The Legal Pad

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"Ultimately, those who hate poison themselves." — Nazi Holocaust survivor

In This Issue:

1. Get Your Red-Hot Pell Grant Right Here! 1
2. IL Supremes to State: Pay Up! 2
3. General Assistance Trumps MSOP! 2
4. MSOP Has Churned a Lot, but w/o Releases 2
5. The Shaming Continues: How We Got Here 3
6. If You Didn't Have Any Interview, How Can You Have Any Pudding? 3
7. VA Report #21: Finishing Off the Static-99R 3-4
8. Backgrounds Produce Differing Perceptions as to Child Sex Abuse Prevention & Policies on SOs 5
9. Inquiring Feds Want to Know: 2022 MSOP-ML Medical Care Survey Probes Whether There Is Any? 5-6
10. The Need for Defense 6-7
11. Rushville Says We Shouldn't Be Here 7-10

Coming Soon:

- ✓ Banishment by a Thousand Laws
- ✓ Remorse Bias — What's THAT?
- ✓ A Little History Yields Deja Vu
- ✓ Othering and Resistance. Huh?
- ✓ The Latest on Anti-SO Vigilantism
- ✓ Beware the Deepfake
- ✓ What Is E-Carceration? Why You Will Care
- ✓ RNR vs. Good Lives vs. Virtue Ethics vs. Desistance: Any bets?
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
- ✓ Conscience Confrontation of Legislators (Real Psychopaths)
- ✓ What Does Substantive Due Process Say about PPG Testing?
- ✓ Findings Change Everything
- ✓ Bayes, Monahan, Chaos, Uncertainty — Oh My!: Actuarial Prediction? Good Luck with That!
- ✓ As If Bias Wasn't Enough: Now There's "Machine Bias"!
- ✓ Vigilantism: No Time to Stick Your Head in the Sand!
- ✓ Health Disservices? People Are Dying. What Can Be Done?
- ✓ RNR vs. Good Lives vs. Virtue Ethics: A 3-Way Debate
- ✓ Calling them Out: An Open Letter to Legislators
- ✓ Megan's Law Says Your Next International Trip Will End in Jail.
- ✓ FAC Asks UN to Deem US SO Registry Violates UDHR. You Need More Alphabet Soup.
- ✓ RNR v. Good Lives v. Virtue Ethics v. Desistance. Tag Team?
- — And a ton of new excerpts are coming. Stay Tuned!

Feedback? News? Write!

TLP Editor Address (Exactly & **Only** as Below):

Cyrus P. Gladden II
1111 Highway 73
Moose Lake, MN 55767-9452

SOCC Confinees Can Now Apply for Pell Grants Starting for 2023-24 Academic Year.

[per CURE National Civil Commitment Liaison Eldon Dillingham, 12/1/2022].
Summary by Cyrus Gladden:

If you've been convicted of a forcible or nonforcible sexual offense and you're subject to an involuntary civil commitment upon completion of a period of incarceration for that offense, you're not currently eligible to receive Federal Pell Grants.

However, the law soon will change for students who are serving involuntary civil commitments. Effective July 1, 2023, an otherwise-eligible student who is subject to an involuntary civil commitment may qualify for a Pell Grant.

This clears up a question that has lingered since an earlier liberalization by Congress of Pell Grant eligibility. At that time, Congressional leaders struck a deal to reinstate Pell grants for incarcerated students more than a quarter century after banning the aid for prison education programs. This provision generally restoring such grants for those incarcerated was part of a package of higher education policies and financial aids. That Act also upped the maximum Pell grant award to $6,495 for the 2021-22 school year. Before that liberalization, the federal government was already spending about $30 billion a year for the Pell grant program. However, the cost of providing Pell grants to those incarcerated (when it was previously permissible) was never more than a tiny fraction of that total.

Pell grants were never banned categorically for those in mental health facilities, nor banned outright for those in SOCC facilities specifically. Nonetheless, college financial aids officers regularly insisted that the ban on such grants to the incarcerated applied to all confined in SOCC facilities. The latest Congressional Act removes that excuse, clarifying our eligibility. Its amendments to the Pell Grant program have categorically removed the prohibition of such grants to involuntarily committed individuals from Section 401 of the HEA (setting forth the Pell Grant program).

Based on Congress' change to the relevant statutory language and consistent with a rulemaking subcommittee member's recommendation and the discussions held during that subcommittee's meetings on the matter concurring with that suggestion, the statute's exclusion of those subjected to involuntary civil commitment from the definition of 'confined or incarcerated individual' makes it clear that Congress' intent in this latest liberalizing amendment is to expressly provide that all in involuntary commitment – including those in SOCC facilities -- are not prohibited from receiving a Pell Grant on that basis, nor do they need to be enrolled in a PEP in order to qualify.

Currently then, an individual who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense (as determined in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program), is now authorized to apply for Pell Grants and may receive same on or after July 1, 2023 (provided that all other usual requirements for Pell Grant eligibility are met). This is a proverbial 'sea change' in legal eligibility for availability of grant money for college expenses for those in SOCC confinement. It should be taken advantage of by those who qualify in other respects who wish to receive college instruction in ways available to those confined in such SOCC confinement facilities.

This includes both traditional 'distance learning' (instruction by mail) and modern lecture and seminar attendance via video conference digital connection (where it is offered by a given college for particular courses), as well as for conferences with college counselors and scholastic advisors (usually specific to given "majors" of college study). In some college programs (still the exception), it may even be possible to complete a degree program and to graduate while still in such confinement. Even where that is unavailable, college credits earned for such non-campus learning are usually applicable to the credit requirements toward a degree program. The remaining degree requirements can then be completed through on-campus instruction after one's release from confinement.

Thus, for anyone attaining release from SOCC confinement, receipt of such college credits while confined provides a special 'leg up' toward employability as a college graduate after release.

For those still in need of remedial learning (for instance, gaining a "G.E.D." high-school equivalency diploma), this important door-opener to higher education provides a powerful incentive to undertake and complete the courses and testing needed to gain a G.E.D. It also provides further incentive for those who wish to apply for admission to a college or university to gain further learning which will greatly increase one's score on college entrance tests, which are often strongly relied upon by college entrance officers in cases where a traditional high school diploma, with its grade-point average, is unavailable due to one's earlier direction in life.

It must be noted, however, that over the last twenty years or so, many universities and colleges have erected bans on admission upon those with past sex offenses. It also may be the case that some other universities and colleges have not bothered with enacting such bans because the former ineligibility for Pell Grants for those in SOCC facilities posed such a financial obstruction to college attendance that a college-specific ban on former sex offenders was deemed unnecessary. This change in Pell Grant eligibility may prompt such action by various colleges and universities. This may add an urgency to act without delay by those now otherwise eligible to apply for college admission. In any event, it points up the need to check to see whether a given college or university you may wish to apply to will consider such an application, or instead will simply categorically reject your application on the basis of such a ban. The good news: the majority of higher education entities do not have such categorical bans. First Amendment case law recognizes that a right to education is subsumed in the freedom of speech. Hence, it may be possible to challenge such an absolute ban on admission of sex offenders into college, at least where the college or university in question is governmentally run. The delay encountered in litigation, however, makes this option unattractive.

The institution of higher learning you wish to gain admission to may, however, still require you to pass a special review process to ensure to their satisfaction that you do not present any danger of criminal recidivism as to your ultimate presence on campus. This kind of review is fairly common to those in our position (as, for hiring by large corporations or for jobs involving public contact). This may be more difficult to overturn in court, despite the fact that favorable satisfaction of such review was almost surely required simply to gain release from SOCC confinement.

As to the MSOP SOCC confinement system specifically, except only those in treatment Phase III and the Community Preparation Services (CPS) pre-release program who are individually permitted to do so, MSOP policy has barred all of its confinees from taking college courses ("post-secondary courses and programs"). This ban has always been unconstitutional, but apparently remains unchallenged to date. However, now, one rationale for that ban, namely the assumed bar on Pell grants, has been removed. With this potential burden on MSOP finances no longer a concern, that rationale has disappeared, making that unconstitutionality more undeniable than before. 'Go get 'em, litigators!

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IL Supreme Court Says State Must Pay to Support Disabled SOCC Releasee on Provisional Release.

People v. Kastman, No. 127681 (Ill. 2022)

Summary by Sex Offense Litigation and Policy Resource Center:

"Nature of Case: In 1994, Defendant Kastman was found to be a sexually dangerous person and was committed to the guardianship and custody of the director of the Department of Corrections (Dept.) under the Illinois Sexually Dangerous Persons Act (Act). Kastman was granted conditional release from institutional care and later filed a petition requesting that the Dept. be compelled to provide financial assistance to cover his treatment and living costs. Kastman asserted that he was unemployed, disabled, and could not afford his $300 monthly treatment costs and the $1800 monthly rent for housing compliant with the Sex Offender Registration Act (SORA) and the numerous requirements of his conditional release.

The Director of Corrections opposed Kastman's petition, arguing that he had no continuing duty to provide for Kastman's housing and treatment outside of the institutional setting.

