



# Commitment as Mass Incarceration

Tristan Campbell, "Involuntary Civil Commitment as Mass Incarceration," pp. 32-46 (2023).

**Editor's Introduction:** The following excerpt addresses general civil commitment. It is included in *tLP* because almost everything critical of such general commitment applies with even greater force to sex offender civil commitment (SOCC). Of course, all things that appear moderate as to general commitment (such as typical length of such commitments cited below) do not apply to SOCC.

**Text Excerpt:** [p. 32:] "...The systems, structures, practices, and policies of structural oppression as seen through the exercise of involuntary commitment increase the power of the carceral state and further infringe on the liberty of individuals and communities to address behavioral and mental health crises without involving the police.

...Depending on the state, the permitted maximum duration of treatment ranges from less than one month to more than one year for both initial and subsequent civil commitment orders.<sup>3</sup> Hearings for involuntary civil commitments have been described as a 'charade' with the average length of the hearing ranging from 4 to 9 minutes long.<sup>4</sup>

[p. 33:] "[S]tates should implement a constitutional limitation on the length of confinement prior to a rehearing.<sup>5</sup> This would allow individuals who are facing liberty and property deprivations due to mental illness the ability to receive - at a minimum - similar protections as those as those who face such deprivations through the criminal justice system.<sup>6</sup>

## [p. 35:] B. Quality of Counsel at Traditional Civil Commitment Hearings

The lack of accountability after civil commitment takes place as evidenced by the insufficient collection of data is also present during civil commitment proceedings in the form of inadequate counsel. Michael L. Perlin notes that empirical research demonstrates that "most lawyers prepared much less for civil commitment cases than for other cases, many did not speak to clients before the hearing, and they rarely took an adversary role to obtain release of their clients whom psychiatrists had recommended for commitment.<sup>20</sup> Counsel is often described as 'woefully inadequate ... disinterested, uninformed, roleless, and often hostile.'<sup>21</sup> In addition to the effect this has on their clients, ineffective counsel also results in a diminished amount of case law because few civil commitment cases are taken to trial....

On the other side of the bench, judges are described as having "little judicial experience and little incentive to develop expertise in this area" which conveys that "patients' rights ... are not important."<sup>23</sup> One study identified that "fewer than one-third of judges told patients of their right to counsel, fewer than one-fourth told patients of their right to voluntary status, and about two-fifths told patients of their right to appeal."<sup>24</sup>



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**Variant: *Mus Judici*, found in courtrooms seeking scraps from judges in trade for SOCC clients' futures.**

In summary, civil commitment hearings are the 'disfavored stepchild in the large family of concerns that must be addressed by the justice system.'<sup>25</sup>

## III. INSTITUTIONALIZATION AND INCARCERATION

### Involuntary Commitment as a Carceral Health Service

[pp. 38-39:] "...Wahbi & Beletsky argue that 'involuntary commitment is not treatment for the sake of public safety, but rather ... punish[ment] through violence ... [specifically] violence on people and bodies that are deemed deviant.'<sup>60</sup> This expansion of the carceral state is described as having three characteristics:

- (1) that carceral expansion is not related to crime rates;
- (2) that the investment in punishment is directly related to divestment in other aspects of society that create equitable opportunity; and

**F**rom the point of view of the institution-industrial complex, 'disabled people are worth more to the gross domestic product when occupying institutional 'beds' than they are in their own homes.' This helps to explain some of the underlying motivation for carceral civil commitment.

- (3) that it is targeted toward the literal capture and metaphorical containment of ...groups who are disadvantaged by institutionalized oppression, and as such, it is an artifact of social control and exclusion.<sup>61</sup>

This theory of capture and control is not limited to prisons and institutions but rather carceral-type services that 'replicate the control, surveillance, and punishment of the Prison Nation ...thus, punitive and social services can become indistinguishable.'<sup>62</sup>

[p. 40:] "...[C]ivil commitment where 'conditions of confinement may cause further mental deterioration in prisoners....

### B. Political Economy and the Institution-Prison-Industrial Complex

[pp. 40-41:] "...[D]isability supports a whole industry of professionals that keeps the economy afloat, such as service providers, case managers, medical professionals, health care specialists, etc.'<sup>76</sup> Thus, disability is now used to describe a population which must be 'surveilled for political-economic reasons.'<sup>77</sup> From the point of view of the institution-industrial complex, 'disabled people are worth more to the

gross domestic product when occupying institutional 'beds' than they are in their own homes.'<sup>78</sup> This helps to explain some of the underlying motivation for carceral civil commitment.

## IV. THE ETHICS OF CIVIL COMMITMENT AND CIVIL COMMITMENT ALTERNATIVES

Joseph M. Livermore describes involuntary confinement as 'the most serious deprivation of individual liberty that a society may impose.'<sup>79</sup> He goes on to identify that the 'philosophical justifications for such a deprivation by means of the criminal process have been thoroughly explored. No such intellectual effort has been directed at providing justifications for societal use of civil commitment procedures.'<sup>80</sup>

### Notes:

<sup>3</sup> Paul P. Christopher et al., "Nature and Utilization of Civil Commitment for Substance Abuse in the United States," 43 *The J. of the Am. Acad. Of Psychiatry & The L.* 313, 313 (2015)

<sup>4</sup> Michael L. Perlin, "Who Will Judge the Many When the Game Is Through?: Considering the Profound Differences Between Mental Health Courts and 'Traditional' Involuntary Civil Commitment Courts," 41 *Seattle U. L. Rev.* 937, 937 (2018).

<sup>8</sup> Samantha M. Caspar, & Artem M. Joukov, "Worse than Punishment: How the Involuntary Commitment of Persons with Mental Illness Violates the United States Constitution," 47 *Hastings Con. L.Q.* 499, 501 (2020).

<sup>9</sup> N.Y. Mental Hygiene Law, § 9.33.

<sup>20</sup> Perlin, *supra* note 4, at 940-941.

<sup>21</sup> *Id.* at 941.

<sup>23</sup> *Id.* at 942.

<sup>24</sup> *Id.* at 943.

<sup>25</sup> *Id.* at 945.

<sup>60</sup> Rafik Wahbi & Leo Beletsky, "Involuntary Commitment as 'Carceral-Health Service': From Healthcare-to-Prison Pipeline to a Public Health Abolition Praxis," 50 *The J. of Law, Med. & Ethics* 23 (2022), at 26.

<sup>61</sup> Beth E. Richie & Kayla M. Martensen, "Resisting Carcerality, Embracing Abolition: Implications for Feminist Social Work Practice," 35 *Affilia* 12, 12 (2019).

<sup>62</sup> Wahbi & Beletsky, *supra* note 60, at 27.

