



CURE CIVIL COMMITMENT NEWSLETTER

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FROM THE EDITOR

Imagine my surprise when I answered the phone a few weeks ago to a strange voice identifying himself as a reporter from the St. Louis Post-Dispatch who was doing a story on the civil commitment of sex offenders and who wanted to speak with the editor of the CURE Civil Commitment Newsletter! Needless to say, I was both flattered and encouraged that an investigative reporter from one of the major newspapers in a state with civil commitment would actually reach out to me to get the side of the story that he will never hear from politicians and prosecutors.

This edition of the Newsletter is encouraging as there are a number of places where we are seeing both challenges to the civil commitment regime as well as efforts to educate the public as to the practice and price tag of civil commitment in the jurisdictions that have these laws on their books. Iowa CURE is having a special meeting dedicated to the topic of Civil Commitment and challenges are being waged in states like Kansas, Minnesota and Missouri, to name a few.

As always, I would like to thank our readers for the mail we receive and the submissions for publication. I hope this edition of the newsletter is informative and I want to thank everyone for their generous contributions to both the content of our publication as well as those who have contributed financially to offset the costs of the newsletter.

Thomas Chleboski
Editor

CIVIL COMMITMENT IN KANSAS

Submitted by a Civilly Committed Patient in Kansas

Every six months a Progress Review Panel interviews residents who wish to be advanced to Phase Five (at Larned State Hospital) and to Phase Six (Transition at the Osawatomie State Hospital). It is not automatic that a resident can see the Panel. There are requirements to be met and evaluation scores that must meet the threshold for meeting with the Panel, as well as the recommendation of the therapy Group Therapist. Recently the Panel interviewed three residents for their Phase Six and four residents for Phase Five. Amazingly all seven residents seeing the Panel were recommended for advancement, but all seven were informed that they would first have to take and pass another behavioral polygraph and since there currently is no polygrapher on staff, all will remain at their present phase until one can be hired and a polygraph scheduled.

I truly feel that this program is one of the biggest scams ever fostered on the State. This sucker makes the Bernie Madoff scam look small by comparison. There are many people here who count on this place and this program going on "forever". They tell us that all the time. They can even tell you how much longer they have until they retire. This, of course,

raises the "Conflict of Interest" issue. If they actually started to release people, then staff would be putting themselves out of a job. It's in their best interest to keep as many people here for as long as possible. That way they will have a job for as long as they need one and a well-paid retirement, on the State of Kansas, when they get ready to retire.

Many people on the outside seem to think that we (residents) are not interested in completing the program and getting out. Now it is a fact that some residents have given up trying. But that is understandable if you look at this program as we see it. Last year the oldest guy here (aged 98 years old) died, without getting out. No matter what age you are, how much hope does that give you? Not much in my estimation. Believe me, when you feel (and lots of people here do) that the situation is hopeless, you have a hard time even trying. Thus a lot of guys settle in. They watch way too much TV and play way too many Video games.

The people running this program keep changing and adding to this program. They use all types of reasoning and excuses, but they just keep lengthening and enlarging this program. Their intended goal is to make it so hard and so long as to guarantee that no one will ever fully complete the program. They have added to the number of phases here at Larned State hospital and to the number of phases and supervision down at Transition and beyond. And when someone from Topeka comes out to check on this program, the SPTP people in charge hand pick and select just who they get to talk with so as to insure visitors learn only what staff wants them to know. What they are hiding is the fact of what a waste of our time and tax dollars this place really is. Another practice of the therapists and backed by the administration is advancing certain people to Transition (at Osawatomie), that program officials feel will be fairly certain to mess up and be returned to Larned (LSH) campus. In doing this it fosters the idea that "this is what happens to all these residents."

There are individuals at SPTP who truly are mentally incapable of controlling their behavior: they are of course, a concern. Do they deserve to be locked away forever due to their mental condition? I personally feel that there has to be a more humane way to treat these specific individuals that is fair to them while still affording due protection to society.

What we really need is a fair and impartial evaluation of every individual caught up in this SPTP quagmire. You cannot count on the evaluations we receive every year. They all say the same thing, offer the same diagnosis, and are geared to the justification of the conclusion that we all need to stay right where we are. These reports are submitted to the courts every year. We are the undesirables. We have no one willing to go out on a limb and stick up for us. Even the ACLU, the American Civil Liberties Union, will not do a thing for us. I remember an America where you didn't lock people up in a mental institution just because you didn't like them. Every one of us here has served our full sentence in prison for our crime. The State of Kansas is finally concerned enough to take another look at this program, not because they think that it may be unfair to indefinitely lock up citizens who have served their sentences but because they have finally figured out how expensive it is to lock people up forever. Well I, for one, am glad that the State is concerned enough to take a look at this program for any reason.