The Lake County Circuit Court ordered the Dept.'s Director to pay part of Kastman's monthly expenses. Specifically, the Court ordered the Director to contribute $2413 per month toward Kastman's essential expenses, including rent, treatment, utilities, and medical copayments, and $500 toward his monthly living expenses. The Court stated: "One has to look at the big picture and make a determination as to how anyone can move forward from being actually confined at Big Muddy," adding, 'It's the Court's hope that as he goes forward, Kastman will be in a better position to take on more of the responsibilities with regard to pulling his weight financially in the outside placement.'

The Director appealed and the appellate court affirmed. The Illinois Supreme Court accepted Director's appeal. The Director argued that the circuit court had no authority under the Act to require the Director to contribute to Kastman's treatment and living costs while on conditional release.

Holding: The Illinois Supreme Court rejected the Director's arguments and concluded that the Circuit Court has that authority. In so holding, the court noted that nothing in the language of the Act limits the Director's duties to persons covered under the Act and notes that the term 'custody' used in the Act extends beyond physical custody to include care and control of a guardian. The Illinois Supreme Court affirmed the decision of the appellate court."

Illinois Supreme Court opinion available at: https://mitchellhamline.edu/sex-offense-litigation-policy/wp-content/upload/sites/61/2022/11/2022-people-v.-kastman.pdf. View via Google Scholar: https://scholar.gogle.com/scholar_case?case=16571591110730391498q=people+v.+kastman&hl=en&as_sdt=6.24&as.ylo=2022

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MSOP Wages No Longer Reduce GA.

By Cyrus Gladden

In Docket Number 253140, the DHS administrative appeals office held in a ruling issued on Nov. 29, 2022 that MSOP wages no longer need to be considered as a basis for deduction against the amount of the General Assistance benefit any MSOP confinee is otherwise eligible for.

This means that any MSOP confinee may work as many hours as he wants upon to the maximum for his MSOP phase level and still get the maximum General Assistance monthly benefit. That benefit is currently $111 per month. A rumor unverifiable at press time asserts that this maximum amount for those in MSOP will increase effective January 1, 2023.

This ruling is grounded on a legislative amendment to the underlying statute, Minnesota Statute § 256P.06, Subd. 3 (2). This amendment deleted Subsection (xiii), which previously included in the basis for such GA deductions "income and payments from service and rehabilitation programs that meet or exceed the state's minimum wage rate."

Minnesota's Dept. of Human Services deems MSOP wages, which (on paper) equate the Minnesota minimum wage, to be income from a "rehabilitation program." Hence, MSOP wages were previously allowed to be used as a basis for GA deduction under this statutory subsection.

Now, with this legislative repeal of this subsection (effective Nov. 1, 2022), this administrative DHS appellate ruling held that there is no longer any legal authority for that GA deduction calculation. The MSOP confinee-worker in question was able to get his full GA monthly benefit going forward from Nov. 1, 2022.

This ruling is precedent for all other MSOP confinee-workers as well. If anyone receiving General Assistance does not automatically receive this increase to full-benefit level, he should contact his county income maintenance worker immediately to retroactively get the full amount from Nov. 1, 2022 forward. Merry Christmas from the DHS!

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MSOP Practices: Badly Aimed & Insufficient to Create Releases.

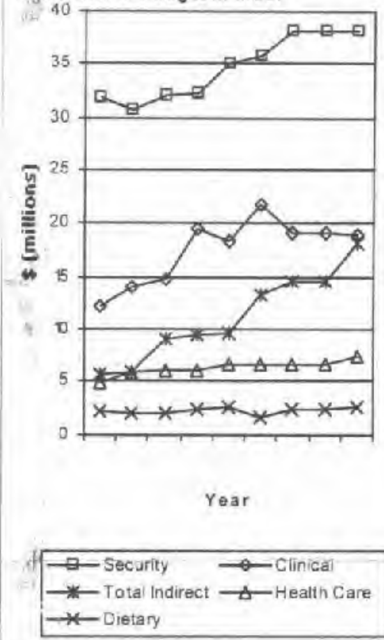
Duncan Brainerd, Experts Critique MSOP: A Chronological Review of the Insufficiency of MSOP's Practices (Dec. 10, 2022, unpub. paper)

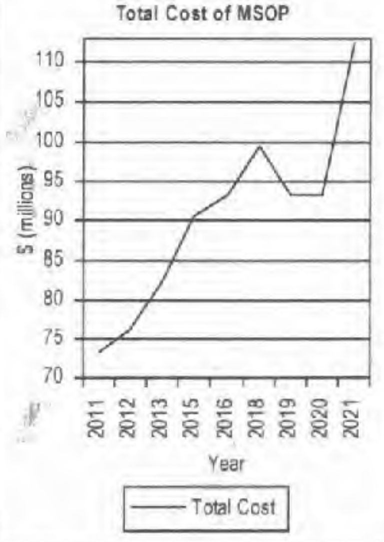
Excerpts:

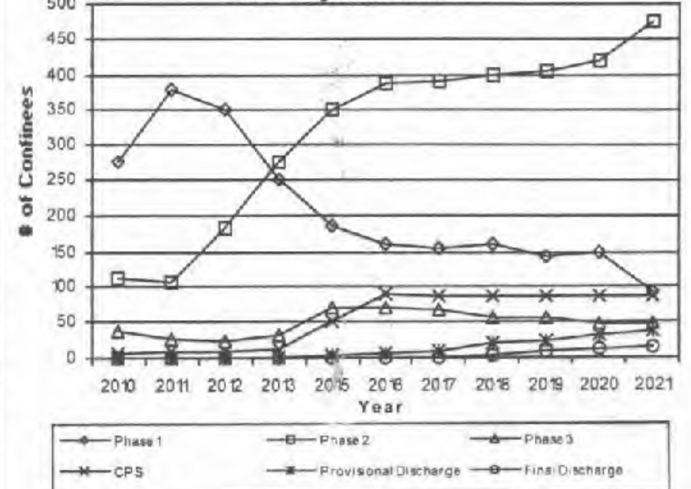
p. 2: "While monies dedicated to security have been relatively stable and had strong growth, monies for clinical services have been volatile and shrank at many points. [See charts at right.]

...Although MSOP had a considerable progression boom in 2013 to 2015, stagnation has occurred since. Progression by MSOP to Phase 3 has dwindled since the progression boom. It is noteworthy that a considerable increase in the population 'outside the fence' has continued to occur. This is because discharges and CPS are done by the CAP (Commitment Appeal Panel), an outside court process not controlled by MSOP or DHS. MSOP has claimed every year since 2012 that 'clients are demonstrating progress, making changes, and advancing through treatment as evidenced by the increasing number of clients in later phases of treatment...', when reporting to the legislature. This is not substantiated by available data. Also of note: the DHS appeals every order for custody reductions, prolonging the process."

Source: MSOP Annual Reports 2011-2020, http://www.leg.state.mn.us/lrl/irl.asp. [See chart below.]







Perlin & Cucolo, Part 4: How We Got Here

Michael L. Perlin & Heather Ellis Cucolo, Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation (Philadelphia: Temple Univ. Press, 2017), Chapter 3: "History of Sexual Offender Laws"

Editor's Note: This is the fourth in a series of excerpts from Shaming the Constitution, a watershed book about sex offender civil commitment (SOCC) that has brought the light of true understanding to many who previously had been completely fooled by the longstanding massive propaganda advanced to support SOCC. This portion recounts an overview of the history of sex offender commitment laws in its two historical phases: 1930-1980 and 1989 to the present.

Text excerpts:

p. 19: "**Early Conceptualizations of a 'Predator'**

Given societies' morals, ethics, and codes of decency, our emotionally charged responses to sexually motivated crimes are easy to understand: like all other criminal acts, such crimes need to be appropriately punished. But punishment must be meted out through rational, intelligent, and directed motives of justice and not rendered arbitrarily. Our legislative responses often result from anger and heightened emotions, further exacerbated by politically charged debates and media-frenzied depictions of offenses and offenders. In short, they shame the Constitution.

p. 21: **Sexual Psychopath Laws**

The process of trying to identify an individual as a sexual psychopath was fraught with problems. Critics had multiple complaints, arguing that (1) the term 'sexual psychopath' was devoid of any diagnostic validity, (2) an act of sexual violence, in and of itself, is not the manifestation of any single mental disturbance, but rather a symptom that can be attributed to any of a large number of causes, and (3) treating the vast number of offenders as a homogeneous group was psychologically completely illogical. Ironically, each of these critiques can be similarly applied to the new generation of SVPA statutes.

pp. 21-22: Two Supreme Court opinions further signaled the beginning of the end of the early sexual psychopath statutes. In *Specht v. Patterson*, the Court struck down a Colorado statute as an unconstitutional violation of procedural due process. The Supreme Court ruled that sexual offenders could not be committed to a treatment facility until they were found guilty – at a hearing with full procedural protections – of having committed the antecedent criminal acts, and the denial of the right to cross-examine the prosecution's psychiatrist would violate due process because it would be almost impossible for a defendant to contest an adverse finding.