<sup>76</sup> Liat Ben-Moshe, "Disabling Incarceration: Connecting Disability to Divergent Confinements in the USA," 39 *Critical Soc.* 385 (2011), at 391.

<sup>77</sup> *Id.* at 392.

<sup>78</sup> *Id.* at 393.

<sup>79</sup> Joseph M. Livermore et al., "On the

Justifications for Civil Commitment," 117 *U. Pa. L. Rev.* 75, 75 (1968).  
80 *Id.*

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# Risk Assessment & Actuarial Prediction – Bayes, Monahan, Chaos, Uncertainty, etc., (Part 3)

Robert A. Prentky, Howard E. Barbaree, & Eric S. Janus, eds., *Sexual Predators: Society, Risk, and the Law* (New York: Routledge, 2015) [Part 3].

**Editor's Introductory Note:** In Part 2 (*tLP* No. 8:2, p. 3), Prentky, Barbaree & Janus discussed a book written by criminologist John Monahan (1981). The significance of the Monahan book was that the Minnesota Supreme Court, in *Linehan I*, adopted five factors cited by Monahan. Interestingly, Monahan cited those factors (Monahan [1981]) as ones contributing to overprediction of future violent behavior due to bias against sex offenders in general or against a given sex offender: (1) political influences, (2) illusory correlations, (3) cultural differences, (4) conceptual and contextual problems, and (5) low base rates. To the contrary, however, *Linehan I* cited those factors as ones that can and should be considered as indicators of an elevated probability of recidivism by a sex offender. Even though this mistake has since been pointed out to that court and its subsidiary Court of Appeals, the Minnesota Supreme Court has stuck to these biased, illusory, and simply erroneous purported 'factors' in case after case of sex offender commitments to the present. Before going forward with the remaining excerpts from Prentky, Barbaree & Janus, *tLP* briefly departs to quote the following passages from *Linehan I* and *II* to illustrate the tragedy that this incorrect reliance by the Minnesota courts upon the Monahan book has caused both to Mr. Linehan and to countless commitment respondents under Minnesota's legislation in question.]

## Part 3:

### Text Excerpts:

*In re Matter of Dennis Darol Linehan (Linehan I)*, 518 N.W.2d 609; 1994 Minn. LEXIS 501 (Minn. Supr. Ct. 1994)

[Headnotes] **Overview:** The inmate argued that the record failed to support, by clear and convincing evidence, the utter lack of control/uncontrollable element and the prediction of harm element of the Pearson test. The court stated that the reach of the Act was limited by the Pearson test. Under the Pearson test, there was required to be a habitual course of misconduct in sexual matters and an utter lack of power to control sexual impulses so that it was likely the person would attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire. In its order committing the inmate to

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the hospital for an indefinite period of time, the trial court used the Pearson test language. It was not enough, however, for the trial court to use this language in a conclusory fashion when the expert testimony upon which it relied had been given in terms of the statutory definition. The court stated that because respondent county did not prove the utter lack of control/uncontrollable element of the Pearson test, the court did not address whether there was clear and convincing evidence that the inmate was likely to engage in future dangerous behavior.

Healthcare Law > Treatment > Incompetent, Minor & Mentally Disabled Patients > General Overview

Criminal Law & Procedure > Sentencing > Alternatives > Treatment Programs

Where utter uncontrollability of sexual impulses is found, the trial court, in predicting serious danger to the public, should consider the following factors if such evidence is presented: (a) a person's relevant demographic characteristics, e.g., age, education, etc.; (b) the person's history of violent behavior, paying particular attention to recency, severity, and frequency of violent acts; (c) the base rate statistics for violent behavior among individuals of this person's background, e.g., data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.; (d) the sources of stress in the environment, cognitive and affective factors, which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner; (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs. [citing *John Monahan, infra*; later called the "Linehan factors"]

Criminal Law & Procedure > Sentencing > Alternatives > Treatment Programs

In reviewing psychopathic personality commitments in the future, the court will look to see whether the factors have been considered, particularly where there is a large gap of time between the petition for commitment and an appellant's last sexual misconduct.

(Decision text, 518 N.W.2d 614:) "In its order committing appellant to the MSH for an indefinite period of time, the trial court used the *Pearson* language. It is not enough, however, for the trial court to use this language in a conclusory fashion when the expert testimony upon which it relies has been given in terms of the statutory definition. Neither the testimony of Dr. Friberg and Dr. Zeller nor appellant's behavior while incarcerated supports the finding of uncontrollability. There is, therefore, no clear and convincing evidence that appellant has an utter lack of power to control his sexual impulses.

Appellant also argues that the record fails to support, by clear and convincing evidence, the prediction of harm element of the *Pearson* test. He notes that even the county's experts, whose testimony provided the basis for the trial court's findings, testified that it was difficult to predict future danger-

ous behavior. In light of this difficulty and the loss of liberty a committed person will experience, appellant urges this court to adopt specific scientific standards for the prediction of dangerousness to ensure that individuals committed as psychopathic personalities pose a serious danger to the public. Specifically, appellant [Note: Using the Monahan factors was Linehan's attorney's suggestion!] urges the use of base rate studies "identifying particular characteristics of research subjects who subsequently engaged in violent behavior." See *John Monahan, Predicting Violent Behavior: An Assessment of Clinical Techniques* (1981). Appellant also urges the use of risk assessment statements that address the likelihood of an individual or a particular class engaging in certain acts as opposed to 'dichotomous' statements that simply opine as to whether particular behavior will or will not occur in the future.

Because we hold that the county did not prove the utter lack of control/uncontrollable element of the *Pearson* test, it is unnecessary to address whether there is clear and convincing evidence that appellant was likely to engage in future dangerous behavior. [Continued Note: The MN S.Ct. ducked the issue of applying the Monahan factors in this 1994 opinion.] Dangerousness in the context of the Psychopathic Personality Statute is predicated on an utter lack of ability to control sexual impulses. *Pearson*, 205 Minn. at 555, 287 N.W. at 302.

Where utter uncontrollability of sexual impulses is found, however, the trial court, in predicting serious danger to the public, should consider the following factors if such evidence is presented: (a) the person's relevant demographic characteristics (e.g., age, education, etc.); (b) the person's history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) the base rate statistics for violent behavior among individuals of this person's background (e.g., data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs. [These come straight from *Monahan*.] In reviewing psychopathic personality commitments in the future, we will look to see whether these factors have been considered, particularly where, as here, there is a large gap of time between the petition for commitment and the appellant's last sexual misconduct.

The state has failed to prove by clear and convincing evidence that appellant meets the *Pearson* standard as applied to the Minnesota Psychopathic Personality Commitment Act; the commitment of appellant as a psychopathic personality is reversed and vacated.

Reversed; commitment vacated.