Civil Commitment: Preventive Detention, Double Jeopardy, and Fake-Science

Daniel was just a teenage kid when he was sent to prison. When he was 17 he had a sexual relationship with a younger teenager. Daniel was not the first high school boy in history to fall in love with a girl, and I don't think they'll be the last teenage couple to act on their sexual feelings. But in Virginia, where they lived, it's a crime and Daniel was imprisoned for 4 years as a sex offender. In some states, our story would end there - Daniel would be released, come home, and struggle with the stigma of being labeled a "sex offender" for the rest of his life; maybe he would be able to find a menial job, or maybe he'd be harassed by his probation officer, and sent back to prison again and again for technical probation violations - but something else happens to Daniel instead.

In Virginia, it is possible to complete your prison sentence for a crime, pass your mandatory DOC release date, and still never get out of prison. More than a decade ago the Virginia legislature passed a law that would allow the Attorney General's Office to file petitions with the court asserting that certain individuals present such a great risk to the community that they should be indefinitely detained in secured facilities.

Under the Civil Commitment of Sexually Violent Predators Act, the state is required to demonstrate that the individual 1.) Suffers from some psychological problem, 2.) Has difficulty controlling their "predatory behavior" as a result of that psychological problem, and 3.) Is therefore "likely to engage in future acts of sexual violence." The Attorney General is fond of calling these people "the worst of the worst" - you know, people like Daniel. The argument behind civil commitment is enticing, but it is deceptive. The theory goes something like this: "This person has been convicted of committing a sex offense; therefore they must have a psychological problem because only sexual deviants commit sex crimes, and since he has a psychological problem which causes him to commit sex crimes he is therefore likely to reoffend." This is circular logic, based on unfounded assumptions.

Psychologists do not have the ability to determine who will or will not commit a crime - there are no crystal balls to predict the future - and they should not be in the business of helping prosecutors invent excuses to preemptively detain individuals. In 1998, the American Psychiatric Association completed a five-year study by a Task Force on Sexually Dangerous Offenders comprised of some of the top experts in the field. The APA concluded that psychiatrists should adamantly oppose civil commitment of those convicted of sexual offenses, according to the report, "to preserve the moral authority of the profession and ensure continuing societal confidence in the medical model of civil commitment."

Paul Applebaum, M.D. described the APA's decision this way: "We were concerned that psychiatry was being used to preventively detain a class of people for whom confinement rather than treatment was the real goal. This struck many people as a misuse of psychiatry." The civil commitment of sex offenders after their prison sentences is a thinly disguised attempt to circumvent our constitutional protection against double jeopardy. When, in fact, these individuals are being punished twice for the same crime. In *Kansas v. Hendricks* the Supreme Court of the United States upheld the power of the states to civilly commit sex offenders for treatment in a 5-4 ruling. Sadly, civil commitment is "treatment" in the same way that probation is "rehabilitative".

When the AG brought its civil commitment petition against Daniel, he never really had a chance. It's always been easy to try a witch. Prosecutors have become quite adept at fear-mongering in civil commitment cases and the facts of Daniel's individual situation are easily swept away by the hysteria that pervades our society around

"sex offenders." The state brings in experts to opine to the dangerousness of this violent predator, often invoking made-up psychiatric disorders considered illegitimate by the medical community and excluded from the DSM-V. In Virginia the prosecution can actually bar the defense from presenting any expert testimony at trial in his own defense - thus, in a case supposedly about whether the defendant has a psychological problem, the only side allowed to present any psychological evidence is the state. The state maintains a stable of experts who make, in some cases, millions of dollars a year just testifying for the prosecution in these cases. It is no wonder their opinions would so consistently align with the state's agenda.

There is no debate that some people do terrible things to other people. The Virginia law was championed to prevent the release of an individual who had kidnapped a 13-year-old boy, locked him in a box underground in the woods, and repeatedly raped him over the course of a week until the boy was finally discovered by a group of hunters and freed. That boy, Paul Martin Andrews, now in his mid-50s, was one of the chief advocates for the creation of a civil commitment law. But having seen the way the law he was responsible for creating has been abused, Andrews has given interviews to mainstream media expressing reservations: "Something is not right."

Daniel's commitment is effectively a life sentence. In Kansas, one of the oldest civil commitment programs in the country, you are 4 times more likely to die in custody than you are to every be released. Tax payers are shelling out on average more than \$100,000 per year per prisoner to *contain* these people in prisons masquerading as treatment facilities on an indefinite basis - in some states like California the price is closer to \$190,000 annually per person. Few Americans realize that according to the Bureau of Justice Statistics, a division of the Justice Department, the average rate of recidivism for those convicted of a sexual offense is 5.3%. Moreover, 95% of sexual offenses are committed by someone who has never previously been convicted of a sex crime.