Five years after the *Specht* decision, the Supreme Court unanimously decided *Humphrey v. Cady*, holding that Wisconsin's statute was unconstitutional because it improperly authorized additional institutionalization past the period of time originally set in the criminal sentence. In rendering its decision, the Court characterized this confinement as being conditioned 'not solely on the medical judgment that the defendant is mentally ill and treatable, but also on the social and legal judgment that his potential from doing harm, to himself or to others, is great enough to justify such a massive curtailment of liberty.

p. 22: **The New Generation Laws**

...Our innate disgust at these types of offenses and our emotionally charged responses appear to be quite natural; yet when we step outside the realm of personal fears fueled by unsupported conclusions and vivid heuristics and enter the legal world – ostensibly supported by collective mandates protecting individual liberties, --we must be cognizant of our individual predispositions and prejudices to ensure that we do not allow them to underlie our legislation and subvert constitutional rights. When we allow this, we allow our laws to shame our Constitution.

p. 23: ...[W]e must consider whether studies on treatment effect, future risk assessment ability, recidivism, and prevention improved with the new generation laws. We must examine whether these new laws are constitutionally supported or whether such statutes should be deemed ineffective for their intended purposes and fall to the wayside once again.

p. 24: *Washington's Revival (the Community Protection Act of 1990)*

...[B]y 1997, at least 17 states had enacted some sort of a 'modern' sexual offender statute.

Each of the new generation of statutes was based on a legislative desire to protect the public from a group of offenders that was widely (and universally) despised: criminals who sexually abused and molested young children. Although the statutes differed in content, they shared certain elements. In each case, the state must prove – by a quantum of either 'beyond a reasonable doubt" or 'clear and convincing evidence' – (1) a history of violent acts, (2) a current mental disorder or abnormality, (3) the likelihood of future sexually harmful acts, and (4) a nexus between all of the first three elements. In most of these statutes, commitment is indefinite, and release is allowed when it is shown (often only through treatment effect) that the offender is no longer dangerous by reason of a mental disorder.

p. 25: ...Perhaps the most consistent criticism of the Washington statute was that it based a commitment scheme on a diagnostic category – mental abnormality/aberration – that had no clinical significance. Individuals who could fall under the category of having a 'mental abnormality' are vastly diverse and may share no more than one attribute; for the most part, treatment for these individuals has had limited success. Significantly, critics claimed that the term 'mental aberration' was an illusory connotation and the term 'personality disorder' was so broad as to include virtually everybody to some degree and almost certainly every sexual offender. As a result, that portion of the Act has been described as 'an exercise in lifetime preventive detention disguised as involuntary psychiatric treatment.'

p. 30: *Constructing Mental Abnormality after Hendricks*

[*Kansas v.*] *Hendricks'* language opened the door to a diagnosis smorgasbord through which evaluators could basically pluck a diagnosis from the *Diagnostic and Statistical Manual* and apply it to their subject as long as they provided some link to sexual offending and lack of control. If that did not create enough of a dilemma in the scientific community, the move to offer diagnoses outside the confines of the DSM destroys the validity of any actual scientific approach to this area of the law.

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Expert Psych Opinion w/o Interview Judicially Barred

Schnabel v. Berryhill, 2019 U.S. Dist. LEXIS 24407 (W.D. N.Y. 2019), at 2019 U.S. Dist LEXIS 19

Excerpt:

"...Because a psychiatric opinion that is based solely on a review of medical records is inherently less reliable than an opinion based on a face-to-face examination, it is an abuse of discretion to rely solely on such opinions ...See also *Velazquez v. Barnhart*, 518 F.Sup.2d 520, 524 (W.D. N.Y. 2007) ('A psychiatric opinion based on a face-to-face interview with the patient is more reliable than an opinion based on a review of a cold medical record. ..') (citing *Westphal*, 2006 U.S. Dist. LEXIS 41494, 2006 WL 1720380, at *4-5)."

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Virginia Report, #21: Wrapping Up the Static-99R

(2) The "RRASOR," "Static-99/Static-99R"

The RRASOR was an early attempt at an actuarial approach to assessing sex-crime recidivism probability. As of 2002, neither "RRASOR, and Static–99 instruments had not been accepted by the psychological or psychiatric community, but were instead "young pioneering efforts of novel science." *People v. Taylor*, 782 N.E.2d 920 (Ill. App. 2002). RRASOR was incorporated into the Static-99 at that time, and thus received no further work. Therefore, it remains unaccepted to date.

The original Static-99 was replaced by the Static-99R as of 2009. However, the replacement is no more valid than the former. The Static-99R/Static-2002R is equally unscientific and useless for predicting sex crimes. See, e.g., *United States v. Lange*, 2012 U.S. Dist. LEXIS 159498 (E.D. N.C. 2012), noting, at Finding "89. Dr. Plaud ...stat[ed] that the Static-99R has a low positive predictive value, and that in any case the instrument's negative predictive value should be used to evaluate individuals." Small component samples of offenders and their varying, unrepresentative constituencies deprive it of any accuracy. Inclusion of non-incarcerated offenders skews the predictions against all who were sent to prison. Authors of this RAI "reweighted" factors used on a merely impressionistic basis – another departure from scientific procedure. Predictions of re-offense based on this RAI include any kind of crime, not just sex offenses.

Criticism of the various scientific problems of the Static-99R is widespread. See, e.g., *Melissa Hamilton*, "Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws," 83 *Temp. L. Rev.* 697, 726-35 (2011) (describing five problems that undermine the credibility of actuarial tests such as the Static-99R).

This is corroborated by *Montaldi's* findings, *supra*, at 41 *Wm. Mitchell Law Rev.* 820-21, observing that whereas the Static-99R Routine table predicted 40 sex offenders selected for commitment would reoffend within five years, in fact only five did (39% predicted; 4% actually did). The Static-99R is widely regarded as the best available actuarial assessment instrument. Thus, this grave over-prediction of probability of sexual re-offense points up that even the best actuarial risk assessment tools are hopelessly inaccurate. Indeed, *Montaldi* notes that those Florida sex offenders recommended for commitment "are most similar to Static-99R 'Routine' Group offenders with a score of 1" (3.8% likelihood of sexual re-offense) – i.e., extremely unlikely (96.2% unlikely) to reoffend.

At pp. 824-25, 837, *Montaldi* drew these conclusions from this outcome:

"The [Florida] findings from late 2011 provided the first evidence that both the

(Continued on page 4)

(Continued from page 3)

observed rates used to norm the Static 99 and predicted rates for the revised Static 99R are grossly inflated for use with a recent sample of sex offenders local to Florida. This is consistent with recent meta-analytical studies showing that rates for especially higher risk actuarial categories vary widely across samples, to the point where no empirical basis exists for treating rates as absolute probabilities (or measures of absolute risk).

"In this author's opinion, the larger meaning to be found in comparing the OPPAGA and Adam Walsh study rates is this: the Florida SVPP, consisting of well-trained and dedicated experts using nationally accepted best practices in risk assessment and diagnostic evaluation, has not been able to distinguish a small group of unusually dangerous sex offenders from average sex *825 offenders coming out of prison. It seems unlikely that a lower rate would have been found if offenders had been chosen randomly for recommendation and then given conditional release."

[At p. 837:] "In fact, a group of sex offenders considered so "out of control" and dangerous that they were deemed to meet commitment criteria and were recommended for commitment in Florida turned out to have almost a third *fewer* sexual recidivists than what would have been expected of *typical* sex offenders, according to the Static-99R..."

Adding, at pp. 839-40: "This argument is not simply the claim that no empirically validated basis has ever existed for choosing between reference groups, an important point made by other authors. It is the claim that now an empirical basis exists for using the Routine Group, and not any other reference group, if the Static-99R is used at all.

"...[T]hese data give support for the claim that offenders who were recommended for commitment in Florida were, in fact, little different risk-wise from offenders not recommended. Neither group was high risk when they were evaluated for commitment consideration. That neither group was high risk gives support to the claim that contemporary risk assessment and clinical evaluation methods are not capable of distinguishing commitment-eligible sex offenders from average sex offenders with respect to SVP commitment criteria as they are now formulated (at least not in Florida). Given no reason to think that Florida sex offenders are, in general, significantly different from sex offenders anywhere else in the United States, this claim is likely to apply in all states with sex offenders-specific civil commitment laws." (emphases supplied)

The leading RAI series, "Static-99R"/"Static-2002R," is unscientific and useless for probability derivation, predicting future sex crimes. Small control samples and their varying constituencies (making aggregation unrepresentative) deprive the Static-series RAIs of any accuracy. Those not sentenced to prison were included, skewing the predicted percentages for all commitment candidates (who all had been) substantially higher. The designers "re-weighted" the Static RAIs without the universal data needed to do so. Static RAIs produce a prediction of any post-prison-release crime, not just sex offenses. Use by raters of 'non-standard' samples in Static RAIs at their discretion, thereby radically increasing the reported probability of future re-offense, is anti-scientific in the extreme.

(a) In the Static-99R, Unscientific, Discretionary Rater's Choice of Extremely Divergent Re-offense-Risk Tables

The worst aspect of the Static-99R is that it introduces a sweeping authorization for a 'judgment call' by a given "rater" (assessor) using it in a specific case to simply subjectively decide whether to use the "routine" table of predicted percentages, or instead to use any of three "non-routine" tables of extremely highly elevated predicted percentages, based only on that rater's impression of how comparatively risky he "feels" the sex offender to be. This makes a huge difference, since the three non-standard tables have listed recidivism probability figures that are as much as four times higher than the comparable figure in the standard table for the same offender's Static-99R score. This is not an actuarial approach at all; indeed, it is not science at all.