*In Re the Matter of Dennis Darol Linehan (Linehan II)*, 557 N.W.2d 171; 1996 Minn. LEXIS 832 (Minn. Supr. Ct. 1996 [Decision text, 557 N.W.2d 178:]; "In finding that Linehan would very likely repeat a course of harmful sexual conduct, the district court used a multi-factor analysis. First, the court considered all six [Monahan] factors for predicting dangerousness outlined in *Linehan I*, 518 N.W.2d at 614 (listing demographics; history of violent behavior; base rate statistics; sources of stress; similarity of present and future contexts to the past; and record of sex therapy).

{557 N.W.2d 189} "Linehan's argument is contrary to the multi-factor analysis for dangerousness prediction outlined in *Linehan I*, 518 N.W.2d at 614. *Linehan I* offered six potential inquiries to aid courts in predicting whether future harm was likely under the PP Act. *Id.* These factors must be considered when such evidence is presented at a hearing, and they are particularly important when the last instance of harmful sexual conduct is remote in time from the petition for commitment. *Id.* Statistical evidence of recidivism is only one of the six factors. In this case, the district court properly followed *Linehan I* and evaluated evidence pertaining to each of the six factors for prediction. It was not error to consider evidence not specifically listed in *Linehan I*. If nothing else, the hearing in this case demonstrated that dangerousness prediction methodology is complex and contested. *Linehan I* did not foreclose good faith attempts by the courts to isolate the most important factors in predicting harmful sexual conduct. We conclude that the guidelines for dangerousness prediction in *Linehan I* apply to the SDP Act, and therefore we cannot accept Linehan's attempt to confine the district court's inquiry. On these facts, we are unpersuaded that *Linehan I* should be modified."

TOMLJANOVICH, Justice (dissenting):

Note 11 excerpt:

"A state cannot civilly commit a person who is dangerous and has a "personality disorder." *Foucha*, 504 U.S. at 82-83 (explaining that a state cannot civilly commit a person who is dangerous and has either an "antisocial personality" or "a personality disorder"). The person must be both dangerous and mentally ill. It is debatable whether *Blodgett's* holding that a person who has a psychopathic personality fits within the definition of mental illness as asserted in *Foucha*,<sup>12</sup> but it could not be more clear that a person who has only an antisocial "personality disorder" does not fit within the definition of mental illness as asserted in *Foucha*."

Note 12 excerpt:

"This limitation is essential. Not because persons with "personality disorders" are any less dangerous than those who have recognized mental illnesses, but because the very {557 N.W.2d 199} essence of the state's constitutionally required compelling interest in civilly committing a person is treatment of the mentally ill. When, in fact, the state's only articulated interest in passing a law is protection of society, it becomes apparent that the real purpose of the law,

despite its platitudes to treatment, is preventive detention. We do not maintain that the SDP Act violates substantive due process only because those with APD currently cannot be treated. We maintain only that the legislature's reason for passing the SDP Act, once properly exposed under the spotlight of strict scrutiny, was not for the stated purpose of treatment, but for the actual purpose of detaining a person who frightens us. Cf. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 124 L. Ed. 2d 472, 113 S. Ct. 2217 (1993)."

[Editor's Closing Observation: Thus the foregoing shows that Minnesota courts have, ever since 1994, relied upon a list of so-called 'factors'] to purportedly show that a former sex offender as commitment respondent is likely to recidivate when the source of those factors illustrates their dubious, if not completely contrary status under science, even such as was already known at the time. The next section of excerpts from the important book by Prentky, Barbaree & Janus (2015) (see next tLP edition) will utterly demolish the validity of these so-called 'factors.'

Yet even in the latest nine years from the publication of that book, the Minnesota Supreme Court has continued to repeat its mistake and to affirm that lower courts have 'done the right thing' in applying these mistaken 'factors.' In that time frame, additional hundreds of past sex offenders have effectively been condemned to presumptively lifetime commitments-as-second-sentences for crimes decades ago at least substantially in part based upon these mistaken 'factors.' The brutality of thus ignoring this life-or-death-in-confinement injustice cannot be overstated.]

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## Risk Assessment: Where Is the Judicial Gatekeeping on Scientific Validity?

Melissa Hamilton, "Judicial Gatekeeping on Scientific Validity with Risk Assessment Tools," 38(3) *Behavioral Sciences & the Law* 226-245 (May-June 2020).  
Part 3 -- Text Excerpts:

[p. 232:] "These prevailing statistics for assessing accuracy require the introduction of what is referred to as a 2 x 2 contingency table, as provided in Table 1.

The '2 x 2' depiction references the fact that the table contains two rows and two columns. The internal cell counts are filled with numbers derived from studying a population of offenders who



'Black Box' AI Risk Assessment Tools

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were scored on a risk tool and their recidivism outcomes tracked:

- **True positives (TP)** – the number correctly predicted to recidivate
- **False positives (FP)** – the number wrongly predicted to recidivate
- **True negatives (TN)** – the number correctly predicted not to recidivate
- **False negatives (FN)** – the number wrongly predicted not to recidivate

A 2 x 2 contingency table requires one to constrict a risk tool's potential assessments into two categories: higher risk versus lower risk. This categorization is meant to distinguish predicted recidivists (the higher-risk group) from the predicted non-recidivists (the lower-risk group). Notably, this is a profoundly artificial exercise as risk tools tend to produce predictions along a spectrum. A tool may sort individuals into categories of low, medium, and high risk. Or, a tool may assign points, such as between 1 and 10, typically with more points indicating a greater likelihood of reoffending. To complete the contingency table, however, one must make a call as to where to draw the dichotomous line, called the cut-point. This could mean in the first example combining medium- and high-risk groups into a single higher-risk category or, alternatively, collapsing the medium- and low-risk groups into the lower-risk category (i.e., low vs. medium/high or low/medium vs. high, respectively). For the total points tool, one could choose a cut-off score anywhere along the spectrum, such as the higher-risk group designated as points 5 and above, 6 and above, or 7 and above, etc. There simply is no scientifically driven or standardized methodology for designating a cut-point. It is inherently a judgment call.

Table 1: A 2 x 2 Contingency Table

		Outcome	
Assess-ment	Recidivist	Non-recidivist	
Higher Risk	True Positives (TP)	False Positives (FP)	
Lower Risk	False Negatives (FN)	True Negatives (TN)	

The four internal cell counts (TP,FP, FN, TN), in turn, lead to calculations of the prevailing accuracy statistics in the field, as reflected in Table 2.