In America, we punish people for what they have actually done; we do not sentence people for imaginary future crimes that we are afraid they merely might commit in the future. But with civil commitment, we have embarked on an adventure in a morally bankrupt, and financially bankrupting, new area of law that fails to meaningfully protect the public, undermines the legitimacy of the psychiatric profession, and is unnecessarily destroying tens of thousands of lives.

The author is Director of Communications for International CURE and was the first Respondent in the history of Virginia's ten-year-old Civil Commitment of Sexually Violent Predators Act to ever win a unanimous jury verdict.

IOWA CURE MEETING WITH FOCUS ON CIVIL COMMITMENT

Iowa CURE has announced a special quarterly meeting on Sunday, October 28th and the focus of the meeting will be the civil commitment of sex offenders. Iowa CURE hopes to bring in a nationally known speaker to educate us regarding this important issue.

Few Iowans realize that Iowa is one of 22 states which operate a special Civil Commitment Unit for Sexual Offenders. The individuals committed to this unit, operated by the Iowa Department of Human Services and housed at the Cherokee Mental Health Institute Campus, have served their prison sentences, but in a separate civil trial have been found likely to reoffend.

As of August of 2012 there were 100 individuals on the CCUSO unit with an average of 8 to 9 new admissions each year. Funding for 2013 is estimated to be \$8.9 million. These

individuals are supposed to be receiving intensive treatment. The leaders of Iowa CURE hope this information will inspire Iowans to come and learn more about Civil Commitment Units in Iowa and across the nation and why International CURE is speaking out against them.

Boston Judge Orders Evaluations

According to a recent article by Boston Globe staff writer Milton J. Valencia, a federal judge ordered the state Department of Correction to conduct psychological evaluations of two men who have been declared sexually dangerous in order to determine whether to provide pharmaceutical treatments as part of their rehabilitation. In a 115-page ruling last week, US District Court Chief Judge Patti B. Saris said that the department was violating its own treatment plan for the rehabilitation of people deemed sexually dangerous, in violation of state law and their constitutional rights. "Plaintiffs have proven that the DOC is not committed to providing a meaningful pharmacological component to the sex offender treatment program," Saris said in the ruling. The two men are being held under state civil laws allowing for their incarceration if they are deemed sexually dangerous. Both men have been declared sexually dangerous for their past crimes, though they completed their sentences.

WOMEN CONFINED IN CIVIL COMMITMENT

Readers have on more than one occasion asked if there are any women who have been civilly committed in the states that have these laws. Since the vast majority of people imprisoned for sexual offenses are men, it was assumed that only men were in civil commitment. However, it would appear that there are also a handful of women who have been civilly committed. As noted in eAdvocate's Civil Commitment blog, there are at least three in California and one each in Florida, Washington and Minnesota.

One woman in Washington's Special Commitment Center recently asked a judge to determine whether she's eligible to be transferred to a less restrictive alternative. The State opposes the move on the grounds that state mental-health experts still consider her a danger to reoffend. The State argues that she continues to meet the definition of a sexually violent predator and that conditional release to a less restrictive alternative would not be in the best interest of the respondent, nor could conditions be imposed that would adequately protect the community. After serving a sentence for sex crime involving a child, state records allege that she later admitted to sexual assaults on other children, both boys and girls, and told therapists she harbored violent sexual fantasies involving children. She has been diagnosed with pedophilia, sexual sadism and other mental disorders. Apparently civil commitment is not for men only.

PROSECUTOR OBJECTS TO SPTP TASK FORCE

In a recent letter to Kansas Governor Sam Brownback and Secretary Shawn Sullivan of the Kansas Department for Aging and Disability Services, Pawnee County Attorney John M. Settle expressed his disappointment with stories regarding the

work of the Sexual Predator Treatment Program Task Force, alleging that two goals of some task force members include "to make martyrs of the committed Sexually Violent Predators" and "demonize Larned State Hospital, Kansas' Sexual Predator Treatment Program and its staff." He also expressed his concern that none of the members of the task force are victims or prosecutors, or even one of the Attorneys General whose task it is to bring people to trial for civil commitment and that the task force is somehow not balanced.

Mr. Settle, the county prosecutor for the jurisdiction in which the Larned facility is located, took exception to criticisms that the SPTP is not rehabilitative, that no one is able to complete the program and that the program is punitive and a sham. Although the Supreme Court made clear that civil commitment is supposed to be about treatment, it is curious that Mr. Settle was willing to assert that the "Kansas Legislature's clear purpose in enacting the Sexual Predator Treatment Program was to protect the citizens of the State of Kansas from an extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeat acts of sexual violence" and that the "treatment provided to those identified sexual predators obviously seeks to rehabilitate those predators, however that is not the overarching reason the program was created." He all but admits what we have always suspected, that civil commitment is all about preventative detention.