State v. Rosado, 25 Misc.3d 380, 889 N.Y.S.2d 269, 392-93 (2009), observed that this "second stage involves making a professional judgment as to where a particular offender is likely to fall within that range. ...[C]urrently, there is no research to assess how well evaluators are able to make this judgment. Clinicians are still waiting to hear more information about 'why [the author of the Static-99R] now created a two-tiered system' and how to interpret the results. Dr. Harris stated, 'it really is troubling that you come up with one score and you get two very different outcomes as to what the risk is to sexually reoffend.'"

(b) Other Static-99R Problems of Note

The developers of the Static-99R have stated that the instrument was developed and intended for use as to sexual offenders with a current or recent sexual offense. See: *Leslie Helmus*, "Improving the Predictive Accuracy of Static-99 and Static 2002 with Older Sex Offenders: Revised Age Weights," 24 *Sexual Abuse: J. Res. & Treatment* 64, 73 (2012). Yet almost all individuals petitioned for sex offender commitment have already served a prison term (usually a decade or more) at the time of that petition. This fact signifies that their "index" sex offense is farther in the past than that – certainly not a current or recent offense in any meaningful sense of the term. Hence, by the admission of Static-99 developers, that instrument is not suited to the context of sex offender commitment and has dubious relevance in that context and admitted lack of accuracy in its predictions of recidivism probability percentages.

The Static-99R's adjustment for increasing age has been criticized as far too little reduction in risk as subjects approach age 60. Actually, the Static-99R has no further reductions in score or probability after age 60. (Dr. Pascucci testimony, *Karsjens* Trial Tr., v. 8, p. 1673). This fact, however, is simply because the age 60 probability is already at the lowest measurable level. No numbers below that have ever been ascertained, due to a complete lack of recidivism at any later ages. *Cf.: United States v. Hamelin*, 2012 US Dist LEXIS 54790 (E.D. N.C. 2012):

"After considering the testimony and the reports of the experts in this case, the Court finds more credible the opinion of Dr. Plaud with regard to this step of the inquiry. Dr. Plaud relied heavily in his testimony on the age of Respondent, who at the time of the hearing was 64 years old, and noted in his report that 'so few [men in their sixties, even those with histories of multiple sexual offenses, including offenses committed in their forties,] re-offend as to make the recidivism rate of this group of men approach zero statistically.' Resp't Ex. 1 at 2." (Emphases supplied).

Likewise, inclusion in the Static-99R of a factor as to whether one had ever been married for at least two years has no scientific support. The scientific support for yet another factor, namely any male victims, evaporates once one excludes cases of homosexual rapes occurring in incarcerated/confined settings from the samples said to support that finding. To remain scientifically valid, this factor must be restructured as a 'prison rape' factor, inapplicable to sex crimes involving juvenile male victims who, by the numbers, are typically subjected only to fellatio, and are usually willing to receive it.

Researchers examining the Static-99 found that its 95% "confidence interval" ("CI") at its highest-risk score was an unbelievably wild spread: 6-95%. *Stephen D. Hart, et al.*, "Precision of Actuarial Risk Assessment Instruments: Evaluating the Margins of Error" (etc.), 190 *British J. Psychiatry* (supp. 49) s60 (2007), at s60, s62. Distinctly, *Melissa Hamilton*, in "Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws," 83 *Temple L. Rev.* 697 (Spring, 2011), at 728, deriving the variance of the Static-99's correlation coefficient, determined that only 10% of the variance in sexual recidivism in the development sample used in the Static-99 is explained by any or all of the scoring factors of the Static-99. *Hamilton* observes, "...[T]his means that 90% of what helps influence sex-offense recidivism is based on other factors." Consequently, as a tool for predicting risk of sexual re-offense, the Static-99 simply is not. Next, using the U.S. Dept. of Justice's sex-crime recidivism base rate (5.3%), and an "ROC" (receiver operator characteristic) rating of .70, *Hamilton* determined that, as to its predictive accuracy, the Static-99 will be wrong 9 times out of 10. (*Id.*, p. 731) (emphases supplied).

More generally, ARA recidivism statistics are almost always derived from studies conducted more than a decade ago as to offenders released as much or more than 20 years before that. Thus, almost all RAIs fail to account for the huge drop in sex-crime recidivism that has occurred since then. In Minnesota, sex-crime recidivism was measured at 17% in a 1990 study, but by 2007, as found by a matching study, it fell to a mere 3%. Since this is nearly a six-fold decrease, and because all risk levels were affected by this drop, an offender previously concluded to have a 50% probability of re-offense under former statistics would now only be 8.8% likely to recidivate in the future – a fact not reckoned by existing RAIs. (*Lawyer X*, *supra*, at pp. 44-46).

Separately, perhaps the most damning of all findings about the Static-99R is the divergence of actual recidivism rates in field studies from the predicted rates asserted by that RAI. *Marcus T. Boccaccini, et al.*, "Field Validity of Static-99/R Scores in a Statewide Sample of 34,687 Convicted Sexual Offenders," 29(6) Psychological Assessment 611-623 (2017), DOI:
http://dx.doi.org/10.1037/pas0000377
found such radical divergence in a huge study of sex offenders in Texas:

Abstract Excerpts:

p. 611: "The Static-99 (and revision, the Static-99R) reflect the most researched and widely used approach to sex offender risk assessment. Because the measure is so widely applied in jurisdictions beyond those on which it was developed, it becomes crucial to examine its field validity and the degree to which published norms and recidivism rates apply to other jurisdictions. We present a new and greatly expanded field study of the predictive validity (M = 5.23 years follow-up) of the Static-99 as applied system-wide in Texas (N = 34,687). ...[C]alibration analyses revealed that the Static-99R routine sample norms led to a significant overestimation of risk in Texas, especially for offenders with scores ranging from 1 to 5...."

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Different Backgrounds Produce Differing Perceptions as to Child Sex Abuse Prevention & Policies on SOs.

Socia, Kelly M. et al., "How Background Relates to Perceptions of Child Sexual Abuse Prevention and Policies Related to Individuals Convicted of Sex Crimes," 31 *Criminal Justice Policy Rev.* 1059-1094 (Issue 7, Aug. 2020)

Abstract: "Although research has examined perceptions of child sexual abuse (CSA) prevention and the efficacy of sex offender policies (SOPs), less research compares these perceptions between different backgrounds. We explore these perceptions among North Carolina stakeholders with backgrounds related to (a) victims of CSA, (b) individuals convicted of sex crimes (ICSCs), and/or (c) law enforcement and policymakers. Specifically, we examine how these backgrounds differ in the perceived efficacy of (a) the ability to prevent CSA, (b) containment-based SOPs, and (c) assistance-based SOPs. We find that the victim-focused background was the most optimistic that CSA prevention is possible, and the law and policy background was the most pessimistic. Furthermore, the ICSC-focused background was the least likely to believe in the effectiveness of containment-based strategies and the most likely to believe in the effectiveness of assistance-based strategies. An overlapping victim-and-ICSC background consistently fell in between the views of victim-only and ICSC-only backgrounds."

Editor's Note: Thus, this study essentially finds that the beliefs of both former sex-crime child victims and those who sexually abused children in the past are in agreement that there is an ability to prevent sexual abuse of children and that assistance-based sex offender policies are the likely effective way to achieve such prevention. In contrast, the authors find that law enforcers and SO policy makers believe that sex-crime prevention is impossible by any other means than confinement of sex offenders or other liberty-restricting measures to achieve total containment of sex offenders away from open society. This contrast, aligning views of sex abuse victims with those who have committed sex crimes against children – together all of those who have direct experience with such crimes – suggests that law enforcers and SO policy makers, whose experience with such crimes is only secondary (through accounts only) at best, have formed their views through conjectures and fear-based imaginings and the emotional reactions of disgust, horror, and anger such imaginal experience produced.

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2022 MSOP-Moose Lake Medical Care Survey for US DOJ

[Eds.], 2022 Medical Care Survey Results Compiled Data for the United States Department of Justice

Excerpts:

p. 1: "Who Created the Survey and This Report?

The survey used to collect the data reflected in this report was created and distributed by the detainees of MSOP [Minnesota Sex Offender Program], Moose Lake site. The same detainees used the data from the completed surveys to develop this report.

What Questions Were Asked in the Survey?

1. Is MSOP keeping you confined without a mental illness?
2. Do you have any medical conditions the DOJ should be aware of?
3. Are you currently living in pain?
4. Are you suffering daily pain?
5. How long have you been in pain?
6. Are you receiving pain medications? If so, what medications?
7. Have you signed for a Medical Transport and are you awaiting transport? If so, how long have you been waiting?

When, Where, Why Was the Survey Conducted?

The survey was conducted during a time of extreme grief and fear at the MSOP, Moose Lake site. 34 detainees have died at the MSOP since January 2017. This equates to one death every 60 days. For a population of 750, this is a relatively high rate of deaths for any state institution. The survey was conducted to determine whether there is a connection between the rate of deaths at MSOP and the level of medical care provided to the detainees.

How Was the Sample Collected for the Survey?

The Moose Lake site houses approximately 450 detainees. Throughout the compound there are 7 units that regularly house individuals, with the number of detainees varying from unit to unit. Approximately 25% of the detainees in each unit participated in the survey: 24 from Unit 1A, 22 from Unit 1B, 15 from Unit 1C, 25 from Unit 1D, 21 from Unit 1E, 2 from Unit Alpha, and 4 from Unit Beta. This equates to 113 detainees, which is a little over 25% of the total population of the Moose Lake site and about 15% of the total MSOP population (about 750 detainees total).