[Tables 2, 3, and 4 appear on next page.] pp. 232-33: The overall accuracy of a tool combines the correct assessments by adding the true positives and true negatives and dividing that sum by the entire population. Assume a group of 100 offenders in which 60 of them were true positives or true negatives (TP+TN). As a result, this tool achieves an accuracy rate of 60%. While this single statistic may on the face if it appear revealing about the tool's holistic performance, it does not give any information about whether the tool has better accuracy in predicting recidivists versus non-recidivists. It could be that the tool's per-

Table 2: Accuracy Measures

Outcome	Assess-ment	Recid-ivist	Non-recidivist	
	Higher Risk	TP	FP	
Lower Risk	FN	TN	Negative Predictive Value (NPV)	
	True Positive Rate (TPR)	True Negative Rate (TNR)	Overall Accuracy	

Note: TP = true positives; TN = true negatives; FP = false positives; N = total sample size. The numeric calculations of the five measures on the right and bottom margins of the table above are identified in Table 3.

formance is rather lopsided. Most or all correct classifications could be true positives (TP), with few or none being true negatives (TN). This would signify that the tool is much better at predicting recidivists than it is at predicting nonrecidivists, and thus is imbalanced. Such an imbalance may be important to understand and to reorient accordingly. In such a scenario, the judge may still admit the tool as scientific evidence but then place more weight on the tool's high-risk outcomes than on those indicating low risk.

p. 233: The other four computations in Table 3 deconstruct accuracy by rows and columns. Consider the bottom margin of Table 2, which shows the true positive rate (TPR) and the true negative rate (TNR). The TPR is alternatively titled 'sensitivity' in the field of statistics and represents the accuracy rate for the recidivists.<sup>56</sup> The TNR is alternatively titled 'specificity' and represents the accuracy rate for the non-recidivists.<sup>56</sup>

[These measures derive from the field of] military signal detection, where a more sensitive signal is less specific. Sensitivity is the true positive rate: the proportion of actual events that are identified as events. Specificity is the true negative rate: the proportion of actual nonevents that are identified as nonevents. Signal detection involves a trade-off: If the detector is tuned to be more sensitive, it will detect a greater proportion of correct targets (e.g., spot enemy ships), but it will also be less specific and therefore produce more false alarms (e.g., mistake dolphins for enemy ships). Translated to the prediction of recidivism, the 'detector' is a risk assessment scale, which can be reported either as a score on the risk scale or a probability of recidivism associated with that score.<sup>57</sup>

Then reflect upon the two accuracy statistics to the right of the table in Table 2. The positive predictive value (PPV) is the proportion of higher-risk predictions who actually reoffend. The negative predictive value (NPV) then presents the proportion of lower-risk predictions who did not reoffend.

pp. 233-34: Perhaps more explanation will be useful to better conceptualize the contrasts between, on the one hand, the TPR/TNR, and, on the other hand, the PPV/NPV. Recall the differentiation between discrimi-

nation (relative accuracy) and calibration (absolute accuracy). Also be attuned to a contrast in whether calculations are made retrospectively or prospectively.

Table 3: Calculations for Accuracy Measures

Measure	Calculation
Overall accuracy	(TP+TN)/N
True positive rate (TPR)	TP/(TP+FN)
True negative rate (TNR)	TN/(TN+FP)
Positive predictive value (PPV)	TP/(TP+FP)
Negative predictive value (NPV)	TN/(TN+FN)

Note: TP = true positives; TN = true negatives; FP = false positives; FN = false negatives; N total sample size.

p. 234: The TPR/TNR in turn evaluates non-recidivists and provides a low-risk discrimination metric. Discrimination is retrospective in nature as it is calculated after the recidivists and non-recidivists have been identified.<sup>58</sup> In other words, these discrimination statistics are classification measures that use known recidivists and non-recidivists to determine whether they would have been predicted to reoffend.

In comparison, PPV/NPV are calibration statistics. The PPV is a high-risk calibration measure, while the NPV is a low-risk calibration measure.<sup>59</sup> Calibrations are prospective in nature and thus indicate forecasting accuracy by measuring how well the tool predicts future recidivism.

It is essential to understand that these measures are distinguishable because a tool can perform well on one or more of them, while showing poor results on others. It is equally vital to recognize that results will vary by simply changing the cut-point. To illustrate these ideas, Table 4 contains accuracy statistics from the sample dataset with the COMPAS violent recidivism risk tool using the whole population, but comparing two different cut-points.

Table 4: Examples of Accuracy Measures

	Cut-point A (low vs. medium/high) Estimate (95% CI)	Cut-point B (low/medium vs. high) Estimate (95% CI)
Total accuracy	73% (72-75%)	84% (83-85%)
True Positive rate (TPR)	53% (49-57%)	21% (18-24%)
True Negative rate (TNR)	77% (76-79%)	96% (95-96%)
Positive Predictive value (PPV)	31% (29-34%)	49% (43-55%)
Negative Predictive value (NPV)	89% (88-91%)	86% (85-87%)

Note: CI = confidence interval.

Table 4 compares two cut-points using a pair of combinations of the tool's ranking of low, medium, and high risk. Notice several important results:

- Total accuracy results vary by cut-point, with a better overall accuracy of 84% at the upper threshold compared with 73% at the lesser threshold.
- For high risk/recidivism, raising the cut-point (from A to B) means a loss in classification accuracy yet improves forecasting accuracy: the estimate of the TPR decreases (53% to 21%), while the PPV increases (31% to 49%).
- The opposite effects occurred for low risk/non-recidivism, whereby raising the cut-point resulted in an improvement in classification accuracy yet decreased forecasting accuracy: the TNR increases (77-96%), while the NPV suffers slightly (89-86%).
- Not all accuracy measures changed at equivalent degrees with the increased cut-point, such as the NPV experiencing a more modest adjustment.
- Across accuracy measures, the tool performs significantly better with non-recidivism at both cut-points. The accuracy statistics with recidivism are weak to moderate at best.

In general, Table 4 shows how, at least with this exemplar risk tool, the various measures can achieve disparate levels of accuracy depending upon positive versus negative accuracy statistics, classification versus forecasting accuracy, and changes in cut-point.

A judge evaluating accuracy may wonder how to choose among these competing accuracy rates. The answer depends to a large degree on whether one focuses on the classification metrics (TPR/TNR) or the forecasting metrics (PPV/NPV). Experts generally agree that PPV/NPV are the far more relevant accuracy statistics because judges are concerned with the prospective accuracy of the tool in predicting future offending.<sup>60</sup> Accuracy measures of

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discrimination (i.e., TPR/TNR) that assess already known recidivists and non-recidivists are not of much interest in sentencing decisions.

p. 235: Table 4 included confidence intervals to the estimates provided. Confidence intervals are relevant to providing context as to the certainty of the risk estimates. Unfortunately, validation studies published to date rarely report confidence intervals, which may improperly suggest a higher level of certainty in their estimates. Table 4 nonetheless shows confidence intervals for illustration purposes to show the range of at least one tool's accuracy estimates. Consider if the deciding judge wished to address the algorithmic score using a 'more likely than not' evidentiary standard. The PPV at the lesser cut-point would not seem to comply with its estimate that 31% of those predicted as higher risk would violently reoffend (confidence interval of 29-34%). At the elevated cut-point, the PPV indicates that 49% of those predicted of being at higher risk would violently reoffend. This seems just under the desired standard that might suggest a rate of >50% likelihood, but the confidence interval spans this gap at 43-55%. The presiding judge would then have to make a judgment call as to whether that higher-risk group met the 'more likely than not' evidentiary standard as the confidence interval extends above a 51% mark.