Driving home his assertion that this is a particularly violent population, Mr. Settle points out that from 2009 through 2011 he has filed 120 felony cases against various residents of the program but he never reports how many of those cases saw a courtroom or garnered a conviction. He concludes that SPTP was intended "to protect our citizens from these sexually violent predators" and requests that "any changes to the program must first and foremost consider the safety of each Kansas citizen, not the plight of those committed sexually violent predators."

Unresolved Questions Concerning Sex Offenders and Civil Commitment in Nebraska

In a 2011 article in the *Journal of Criminal Law and Criminology* entitled "Sex Offenders Exceptionalism and Preventive Detention," Corey Yung states, "the emerging war on sex offenders, as typical of wartime mentality, has been marked by substantial deviations from established legal doctrine, constitutional protections, and the rule of law. (There has been) a high level of panic among the general population about sex offenders." Nor have the myths about sex offenders lessened. The danger-stranger myth is still prevalent, even though the evidence reveals that only 10% of all sexual crimes are committed by a stranger. The myth that sex offenders cannot be rehabilitated and have a high rate of recidivism is still strong, despite the fact that several studies have found that as few as 5% are arrested again and the highest recidivism rates are less than 15% -- compared to more than 25% of other offenders in Nebraska and 60% nationwide. Another myth contends that most sexual offenders are pedophiles. Pedophiles are a small segment of sex offenders but the media and the public tend to lump all sex offenders into that category. In this article I do not intend to minimize the harm, the pain, the horror or the long term consequences of sexual exploitation

and violence. The focus of this essay is a critical look at what we are doing to solve these problems.

The evidence from previous wars, like the war on drugs, is not encouraging. From the hype of "Just say 'No'" of the 1980s to the high profile but ineffective DARE program, to the costly "get tough on crime" of the 90s, to the billions spent in Latin America – little has substantially changed in the world of illicit drugs. Even the 40 year old war on cancer has been criticized as extremely expensive, highly publicized and only moderately successful. The recent war on sex offenders seems headed for a similar fate.

The 2006 Adam Walsh Act contained a plethora of new restrictions, sentences, and requirements for sex offenders. In Nebraska, LB 1199 became law in 2006. Like Adam Walsh, it has further exacerbated the treatment and rehabilitation of sex offenders. The classification system is overly restrictive and punitive. At an interim hearing several years ago, the testimony of sex offenders, caught in the LB 1199 net, made it clear that the law was an impediment to their continued success. In addition to the restrictions noted above, LB 1199 seems to have unwittingly increased the length of stay of those sex offenders, who have completed their sentences and been civilly committed. The Department of Health and Human Services, which oversees civilly committed sex offenders, has phased in a two-stage treatment program, which has raised the bar for release. One source I consulted noted that between July 2006 and November 2010 only 10 sex offenders had been released.

In addition to excessive repression of sex offenders, the civil commitment programs are costly to the state. It was conservatively estimated that the Lincoln Regional Center and Norfolk Regional Center's budget for 2010 were close to \$30 million. Formerly the LRC successfully treated sex offenders for an average of 18-24 months. Currently, the two-phase program is 5 years to life! Daily cost per offender is estimated at \$540, which translates into more than \$100,000 a year. Some have suggested that NRC has continued to warehouse sex offenders to preserve the 200 jobs for the community.

Dr. Cameron White, Behavioral Health Director for DOC, in a presentation at the Community Corrections conference in October of 2012, distributed the following: "The Nebraska Department of Correctional Services Behavioral Health Division consists of about 130 professionals including psychiatrists, mid-level psychiatric providers, psychologists, mental health practitioner, social workers, nurses, and drug and alcohol abuse counselors. The focus is to provide clinical treatment services to the priority populations including

those with severe mental illness, violent offenders, substance dependent offenders, and sex offenders." He noted also that a large number of inmates (212), who were incarcerated for sexual offenses, were discharged in 2012. Of those, 17 were recommended for possible civil commitment. He did not document how many were in fact civilly committed.

A sex offender released from the Lincoln Regional Center wrote the following: "Treatment approaches are premised on the behavioral modification model; there are many components of the Basic Treatment that work effectively – including group and individual therapy approaches." He further noted the recognition by LRC of the need for an individual treatment plan. However, he stated that this policy was followed inconsistently. It is encouraging that the Department of Correctional Services is able to safely discharge many sex offenders into the community; it is an expensive, human tragedy that most sex offenders who are civilly committed are unlikely to return to the community. This is both inhumane and costly. We can do better.

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Billboard seen from I-94 near Albertville, Minnesota

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!

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