Conclusions of the Survey

After compiling the results of the survey, it is clear that the rate of death at the MSOP is caused by the MSOP's refusal to transport detainees to the hospital for various levels of medical care. In addition, there is evidence to suggest that an MSOP employee is benefitting financially from the deadly consequences of the insufficient medical care at the institution.

October/November 2022 Medical Care Survey Results

91% of the survey participants report they believe that MSOP is keeping them detained without a mental illness or without an updated mental health assessment for their level of care.

76% of the participants described various health issues including: recent stroke, water edema, infections, heart problems, leaky bladder, advanced arthritis, spinal arthritis, chronic rheumatoid arthritis, orbital fracture, nasal fracture, migraine headaches, twisted feet, rectal bleeding, broken teeth, blindness, high blood pressure, hernia, ringing in the ears (tinnitus), constant and chronic cough causing insomnia, deteriorating discs in the back, fractured spine, hearing loss, heart disease, prostate problems, lump on nipple, nose polyps, numbness in limbs, ruptured tendon in ankle, gastric issues, acid reflux disease, neurological issues, difficulty breathing post-Covid, dying hip bone, gall bladder issues, no teeth (need dentures), thyroid problems, pinched nerve, vision/hearing loss, constant loss of teeth, lack of movement in limbs, bunions, blood clots, nerve damage, infected cyst, gall stones, fractured ankle, neck injury, excessive perspiration, dizziness, fatigue, coughing up blood, and shrunken urethra. Also among this 76%, specific diagnoses were reported, such as bipartite patella in knee, narrowing of lumbar 4 and 5 disc space, Klinefelters Syndrome, Crohn's Disease, Peratidectomy, spinal stenosis, C.O.P.D., diabetes, pseudo rheumatoid arthritis disease, severe sleep apnea, Diverticula, Keratosis, torn scapula muscle with shoulder impingement of the cuff, and reactive airwaves disease. Some of the participants among this 76% reported pain in the feet, ankles, knees, legs, Achilles, hips, sciatic nerve, stomach, testicles, back, throat, neck, elbows, wrists, shoulders, joints, ears, and gums. In addition, participants reported nerve pain, severe pain causing insomnia, and 'shooting' pains.

88% of the participants report that they are currently suffering in physical pain

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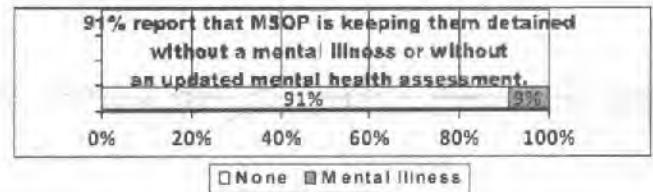

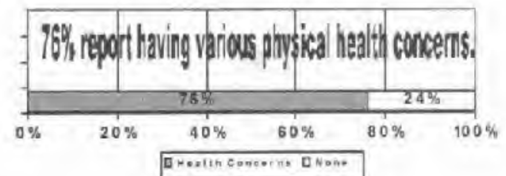

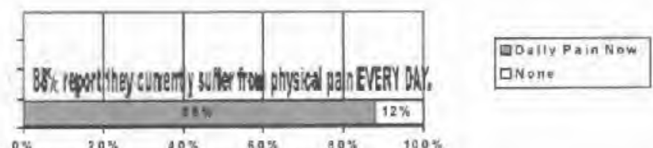

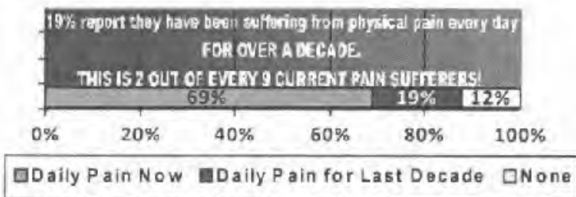

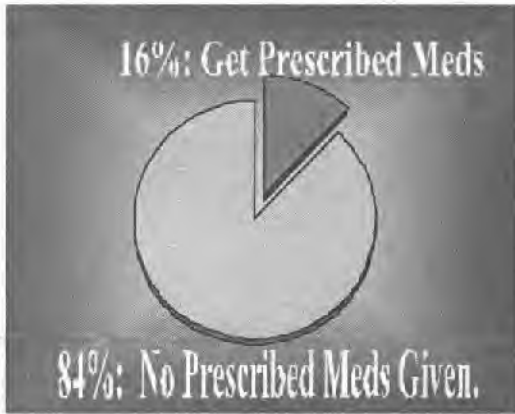

58% were forced by MSOP to wait for medical transports for needed care

The average wait was 9 months.

*

(Continued from page 5)

every day. 19% of them have been suffering for over a decade.

Only 16% receive prescription pain medications for their pain. 84% are forced to rely on over-the-counter pain medications.*

There are no medical doctors at the MSOP. Therefore, detainees often require state provided transportation to local hospitals for medical care. 58% of the participants report that MSOP approved medical transports for outside care. According to the data compiled in this survey, those approved for outside care have to wait approximately 9 months on average to be transported to local hospitals.

Note:

* MSOP clinician, Mike McEchran, in addition to his employment with the MSOP, works as a pharmacist at the Thrifty White Pharmacy in Moose Lake, MN. Thrifty White Pharmacy is where prescription medications *would* come from when outside doctors prescribe them. However, multiple participants report that MSOP prohibits the men from actually receiving the prescriptions. Instead, the men are expected to purchase over-the-counter pain medications from Thrifty White or from the MSOP Canteen contractor. Detainees do not have the sufficient resources to investigate the relationship between Mr. McEchran's dual employments. We urge the U.S. Department of Justice to investigate the connection between MSOP and Thrifty White Pharmacy.

Thank you to the participants of the 2022 Medical Care Survey

...For the men who have kept hope alive, we thank you! For the men who refuse to stop fighting, we thank you. There are people suffering all over the world. Your strength will one day be their strength as the world learns about your courage. Together we are ending SOCC. Together we are finding more humane ways of dealing with sexual violence. Our resistance is in honor of the women and children who continue to suffer while SOCC systems preach their false doctrine – wasting billions that could otherwise be used to protect our communities. We thank you for being part of the solution. We hope you will continue to work with us in the future as the data from these surveys are necessary if we are going to shine a light on the peculiar phenomenon of the Shadow Prison and bring an end to it. Mii gwech! Thank you for helping end SOCC!

***: [Death] Certificate graphic symbolizes needless deaths or their peril.**

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Another Vigilante SO Murderer with No Remorse; The Need for Self- and Mutual-Defense

Mitchell Carter et al., "Man Shows No Remorse for Fatally Shooting Registered Sex Offenders, Deputies Say," July 29, 2022, *Texas Tea Newsletter* (Issue 11, Oct. 2022), pp. 5-6

Text excerpts:

"A man in Indiana told deputies he has no remorse for fatally shooting a registered sex offender, authorities said.

According to the Vanderburgh County Sheriff's Office, 34-year-old Ricky Allen Kiper, Jr. shot and killed 41-year-old James C. McClernon on Wednesday.

Investigators said Kiper knocked on the front door of a home, asked for McClernon, then shot him.

Kiper was caught about a mile from the scene, and he admitted to shooting

McClernon twice.

Officials said Kiper told them he killed McClernon because he was a sex offender. Investigators said Kiper was not remorseful, and he told them his actions were justified.

McClernon's family told [broadcaster] WFIE that while McClernon was on the sex offender registry, it was for a physical altercation McClernon had two decades ago with an adult woman in Canada, for which he served time there. Canada did not enter McClernon into their sex offender registry database, [which is for police use only and is not published to the public].

McClernon's family said they did not understand why he was placed on the sex offender registry when he moved to the United States. They were actively in the process of trying to help McClernon get taken off that registry when he was killed..."

Editor's Comment:

As an article resulting from academic research into vigilante violence against sex offenders has reported, murders of former sex offenders have been on the rise in recent years. Such murders are often planned and carried out in conspiracies, as that article reports. (This article will be excerpted in a future *TLP* edition.)

However, police nonetheless contend that such murders occur seemingly randomly and without any advance warning to police by the murderer or any of his family or friends (in what may well be an unprosecuted conspiracy of silence in advance). It is not clear whether such cluelessness on the part of law enforcement personnel is actually merely falsely feigned. However, even if real, such cluelessness is at the least willfully ignorant -- the result of law enforcement turning what amounts to a collective blind eye to the likelihood of violence against sex offenders.

This is doubly incredible, given that police agencies themselves are responsible for delivering community notification meetings about sexual offenders who have either recently been released or who have recently moved to a new locale.

In fact, in an effort to whip up community action to closely surveil the former offender in question, police conducting such public presentations often recount an offender's criminal history with exaggeration and use of incendiary language and do their utmost to suggest to attending members of the public that the offender – despite the span of decades since his past sex crime(s) -- still remains a current threat to the community. Frankly, this creates an atmosphere at the end of all such meetings that, were it not for police presence, would very likely prompt a lynching.

The absence of any steps by local police agencies to protect any sex offender from such murderous violence completes an intolerable set of circumstances rooted in the very existence of the public sex offender registry in the U.S. (unlike the private police database kept in Canada, for instance).