Despite the relevance and relative accessibility of these accuracy measures once explained, another statistic overwhelms the literature. The AUC remains the 'dominant' statistical metric in the available criminal justice risk assessment literature to gauge a tool's utility and to allegedly support developers' assertions that their tools have been 'validated.'<sup>61</sup> As such, it is foreseeable that the AUC will be offered as evidence to support the admissibility of an algorithmic tool's results and thus deserves special consideration here.

Notes for Parts 2 & 3:

43 Jay P. Singh, "Predictive Validity Performance Indicators in Violent Risk Assessment," 31 *Behav. Sci. & L. 8*, 18 (2013).

44 Kim & Duwe, *supra* note 13, at 189.

45 Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 597 (1993).

46 Richard Berk, *Machine Learning in Risk Assessments in Criminal Justice Settings* 7 (2019).

47 Howard N. Garb & James M. Wood, "Methodological Advances in Statistical Prediction," 31 *Psychol. Assessment* 1,456 (2019); Blair et al., *supra* note 9, at 346.

48 Seena Fazel & Stal Bjorkly, "Methodological Considerations in Risk Assessment Research," in *Int'l Perspectives of Violence Risk Assessment* 16, 16 (Jay P. Singh et al. eds., 2016)

49 Northpointe, Practitioner's Guide to COMPAS 1 (2013), [http://www.northpointeinc.com/files/technical\\_documents/FieldGuide2\\_0121813.pdf](http://www.northpointeinc.com/files/technical_documents/FieldGuide2_0121813.pdf).

50 Brennan & Dieterich, *supra* note 37; State v. Loomis, *ibid*.

51 L. Maaike Helmus & Kelly M. Babchisin, "Primer on Risk Assessment and the Statistics Used to Evaluate Its Accuracy,"

44 *Crim. Just. & Behav.* 8, 11 (2017)

52 *Id.*

53 These statistics were calculated using a regression equation. Melissa Hamilton, "The Sexist Algorithm," 37 *Behav. Sci. & L.* 145, 151 (2019).

54 Fazel & Wolf, *supra* note 8, at 42.

55 Kristian Linnet et al., "Quantifying the Accuracy of a Diagnostic Test or Marker," 58 *Clinical Chemistry* 1,292, 1,296 (2012).

56 *Id.*

57 Philip D. Howard, "The Effect of Sample Heterogeneity and Risk Categorization on Area Under the Curve Predictive Validity Metrics," 44 *Crim. Just. & Behav.* 103, 105 (2017).

58 Helmus & Babchisin, *supra* note 51, at 11.

59 Singh, *supra*, note 43, at 11 fig. 1.

60 *Id.* at 12.

61 Jay P. Singh, "Measuring and Interpreting the Predictive Validity of Violence Risk Assessment Studies," 31 *Behav. Sci. & L.* 1, 3 (2013).

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## Frank Joseph Makes Call to Action re Alsdurf



Frank Joseph, "Call to Action!!!" (submitted by author), Oct. 2023.

Text:

**\*Call to Action!!!**

**VOCAL Exposes Minnesota Scam To Lock Away Innocent Men For Life. Sex abuser doctor labeling innocent men as "sex abusers" in order to lock them up for life in MSOP**

✧ **VOCAL Says That All Men Seen By Dr. Alsdurf Must Be Released From MSOP ASAP.**

✧ **VOCAL Lists The Names of Many Inmates Inside of MSOP Affected By This Scam Doctor.**

✧ **Look For Your Name In This Article And See If This Scam Doctor Sent You To MSOP.**

In the last ten years or so, many organizations have sprouted up and claim to fight for the rights of 'sex offenders.' **Victims of Child Abuse Laws (VOCAL)** has been fighting for the rights of those accused of and/or convicted of sex crimes for more than 40 years. VOCAL has long preceded the internet and these various sex offender registries.

VOCAL is way ahead of these other organizations. While these new organizations continue to struggle and are run out of a P.O. box, VOCAL has matured and has proven itself to be a durable organization and is at the very forefront of fighting for 'sex offender' rights.

If anyone convicted of a sex crime follows any one organization, they should follow VOCAL.

VOCAL does in-depth analysis and investigations into various child abuse laws and issues that affect people who have been charged with child abuse. In their latest investigations, they do a deep dive into who Minnesota hires to do evaluations in order to commit men to the Minnesota Sex Offender Program (MSOP).

According to VOCAL, MSOP is a scam to deprive innocent men of their freedom by 'diagnosing' them with bogus mental disorders and locking them away for life based on these bogus diagnoses.

In this article, VOCAL reports on Dr. James Alsdurf, who has had many allegations of sex abuse made against him and, ironically, Dr. Alsdurf is doing sex offender examinations in order to commit people to MSOP. VOCAL says that this sex abuser doctor is labeling innocent men as 'sex abusers' in order to lock them away for life.

This article is a must read for anyone interested in Sex Offender Civil Commitment (SOCC) and is available at [vocalhome.blogspot.com](http://vocalhome.blogspot.com). Have your family and friends copy and send you the 29 page stipulation that details all of the sex abuse allegations made against Dr. Alsdurf. Also, *pass out copies of this article so everyone can see if their case is affected by this scam doctor or not.*

***We need your help to expose these injustices and to help free these men from MSOP.***

But, I am locked up in MSOP. What can I do?

*You can have your family and friends publicize this article on the internet.*

Have your family and friends post this important article plus a link to VOCAL's blog on facebook, Twitter [now "X"] and every other site on the internet that they can think of and have them email it to all of their friends and family.

*Also, have your family and friends report what is going on in MSOP and other SOCC centers to:*

[vocalchamp@gmail.com](mailto:vocalchamp@gmail.com).

*Exposing Minnesota's Scam to Deprive Innocent Men of Their Freedom*

One Minnesota psychologist has had more sexual misconduct complaints made against him than many of the men that he sent to the Minnesota Sex Offender Program (MSOP) for life.

*Sex abuser doctor falsely labeling non-dangerous men as 'dangerous sex abusers' in order to deprive them of their freedom*

VOCAL does in-depth analysis and investigations into various child abuse laws that tear innocent families apart and sends innocent people to prison, often for life. One often overlooked aspect of these laws is states committing innocent men to 'psychiatric hospitals,' not because they are dangerous, but because they are an unpopular minority.

