quite high as of late, especially with Minnesota's sex offender treatment program coming under such scrutiny from the federal government, but noted that this does not justify the actions of staff at the North Dakota State Hospital. He concluded that if there is nothing to hide, staff should have nothing to worry about. One can only conclude that the "patients" at this "hospital" have less constitutional protections than the 9/11 detainees at Guantanamo.



Picture of "patient room" at the "hospital" in North Dakota.

We welcome your feedback on the newsletter as well as any articles, artwork or photographs that you may wish to submit. Indicate whether you would like your name to be published with your submission if it is selected for publication in an edition of the newsletter. Please understand that any submissions will remain in the CURE Civil Commitment Newsletter files and that the editorial staff reserves the right to edit any submission as needed. Thank you!

The CURE Civil Commitment Newsletter is published quarterly (January, April, July, and October) and is available, free of charge, to anyone wishing to receive it. The newsletter boasts an all-volunteer staff but there are costs to produce the newsletter including printing and postage. If you would like to donate to offset the costs of this project, please make out a check or money order to "CURE" and mail it to CURE Civil Commitment Newsletter, PO Box 2310, Washington, DC 20013. If you would like to receive the newsletter please send us your contact information at the same address:

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