Such murderous violence happens at the hands of those who are already motivated by revulsion and hate against their imaginings of sex offenders. These individuals, devoid of any self-restraint of their chronic rage, go out of their way to use the sex offender registry to find sex offenders living close to their own communities.

They deliberately seek out information about a sex offender's past crime(s) and his residential address. Both of these items of information are available in the public sex offender registry. However, these facts are often seized upon by other websites operated by other persons with equally extreme levels of rage against sex offenders.

These web site operators deliberately bill their sites as internet locations where those with such malevolence can more conveniently learn about sex offenders near to any location in the country and they exaggerate the facts of a given offender's crimes in an equally deliberate effort to inflame those with such violence in their hearts into a killing rage by such incendiary re-publicizing of such (sometimes decades-late) reportage.

In doing this, they portray the official registry as withholding many facts about a given sex offender, with a claim that the republishing website must be consulted, on the contention that the official registry website cannot be trusted to convey the full picture of a sex offender's claimed vileness, compulsion, and currently presented extreme danger to any potential victims within his range of access.

It might be possible to try out a host of reforms in an effort to bring this campaign of murders to a halt. Yet the only reform that can squeeze off the source of information about former sex offenders is to end public access to the sex offender registry.

Any lesser legislative act merely banning republication of sex offender registry data would become entangled with the First Amendment, which generally guarantees the right to disseminate information like that found in a publicly free database furnished by the government itself. Because of the indirect method required to clear the First Amendment hurdle, website operators would only have to reconfigure their sites so as to appear to be providing a service to potential victims, rather than a rabble-rousing to those easily incited to murderous vigilantism.

Now that the registry has been ongoing for more than twenty years, it probably is politically unviable to end public access to the government's registry of everyone with a sexual offense at some point in their past life. The sex offender registry has become a de facto checkpoint for employers, landlords, and even ladies vetting the charming beau who has requested a date. The howl of protest were all of those uses to be thwarted would reverberate from coast to coast.

Finally, what I have been calling "the registry" (in the singular) actually is the combination of both the federal registry and all those others which are operated by individual states to track their own former sex criminals and others who move into the given state. The patchwork of such state systems to date that have, respectively, been overturned or upheld by court decisions on grounds that may well not be applicable to systems of other states with divergent features will likely make it impossible to strike down all such registries.

Nonetheless, there is always a slim possibility that a sweeping decision by the U.S. Supreme Court could make it impossible for any registry to operate. It's just not a bet I would choose to make, given the poor odds.

A campaign of federal and state-by-state repeals probably holds better (if still very slim) odds. But in any event, such a campaign would, at a minimum, take most of two decades to complete, if totally successful. Meanwhile, murders would continue unabated.

Thus, it is clear that the only method of prevention of vigilante violence against sex offenders likely to succeed is armed self-defense or mutual-defense. When arrayed against armed would-be killers, unarmed defense is utterly powerless. Mutual defense only works when multiple armed defenders are present when assailants suddenly show up. Likewise, because such vigilante attacks are always carried out by surprise, murders are carried out within seconds of finding the victim. Calling the police and waiting for help to arrive is a nonstarter. This is an excellent argument for cohabitation by many sex offenders, providing round-the-clock security.

Armaments pose a problem, since very few sex offenders ever regain their former right to possess firearms. However, no doubt you have heard the adage that one should not go to a gunfight armed only with a knife. Because of the lack of real police protection, firearm possession for such protection is just as necessary and therefore legally defensible as is shooting an assailant in the process of drawing a firearm to shoot you with.

Some murderers of former sex offenders have been let off easily by sentencing judges (in one case levying only two years in prison, in another simply placing the vigilante on probation. Such judicial outcomes provide no deterrent effect; to the contrary, they telegraph judicial tolerance of such murders. This is unacceptable.

In sum, woe be unto any government or its officials who deliberately if tacitly decline to provide protection and who refuse to allow potential murder victims to defend themselves by levying long prison terms should they do that which they must. This includes the need to preemptively interdict plans for life-taking violence before it arrives at the door. This is not a threat; it is simply a prediction based on momentums unchecked, as sure and unavoidable as the meeting of the speeding Titanic with an iceberg in the infinite blackness of an overcast midnight on the high seas. We cannot force governments to do anything. It is up to those with decision-making power to decide what kind of a country they wish this one to become in the future. A chaotic anarchy conveniently tolerant of murder never stays one-sided for long.

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Rushville: Treatment Lifetime Detention Behind Razor Wire

Editor's Introduction: Like MSOP, the Rushville, Illinois facility discussed in the following exposé is a shadow prison: a prison for those detained without current sentence under rubric of treatment for former sex offenders, but really just a dodge to appear other than what they really are: double jeopardy re-incarceration of those whose sentences have expired.

While the physical design of Rushville is (believe it or not) more austere and cramped than MSOP's two facilities, its general manner of operation is similar and its restrictions on its confinees share so many similarities with other SOCC facilities that it gives cause to ponder whether, if left unchecked, sooner or later all SOCC systems, including MSOP, will be as tightly constrained as the near-solitary confinement routines of Rushville.

At the very least, those routines approximate high-security jail operations, where prisoners never leave their residential "pod" except for official summons and specifically authorized and escorted activities.

Hence, the following report is, if anything, far too kind to Rushville. Unfortunately, the ramification of this is that, if Rushville is permitted to continue to exist, it will legitimate by its tolerated example barbaric treatment of those seized up without conviction or charge and subjected to stripping away of years (perhaps all) of their lives, forced to remain in the closest modern thing to durance vile of yore.

So, dear reader, forge through the following text, but be aware thqat you are learning the produce only of th lightest scratching of the surface of the awful

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truth.

Civil Commitment Working Group Illinois, "Inside Illinois Civil Commitment: 'Treatment Behind Razor Wire'," https://insideciviilcomil.com (Chicago and Rushville, IL, 2022)

Fore Quote: "This is double jeopardy, a prison under the scheme of treatment for sex offender[s]. If treatment works, why are they not releasing people like you should[?] ...People should know that we have all done our time in prison and that we are being held in another prison indefinitely under the term of 'treatment.'" – Rushville survey respondent.

Introduction:

"Key Findings and Recommendations

Rushville residents were clear about the following:

- Civil commitment at Rushville Treatment and Detention Facility is punishment, not treatment....
- Civil commitment at Rushville is a life sentence.

Our Recommendations

United by our opposition to sexual violence and our commitment to building a world where no one experiences sexual harm, we do not believe it is possible to build that world so long as civil commitment continues to exist....

...Less people in

- Eliminate the Static 99R....

...More people out

- Release people at higher rates.
- Create transparent and accessible pathways for accessing conditional release.
- Instate therapist-patient confidentiality.

...Help those inside now

- ...Expand access to the outside world.
- Reallocate resources to offer more one-on-one, confidential therapy.
- ***About Rushville Treatment and Detention Facility***

...To get released, individuals must progress through several phases of treatment for mental illness and rounds of behavioral evaluation. This process often takes decades and has no clear end date. Detention at Rushville is remarkably costly to taxpayers and the state.....

What happens at Rushville?

...Though receiving treatment is technically voluntary, people at Rushville are not allowed to be released unless they finish their treatment, making this a coercive practice where they must receive treatment or stay in Rushville for life.

However, residents at Rushville find it impossible to be released even when agreeing to and spending years in treatment. Further, treatment at Rushville relies on outdated and cruel practices that are under-researched and unsupported by research. ...Residents get shuffled between providers due to the high turnover of therapists. These practices make it incredibly difficult to move forward in treatment and get released.

About this report

Who wrote this report? Why?

A group of volunteers who met through the Chicago chapter of the non-profit organization Black and Pink wrote this report between 2019 and 2022, but the work started back in 2013. ...[V]olunteers ...became alarmed by the stories Rushville residents were sharing: residents were dying at abnormally high rates and being denied proper medical treatment....

204 people returned this survey to us. After receiving the surveys, we followed up with the 70 Black and Pink members inside Rushville to gain more information. We received responses to 20 follow-up questionnaires and conducted seven phone interviews, each of which helped guide us chart the path toward producing this report....

> **"This is NOT a mental health facility, it is a ...holding facility designed to [take] as much time – and as much life – of the inmates as possible." – Rushville survey respondent.**

In 2022, we left Black and Pink to form an autonomous group of researcher-activists who are fighting for liberation for civilly committed people in Illinois, guided by the principles of abolition and transformative justice.

Key Finding #1

Civil commitment at Rushville Treatment and Detention Facility is punishment, not treatment.

Treatment is not helpful.

Survey respondents said they received a variety of treatments at Rushville, but most respondents did not think those treatments had been helpful. Their reports are supported by experts: for more than 20 years the American Psychiatric Association has objected to civil commitment laws, calling them a 'serious assault on the integrity of psychiatry (Schwartz, 2000).

...Many respondents reported that being civilly committed was a life-long sentence. Respondents also strongly expressed that being civilly committed wasn't helping anyone – not themselves, and not the communities they came from.

Rushville uses ineffective and harmful practices to detain people.