VOCAL is currently investigating how the State of Minnesota locks innocent men in its 'psychiatric' facilities under guise of 'treatment.'

Minnesota has created special laws in order to incarcerate these men because they couldn't be incarcerated under Minnesota's existing civil commitment laws. After reading this series of articles you will understand why thirty states have rejected passing these unconstitutional laws.

In this special report, we expose how the State of Minnesota uses unqualified and unethical psychologists to perform sham psychological examinations in order to commit innocent men to the Minnesota Sex Offender Program (MSOP) for life.

Dr. James M. Alsdurf performs examinations for the State of Minnesota in order to civilly commit individuals to MSOP. Dr. Alsdurf usually finds that these individuals qualify are persons who should be committed to MSOP. VOCAL believes that Dr. Alsdurf is unqualified to do these examinations and that every person admitted to MSOP based on his examinations should be immediately released from custody.

**The pot calling the kettle black**

On October 26, 1989, Dr. Alsdurf signed a Settlement Stipulation For Order Of Restricted License And Conditional License with the State of Minnesota Board of Psychology with his attorney present. VOCAL believes that the allegations contained in this settlement stipulation are reasonably accurate.

According to the settlement stipulation, several of Dr. Alsdurf's female patients accused him of a broad range of sexual abuse and other inappropriate conduct. He discussed his own infidelity in his marriage with at least one of his clients and other clients have accused him of discussing his marital, financial and personal problems and his sexual fantasies or masturbatory practices with them.

He allegedly told at least one of his clients about rape allegations made against his brother and allegedly played with his genitals in front of another client, who had previously suffered from sexual abuse. He allegedly told a depressed client to 'commit hari kari if you like.'

He allegedly called at least one of his clients a 'fucking bitch' and used other offensive language towards her such as 'fuck,' 'tits,' 'having a hard on,' 'stacked,' and 'ball breaker.' He allegedly asked one of his female clients to stay in a hotel with him.

The Minnesota Board of Psychology found that he lacked the requisite training in psychopathology to evaluate or treat patients in a forensic setting. Subsequent records indicate that Dr. Alsdurf completed a single course in the diagnosis and treatment of psychopathology and all restrictions were eventually removed from his license.

The settlement stipulation is 29 pages in length and contains some very serious and disturbing allegations against Dr. Alsdurf.

All 29 pages of this settlement stipulation is posted at the end of this article posted in [vocalhome.blogspot.com](http://vocalhome.blogspot.com)!!!

**It's Time to Lock up Dr. Alsdurf in MSOP with All of the Other 'Sex Abusers.'**

What's good for the goose is good for the  
(Continued on page 6)

gander. And what's good for the 'patient' is good for the doctor. It's time to lock this sex abuser doctor in MSOP in order to give him a taste of his own medicine. Either lock this sex abuser doctor up or let all of the men in MSOP go free.

One often overlooked aspect of these laws is states committing innocent men to 'psychiatric hospitals,' not because they are dangerous, but because they are an unpopular minority.

Dr. Alsdurf is a 'dangerous' sex abuser. Why is he a dangerous sex abuser? Because VOCAL says he's a dangerous sex abuser. He is a danger to the Constitution of the United States and everything that we, as Americans, hold dear.

Dr. Alsdurf declares *ipse dixit* that non-dangerous men are dangerous. *Ipse dixit* is a legal term that means, 'my findings are based on my word only with no scientific evidence to back it up. But you should accept them just because I say so.' If Dr. Alsdurf can find that these men are dangerous based solely on his word with no evidence to back up his claims, then VOCAL can equally find Dr. Alsdurf dangerous based only on our word with no scientific evidence to back up our claim.

**VOCAL does not believe that Dr. Alsdurf is qualified to perform sex offender civil commitment examinations.**

Despite Dr. Alsdurf denying these allegations, the Minnesota Board of Psychology felt that the allegations were sufficient enough to take action against Dr. Alsdurf's license in psychology.

VOCAL believes that, due to the State of Minnesota taking action against Dr. Alsdurf's license, there is a reasonable probability that the allegations made against Dr. Alsdurf are truthful in whole or part. VOCAL believes that due to the serious and disturbing nature of the allegations made against Dr. Alsdurf, that Dr. Alsdurf lacks the professional judgment to perform sex offender civil commitment examinations.

Further, VOCAL believes that the single course that Dr. Alsdurf took in the diagnosis and treatment of psychopathology is insufficient to qualify Dr. Alsdurf to perform sex offender civil commitment examinations.

VOCAL is unaware of any other training that Dr. Alsdurf may have undergone since his reinstatement of full licensing privileges and will oppose him performing sex offender civil commitment examinations until Dr. Alsdurf provides VOCAL with proof of further training that he may have undergone that would qualify him to perform these examinations.

#### **Whose Cases Are Affected by the Alsdurf Allegations?**

VOCAL does not have a complete list of cases that Dr. Alsdurf performed sex offender civil commitment examinations in. However, we do have a brief partial list below of published rulings by Minnesota appellate courts that are public records. This list is incomplete because not all cases were appealed and some of the appealed cases were not directed by the appellate

court in question to be published. Every MSOP commitment victim should view their case file to see if Dr. Alsdurf performed an examination in their case.

MSOP commitment victims are also encouraged to contact VOCAL at [vocalchamp@gmail.com](mailto:vocalchamp@gmail.com) to tell us their story, regardless whether Dr. Alsdurf was an examiner in their case or not and whether they are in MSOP or are in sex offender civil commitment in a different state.

Dr. Alsdurf performed examinations in the following cases. This list is not exhaustive. Darrin Scott Rick; Joseph Anthony Favors; Christopher R. Coker; Michael Kenneth Pirki; James Lee Schwening; Leon James Preston; Todd Anthony Fernandes; Russell J. Hatton; Grant Junior Grayson; Richard Russell Fageroos; Vou Xiong; Donald J. Conard; Jeffrey Patrick Guetter; James C. LeMasters; Dale Allen Lindsey; Fitzgerald Calvin Stewart; Kermit Lorenzo Deloach; Charles R. Stone; Robin John Rzymyslowski; Kevin Scott Karsjens; Thomas Steven Allen Snook; Michael Dean Brown; James Ronald Christenson; Christopher Loyd Ivey; Jacquet Dean Munn; Robert Lee Lueck; Kevin Boyd Nelson; Jason Duane Sveen; James John Rud; Isaiah Charles Swedeen; Richard Allen Smuda; Walter Johann Happel; Damon Brooks Bryant; Philip Samuel Goldhammer; Colten Chase Camacho; Dale Allen Williams, Sr.; Lawrence Joseph Fisher; Thomas Ray Duvall; Donald Duane Hill; Ozhaawaskoo Giishig AKA Guy Israel Green; Jimmie Ray Ramey; John Louis Beaulieu III, and Jacob Karl Rask.