Rushville uses the following tools to assess each resident's risk of reoffending, prevent re-offense, and track 'treatment' progress. Al these tools are controversial. Risk assessment materials are tools that are used to predict the likelihood that an individual will act in a certain way (namely reoffending). They're based off predictive algorithms and past criminology studies.

But research does not show that these tools work (Hoppe, Meyer, De Orio, Vogler, & Armstrong, 2020). None of these tools (or risk assessment tools in general) support Rushville residents' healing, treatment, or progress, and thus, none of these tools make communities safer. The data gathered from these tools often end up harming residents' chances at release in court. No equation can predict a given individual's behavior, and data about the past behavior of a group of people cannot predict the future behavior of any specific individual.

Regulation and Evaluation Tools at Rushville

Rushville uses the following tools to measure treatment progress and control residents' behavior. Many of these measures rely on risk assessment data, or data that draws correlation between an individual's characteristics and their behavior. Behavioral risk assessment measures rely on the false pretense that human behavior can be predicted. These tools raise a host of ethical red flags, as they use generalized statistics to make decisions about individuals' freedoms. Instead of imposing retroactive consequences for individuals' historic behaviors, risk assessment tools justify punishing individuals for their 'risk' of committing behaviors that have not already occurred. These tools are punitive, not rehabilitative.

Residents at Rushville have criticized the following tools. They have reported that the use of the penile plethysmograph is humiliating and that the images and sounds shown to them during the exam is disturbing. Residents also report that the use of a polygraph creates a culture of distrust that is a barrier to cultivating a healing treatment environment. When residents raise such concerns, question the accuracy of these measures, and refuse to take polygraph tests or PPG exams, they are punished further.[2]

STATIC-99R

What is it? The Static-99R is a ten-question diagnostic survey about an individual's personal and criminal history. The rationale for the test's algorithm and weighting is not revealed by the test's creators. Except for those who committed themselves, all residents are examined using the STATIC-99R.

What is it used for? The STATIC-99R is used along with several psychological evaluations to determine the likelihood that someone will reoffend, which informs decisions about whether or not someone will be civilly committed.

Critiques The questions on the STATIC-99R exam discriminate against people who have had 'any male victims' and those who have not lived with a romantic partner. In addition to normalizing violence against women, this results in queer people and younger people being ranked as higher risk.

Studies of the STATIC-99R's accuracy rate are highly variable, at best it's only found to be about 70% accurate (Barbaree, Seto, Langton, & Peacock, 2001). The test rarely produces outcomes that qualify someone to be civilly committed and can allow for bias to be disguised as objective calculations in legal proceedings (Vogler, 2021, p. 126).

Penile Plethysmograph (PPG)

What is it? A penile plethysmograph device is attached to the individual's penis while they are shown sexually suggestive content. The device measures blood flow to the area, which is considered an indicator of arousal.

11 survey respondents reported experiencing a penile plethysmograph.

What is it used for? The PPG is used to determine a resident's treatment progress and assess risk of reoffending.

Critiques Critics debate both the efficacy and morality of the PPG. Further, the guidelines for administration of the PPG are vague and variable between facilities (Blumberg, 2018).

Chemical Castration

What is it? Chemical castration is when an individual is prescribed drugs to alter their hormonal chemistry. At Rushville, chemical castration includes administering anti-androgens such as Leuprolide and Eligard as well as Estrogen (Estradiol). 25 survey respondents reported experiencing chemical castration.

What is it used for? To limit arousal and sexual functioning (such as preventing erections).

Critiques The hormonal therapy used for chemical castration van have major side effects that impact both physical and mental health such as bone density loss, infertility, and depression (Lee & Cho, 2003). The ethics of chemical castration are highly contested, and many critics question the legality of allowing the state to alter a person's body (Scott & Holmberg, 2003).

Polygraph

...**Critiques** Studies of polygraph tests' accuracy rates are highly variable (Grubin, 2010). Polygraphs are considered to be so unreliable that they are inadmissible in Illinois courts.

Key Finding #2

Civil commitment at Rushville disproportionately harms people from marginalized groups

...LGBTQ+ people are overrepresented at Rushville.

Slightly more than half of respondents said they were heterosexual or straight (54%). Over 1 in 4 respondents (26%) were bisexual, and 11% were gay or lesbian. The Rushville population is disproportionately LGBTQ+: in the Illinois general population, 2% of people report that they are bisexual, and 2% report that they are gay or lesbian (The Williams

(Continued on page 9)

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Institute, 2019)[4]

...*Disabled people are overrepresented at Rushville.*

...26% of respondents at Rushville said they had some form of disability, compared to 21% of adults in Illinois (Illinois Dept. of Public Health, 2014, p. 8)...

If we count mental illness as a disability, the discrepancy widens, with 68% of Rushville respondents stating they were diagnosed with a mental illness compared to just 4% in Illinois diagnosed with a 'serious mental condition' (Substance Abuse and Mental Health Services Administration, 2015, p. 10). Survey respondents reported being diagnosed by a clinician with conditions such as depression, anxiety, PTSD, and paraphilic disorders....

...*Why are people from marginalized groups overrepresented at Rushville?*

...The Williams Institute report also suggests that the overrepresentation of queer people in civil commitment is related to the STATIC-99R risk assessment tool that determines if people with sex offenses in Illinois will be marked 'sexually violent persons' and sent to Rushville. Those who perpetrated an assault against someone of the same sex are deemed higher risk, which means that gay/bisexual men who have sex with men are overly criminalized.

Key Finding #3

Rushville is a violent place with poor living conditions.

...*Survey respondents reported receiving poor quality and insufficient healthcare.*

...Residents have criticized facility staff for insisting on using handcuffs, including 'black box' handcuffs that can cause permanent wrist damage,[6] on residents who are brought to hospitals. Insufficient medical care is an urgent issue at Rushville, especially given the long-term nature of detainment and the aging population.

In 2018, Rushville began releasing residents whose diagnoses were confirmed to be incurable and terminal. Many residents' infections or diseases may not have become terminal if Rushville listened to resident concerns and provided prompt and preventative medical attention when their concerns were first raised.

For example, a resident who was diagnosed with terminal liver cancer was released in early 2019. During his time in the free world, he was hospitalized and received palliative care. He shared with us that he began seeking treatment for abdominal pain and early symptoms of liver cancer several years before he ever received any medical attention or screening. He died in the fall of 2019 at the age of 59. His death, and many others, were preventable.

Key Finding #4

Rushville is a life sentence.

Between 2006 and 2020, more people at Rushville died than were discharged.

According to a response to the Freedom of Information Act request that In These Times reporter Sarah Lazare made in the summer of 2020, 76 people died in custody at Rushville since the facility opened in 2006. During the same period only 30 people were discharged from the facility (Lazare, 2020).

...*People at Rushville have been there, on average, for nearly a decade and counting.*

At the time of the survey, the length of residents' detention at Rushville ranged from 6 months to 21 years, and the average amount of time people had been at Rushville so far was 9 and ½ years. Indefinite detention with infrequent releases has led many residents to feel that they have received a death sentence.

Recommendations

Ending civil commitment

The primary authors of this report came to this work because of their own personal experiences of sexualized harm. Not everyone involved with this project has been sexually assaulted, nor has every person inside. But sexual violence does occur in civil commitment, and Rushville's practices exacerbate our culture of sexual harm through forced treatment, recounting traumatic experiences, forced confinement, and experiencing the lack of bodily autonomy that comes with all forms of detention. We see similarities in our experiences and stand against Rushville's practices, declaring that none of us can be free of sexual harm until we are all free of sexual harm.

United by our opposition to sexual violence and our commitment to building a world where no one experiences sexual harm, we do not believe it is possible to build that world so long as civil commitment continues to exist. Instead of investing in punitive and carceral systems, we strive for a world where bodily autonomy, free and culturally relevant therapeutic practices, transformative accountability practices, and consensual and pleasurable sex are abundant.

End civil commitment

Start by shrinking it: Reallocate resources that are earmarked for expanding Rushville's capacity or bolstering its punitive and surveilling practices.

Make Rushville voluntary: Make Rushville voluntary, giving people the autonomy to choose healing when they are ready and able to put in the work. We know that there are people inside who want treatment. We do not believe that treatment can happen without their consent.

Less people in

Provide education about civil commitment for people serving criminal sentences

Provide education about civil commitment for people serving criminal sentences before they are released. Educating people who are incarcerated can prevent them from self-committing and help them advocate for alternative recovery supports that are located in their communities of origin.

Eliminate the STATIC-99R: Risk assessment evaluations disproportionately impact LGBTQ+ communities, especially individuals who were accused at a young age. Removing this assessment process helps to address the disproportionate impact of civil commitment on LGBTQ+ communities.

Invest in voluntary, community-based treatment options: Providing more pathways to people to access healing and accountability in their communities of origin helps people disrupt cyclical patterns of trauma that exacerbate their risk of causing sexual harm.

More people out

Release people at higher rates: Voluntarily relocating people to facilities that may serve their specific needs such as adult and elderly care facilities and voluntary psychiatric hospitals can address the needs of residents while providing them with individualized care and shrinking the population of Rushville.

Make conditional release more accessible: Create transparent and accessible pathways for accessing conditional release. Rushville residents deserve to have clear objectives that they can work toward in their treatment process.

Instate therapist-patient confidentiality: People inside civil commitment facilities should be entitled to the same privacy protections as any other therapeutic client. The fear that things they've shared in therapy will arise during their court proceedings is a barrier to authentic treatment. No Rushville resident should fear self-incrimination when trying to meaningfully engage with treatment or access help.

Invest in voluntary, community-based treatment options: Creating more pathways toward healing and accountability in communities of origin allows Rushville residents to make stronger cases for their own release via mandatory supervised release or clemency.

Help those inside now

Allow external monitors to survey the facility: Rushville must be subject to the same oversight and accountability that is required of IDOC by independent evaluators such as the John Howard Association.

Expand access to the outside world: Expanding access to the outside world bt allowing greater access to physical and digital media will strengthen connections between residents and family and the outside world and prepare residents for reentry.

Offer more one-on-one confidential therapy: People inside report that there are limitations to the benefits gained from group therapy and that they would like more spaces where they can speak freely and privately. Expanding one-on-one therapy, provided that residents are allowed therapist-patient confidentiality, will increase support offerings inside.

Immediate actions by people outside

Send in care packages: Send in care packages that contain food, gender-affirming products, toiletries, and cooking supplies.

Educate yourself and others: Educate yourself and others about civil commitment, the societal and interpersonal causes of sexual harm, sex offender registry/legislation, and misconceptions about the impact of the criminal-legal system on survivors.

Challenge stigma: Challenge stigma that shames people who have caused sexual harm or denies their ability to grow and change.

Support transformative justice initiatives: Support or launch transformative justice initiatives in your community.

Conclusion

Rushville Treatment and Detention Facility must close.

Change is long overdue. ... No one should be punished...

Rushville does not make us safer. ... Rushville does not 'cure' people, it cannot prevent harms that have not occurred, it cannot heal trauma or harm. ...Rushville is not a treatment center, it is a prison full of people who are serving de facto life sentences.

Rushville residents must continue to grow, heal, and take accountability for the harm that they have caused.

We do not defend or condone the serious harms that led to people's detainment at Rushville. We believe that everyone at Rushville must face the consequences of the harm that they've caused and work to rectify it.

At the same time, we know that accountability is only possible when all parties consent to the process. People cannot be accountable for the harm that they've caused or heal from the harm that they've experienced without their consent. We know that many Rushville residents are victims of abuse themselves. Forcing people to receive treatment that they do not want to receive is ineffective and cruel, especially when 'receiving treatment' means reliving their own trauma through retelling it to a revolving door of therapists or experiencing emotional, physical, or sexual violence from staff or residents.

Transformative justice is the way forward.

- We believe in principles of transformative justice:
- Harmful actions should be met with consensual accountability and healing.
- No one should be thrown away.
- Anyone can grow or change.

(Continued on page 10)

(Continued from page 9)

- Consequences are an inevitable outcome of our actions, but punishment is cruel and unnecessary.

People cannot practice accountability or heal if they do not have agency over their bodies, spaces, and time. We believe that civil commitment makes transformative justice impossible because it removes people from the communities and relationships where real healing and accountability can happen. Rushville residents must address the consequences of the harm that they caused, but this kind of transformation cannot take place in a place like Rushville."

Selected Notes:

2 ...Polygraphs and PPGs will ultimately become important in determining an offender's progression through treatment, risk level, and potential for release (Vogler, 2021, p. 126).

4 The percentages here do not add up to 100% because 9% of Rushville survey respondents listed one of the following sexuality: pansexual, queer, same-gender loving, Two Spirit, asexual/grey-asexual, or other/self-described.

6 'Black box' handcuffs are handcuffs that have a plastic shield over the keyhole, preventing tampering and further hindering mobility.

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Editor's Closing Observations:

This critique focuses on certain details of treatment as conducted in Rushville. One of these criticisms, for instance, objects to the relative lack of one-on-one treatment sessions. Another objects to unspecified "outdated and cruel practices that are under-researched."

Such criticisms, while valid, miss the forest for the trees. While Rushville's treatment modality is outmoded, the larger fact is that sex offender treatment overall has been one experiment after another, thrown together at the proverbial wall like so any spaghetti noodles to see which ones, if any stick. .Unfortunately, none of the pasta is done to date.

Even the current majority modality, so-called "CBT" (cognitive-behavioral therapy) remains substantially shame-based, with therapists judging 'breakthroughs' by how many tars the treatment "client' is forced to shed in shame and remorse at his previous illegal sexual conduct. This incorrectly attempts to apply the antique Freudian modality of "catharsis" to sexual offending, in what amounts to its misuse as a 'brainwashing' technique of utterly breaking down the mentality of the subject.

Further, the "cognitive" part of this modality involves many precepts that the client must not only learn by heart, but also must be able to think his way quickly to a conclusion as to how each would apply to any factual scenario thrown out by therapists. Especially because most confined in OCC facilities lack any education beyond grade school, it is folly to demand perfect performance in these thought experiments.

Yet even in the hearing needed to attain release, the client will be quizzed on this, and often is denied release merely for some flub-up on a hypothetical question of this type. Of course, this is not how or why individuals reoffend sexually.

Therefore, the only purpose that this 'cognitive' side of CBT treatment of committed sex offenders serves is to provide an excuse not to release them. Indeed, all of the manifold requirements of CBT treatment effectively require many years and even sometimes double-decades to master sufficiently to gain release.

The cruelest punch-line of all this is that, even succeeding at last at this monumental task may still not net a treatment participating confinee, since either testing or behavior may be cited as evidence that the individual remains sexually "deviant." — This, in disregard of all modern research that has time and again established that sexual deviance does not dictate or even merely cast a scientifically proven likelihood of future sexual recidivism.

In short, it is not this or that which is superveningly, fatally wrong with treatment in Rushville. It is that same everything that is wrong with so-called treatment of sex offenders in every civil confinement facility in every one of the 20 states which have them. These treatment modalities always look to the wrong things to treat and miss the obvious.

The obvious is the belated acknowledgement that the universally recognized criminological phenomenon of "desistance" applies just as much to sex offenders as tit does to every other type of criminal offender.

Studies of desistance have uniformly found that certain elements, both within an offender and in his experiential milieu after release, especially as they interact with each other, determine whether one is likely to be able to build a crime-free, rewarding life post-release. The basic principle is that having too much to lose by reoffending is the most powerful factor in recidivism prevention (apart from aging, which terminates all reoffending regardless).

This also pokes a hole in the notion that "COSAs" (circles of sexual accountability) are any more necessary or impactful post-release than a friendly parole agent. The sole reason why they are better, is that most parole agents are anything but friendly and supportive to sex offenders, proceeding on the debunked myth that all released sex offenders are just waiting for an opportunity to pounce on some unsuspecting victim.

Identification of the factors that lead to successful desistance has in turn allowed methods to foster/maximize sex offender desistance, both through seeking to create environments conducive to success and at the same time preparing the prospective releasee for success by well-organized instruction and counseling to create a can-do attitude and confidence in grappling with the various challenges of life in society despite bias.

The question really comes down to whether one wishes to misuse sex offender treatment in some futile, Quixote-like quest to rebuild one's persona from the ground up as literally someone else, or instead to use treatment appropriately and quickly to solve the eminently soluble problem of eliminating recidivism from a release's future.

Treatment of sex offenders has no scientifically established success to date precisely because it is still constructed on such false, Quixote-quest demands.

It cannot improve until leaders of the treatment industry are selected, not from the ranks of those obsessed with the false notion that such 'persona rebuilds' are necessary or even merely possible, but instead from the ranks of those who seek to get sex offenders quickly from a Point A of prison mentality and downbeat hopelessness to a Point B of not just agreeing that a successful life without recidivism is possible, but that it is to be sought as the ex-offender's best hope (indeed, his last) to have a rewarding and pleasing life.

In parallel fashion, all forms of so-called recidivism risk assessment are seriously scientifically flawed.

So-called "static" actuarial checklists ("instruments" simply attempt to prognosticate one's future from his past by further attempting to liken it in extremely superficial ways of a unidimensional character to the recidivism of others who, after sex crimes, were released from prison anywhere from 20 to 50 years ago (when sex-crime recidivism was not meaningfully interdicted, hence not resembling the present).

On the other hand, so-called "dynamic factor" analysis, including so-called "criminogenic needs" and assertions regarding "responsivity (not of the treatment modality, but of the past offender) and the particularly devilish gainsaying of the utility of every "protective factor" advanced — all lack any rigorous academic confirmation. Effectively, each of these propositions is simply impressionistic *ipse dixit*. It is unethical in the extreme and a substitution of crystal ball skrying for psychology to assert an ability to foretell one's future (criminal or otherwise) by any of these equally mystical and invalid approaches.

In sum, while condemnation of Rushville is soundly deserved, it is a condemnation shared by all other facilities of its type wherever they exist. Hence, all should be permanently shuttered, and all their incarcerated victims should be freed.

Unlike *Minority Report*, America is not a land of fear of "future crime." The money now flagrantly wasted keeping 7,000 specific past sex offenders permanently confined on the very unlikely chance that some comparative few of them might make an attempt to repeat their long-past crimes in the teeth of modern detection technology would, as soundly suggested by law Professor Janus, be infinitely better spent funding sex-crime prevention programs of proven success, so that with sufficient funds, they can finish the job of eliminating sex crimes without having to resort to incarceration on sheer fear of crime. As a nation, we are much bigger — and better than that.

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