*If you know someone on this list, please advise them to make a copy of the settlement stipulation from our blog and to contact us at [vocalchamp@gmail.com](mailto:vocalchamp@gmail.com).*

As a general rule, they should send these things to their attorney. However, if their attorney was not aware of this, he may not have done his homework and may be incompetent.

It may be best if MSOP commitment victims address this as a class action without an attorney that failed to even check the credentials of the psychologists in their personal commitment case, or that failed to object if he was aware of such lacking or inadequate credentials. Inmates should discuss and weigh their options with a competent attorney before filing any action in court.

#### **Follow [vocalhome.blogspot.com](http://vocalhome.blogspot.com) to Stay up to Date with Our In-Depth Investigations and Reporting.**

VOCAL is investigating all aspects of the sex offender civil commitment process, to include the psychologists who are performing these sham examinations in order to commit non-dangerous people to sex offender civil commitment.

This is the first report in this series dealing with VOCAL's investigation into MSOP. VOCAL's investigation into MSOP is ongoing. Please follow this blog in order to keep abreast of VOCAL's work involving sex offender civil commitment and other issues related to child abuse laws.

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## **Profiteering from SOCC & Costs of Living as a Parolee or Registered Person**

Laura J. Appleman, "The Treatment-Industrial Complex: Alternative Corrections, Private Prison Companies, and Criminal Justice Debt," 55 *Harv. C.R.-C.L. Rev.* 1 (2020) (Part 1).

**Text Excerpt:**  
[pp. 32-33:] "F. Sex Offender Post-Release Treatment and Civil Commitment"

The for-profit corrections industry has also begun expanding its reach into civil commitment facilities and post-offense treatment for sex offenders. People convicted of sex offenses are sometimes subject to nearly indefinite detention: even when they are not technically serving prison sentences, they are still subject to strict control by the criminal legal system. The criminal justice debt imposed on those convicted of sex offenses is another troubling facet of the treatment industrial complex.

[Part 1] [pp. 37-38:] 2. *Post-Release Civil Commitment*

Approximately twenty states have civil commitment laws and facilities.<sup>381</sup> People convicted of sex offenses in those states can sometimes be civilly confined even after completing their prison sentences, sometimes indefinitely, if they are deemed likely to recidivate.<sup>382</sup> Although it is a form of long-term incarceration, the government classifies civil commitment as a 'therapeutic,' rather than punitive intervention.<sup>383</sup> People confined in civil commitment tend to have indefinite sentences until state officials decide they have been rehabilitated.<sup>384</sup> In theory, civil commitment aims to ensure sex offenders have access to treatment and are prepared for release.<sup>385</sup>

Civil commitment can cost the state almost four times more than confining someone in state prison.<sup>386</sup> Accordingly, states have begun shifting the costs of detention onto the very people who are detained. Texas and Florida, for example, confiscate part of civilly committed people's incomes.<sup>387</sup> States have also begun using private corrections companies to help save money on the operation of civil commitment facilities and the provision of sex offender treatment.

Private, for-profit prison companies have taken over publicly funded facilities that lie 'somewhere at the intersection of incarceration and therapy.'<sup>388</sup> In Texas, where individuals sentenced to civil commitment must shoulder some of the costs, their money is given directly to the privately run detention centers.<sup>389</sup> For example, in 2015, Correct Care Solutions was awarded the management of the Texas-based Bill Clayton Detention Facility, which houses approximately 200 people civilly committed for sex offenses who have already served their prison sentences.<sup>390</sup> The state gave Correct Care a \$24 million contract to run the facility.<sup>391</sup> Since the facility's opening, only five men have been released, and four of them were instead sent to hospitals directly preceding their death.<sup>392</sup> Although the purported

function of the Civil Commitment Center is to rehabilitate individuals convicted of sex offenses, the residents receive few services in what is a for-profit prison in all but name, exiled to a remote location on the state's outskirts, far away from most of their families.<sup>393</sup>

[pp. 38-39:] Like other facilities run by Correct Care, staff turnover is high and medical care is frequently delayed.<sup>394</sup> Individual counseling sessions (required by the state) have been reduced from every two weeks to once every three months.<sup>395</sup> The constant staff rotation means that it is very difficult to 'graduate' from the program; the patient must start over from scratch with each new therapist.<sup>396</sup> The facility does everything it can to extract extra cash from the residents. For example, any packages sent to the residents must contain a receipt, so the facility may charge the sender one-third of its worth.<sup>397</sup> Many residents must pay part of the cost of their ankle monitors, despite being held in a secure facility.<sup>398</sup>

[p. 39:] Florida and South Carolina also have civil commitment centers run by Correct Care.<sup>399</sup> Florida's civil commitment center has been plagued by many of the same problems as Texas, with insufficient staffing, undertrained workers, and minimal treatment.<sup>400</sup> Only about 15% of the residents complete the therapy treatment by the time they are released, obviating much of the point of the civil commitment, which is to provide therapy to prevent recidivism.<sup>401</sup> Florida is the only state to have a private, for-profit company entirely in charge of their Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act.<sup>402</sup> The full contract between Florida and Correct Care, which ran until 2014, paid the company a total of 272 million.<sup>403</sup>

Private, for-profit companies do not have a good track record in running civil commitment centers.<sup>404</sup> In 2004, the safety director of a Florida civil commitment center managed by Liberty Healthcare Company erased video evidence after a resident jumped off the roof.<sup>405</sup> The entire center was dramatically mismanaged, with high staff turnover, abusive behavior from staff and residents, crumbling facilities, and little rehabilitative treatment.<sup>406</sup> All of this created a 'cesspool of despair and depression and drug abuse.'<sup>407</sup>

[p. 40:] Despite the myriad problems it had in Florida, Liberty Healthcare Company currently runs an Illinois civil commitment center called Rushville.<sup>408</sup> As of May 2016, only 83 residents out of hundreds had been released from the program.<sup>409</sup>

The for-profit corrections industry also offers a variety of services to civil commitment centers. Massachusetts uses a private company, MHM Correctional Services, to run release evaluations for those incarcerated in its civil commitment center.<sup>410</sup> Although these examiners are supposed to be appointed by the court, there is little oversight or transparency, and most evaluations are done by MHM.<sup>411</sup>

Like all other aspects of the treatment-industrial complex, criminal justice debt arising from civil commitment is most frequent.  
(Continued on page 7)

quently levied by private corrections companies.<sup>412</sup> The result is to further impoverish those individuals who are most vulnerable, imposing often unpayable amounts on them and their families. This relatively unexplored corner of alternative corrections can no longer be ignored."

Since the facility's opening, only five men have been released, and four of them were instead sent to hospitals directly preceding their death.

#### Part 1 Notes:

381 "A Profile of Civil Commitment Around the Country," *N.Y. Times* (Mar. 3, 2007), [https://archive.nytimes.com/www.nytimes.com/imagepages/2007/03/03/us/20070304\\_CIVIL\\_GRAPHIC.html](https://archive.nytimes.com/www.nytimes.com/imagepages/2007/03/03/us/20070304_CIVIL_GRAPHIC.html).

382 *Erin Fuchs*, "For-Profit Prison Companies Have a Worrying Plan for Boosting



In Zimbabwe they just carry the cash out.

Profits," *Bus. Insider* (Nov. 20, 2014), <https://www.businessinsider.com/for-profit-psych-facilities-2014-11>.

383 *Toshio Meronek & Erica R. Meiners*, "Beyond the Carceral Logic of Civil Commitment," *The Next System* (Nov. 10, 2017), <https://thenextsystem.org/learn/stories/beyond-carceral-logic-civil-commitment>.

384 *Id.* (Introduction).

385 *Id.* (Rushville)

386 *Ibid.*

387 Tex. Health and Safety Code Ann. Art. 11, § 841.047 (West 2017); Fla. Stat. § 394.928 (1999).

388 *Michael Barajas*, "A Prison by Any Other Name," *Tex. Observer* (Feb. 12, 2018), <https://www.texasobserver.org/a-prison-by-any-other-name/>.

389 *Id.*

390 *Cate Graziani & Eshe Cole*, Grassroots Leadership, *Incorrect Care: A Prison Profiteer Turns Care into Confinement 5* (Feb. 2016), [http://grassrootsleadership.org/sites/default/files/reports/incorrect\\_care\\_grassrootsleadership\\_2016.pdf](http://grassrootsleadership.org/sites/default/files/reports/incorrect_care_grassrootsleadership_2016.pdf).

391 *Barajas*, *supra* note 388.

392 *Id.*

393 *Id.*

394 *Id.*

395 *Weekend Read*: "They Served Their Prison Sentences, But They're Still Locked Up," *Southern Poverty Law Center* (Feb 16, 2018), <https://www.splcenter.org/news/2-18/02/16/weekend-read-they-served-their-prison-sentences-but-theyre-still-locked-up>.

396 *Barajas*, *supra* note 388.

397 *Id.*

398 *Id.*

399 *Id.*

400 "Violent Sexual Predators Held Indefinitely – For a Profit," *NBC2*, (June 9, 2015) <https://www.nbc-2.com/story/29230766/violent-sexual-predators-held-indefinitely-for-a-profit>

401 *Id.*

402 *Id.*

403 *Id.*

404 *Barajas*, *supra* note 388.

405 *David Sherfinski*, "Virginia Considers Two Jail Firms with Sketchy Pasts," *Wash. Times* (Apr. 30, 2012), <https://www.washingtontimes.com/news/2012/apr/30/virginia-considers-two-jail-firms-with-sketchy-pasts/>.

406 *Abby Goodnough & Monica Davey*, "A Record of Failure at Center for Sex Offenders," *N.Y. Times* (March 5, 2007), <https://www.nytimes.com/2007/03/05/us/5civ7.html>.

407 *Id.*

408 *Meronek & Meiners*, *supra* note 383 (discussing Rushville Treatment and Detention Center).

409 *Id.*

410 *Christian M. Wade*, "Sex Offenders Examiners' Oversight Questioned," *The Salem News* (June 14, 2018), [https://www.salemnews.com/news/local\\_news/sex-offender-examiners-oversight-questioned/article\\_4b142ae8-8b65-53439-b967-cabbd3951fe8.html](https://www.salemnews.com/news/local_news/sex-offender-examiners-oversight-questioned/article_4b142ae8-8b65-53439-b967-cabbd3951fe8.html) (explaining the role of the private company MHM Correctional Services Inc. in Massachusetts).

411 *Id.*

412 *Barajas*, *supra* note 388.

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## The 'Legitimation' of Minnesota's Sex Offender Commitment Scheme

"Lawyer X" (author of *Deviant Justice – The American Gulag*), *Yonkers, NY: In Depth Media*, 2014; available per Amazon), *Minnesota's Sex Offender Commitment Scheme: Doomed from the Start, and Why Federal Task Force Suggestions Can't Fix It* (article updated 2024)

**Text:** Twenty years ago, in passing rage and hysteria over impending prison release of two notorious sex offenders, Minnesota's lawmakers created a special "civil commitment" to continue to incarcerate them and other sex offenders claimed to be too dangerous to release. The deliberate vagueness and breadth of this "SPP/SDP" law makes it arguably applicable to any sex offender.

However, only a small handful of sex offenders have ever fit the over-popularized

image of compulsive sex criminals who will attack any woman or child as soon as they can. Yet that law treats all within its expansive scope as if they are certain to do so. That legislation also erected release criteria impossible for a committed offender to satisfy – far more demanding than simply showing that the commitment criteria are no longer present. Release is not authorized on that latter basis. Only about 20 committed former offenders have been released unconditionally so far, with only about 60 more currently living in-community under toight restrictions and burdensome requirements. Thus, comparatively, about 750 sex offenders are now detained (not counting the 101 who have died) in "MSOP," the state's special commitment prisons just for these former felons.

Now a disclosure: I oppose this misuse of civil commitment. It is a dishonest cover for unfair post-prison preventive detention for life and a disgrace to all legislators, judges, and psychologists who engage in the illusory charade that SPP/SDP commitments have anything to do with psychiatry.

But this article is for those who cling to the notion that civil commitment of sex offenders is worth saving, despite its obvious flaws. If so, it must be recreated from scratch as a radically reduced program. Current suggestions avoid grappling with its most basic problems. Why should you care? Read on.

The operating costs of the MSOP program are staggering – approaching \$130 million per year. This works out to about \$145,000 per year/per detainee. This is at the current minimal levels of treatment offered. Those levels and their hefty cost component will skyrocket if MSOP loses any court challenge to the inadequacy and sluggishness of that slow and minimal treatment. This does not include bonded construction and renovation costs of MSOP's two facilities to date. The most recent of these costs was to expand the housing of MSOP confinees theoretically in the last phase of their confinement in high security. However, this expansion was necessitated by MSOP's refusal to release more than the dozen or so now released on average per year. Even if no more convicted sex offenders were committed in the future in Minnesota, at this trickle of annual releases it would take still take over 62 years to release all 750 still confined in MSOP's pseudo-prisons. Of course, in that time period, well over half of that total will die before getting released, due to that reluctance by MSOP. Even worse, given that new commitments continue to outstrip releases, MSOP, with all of its heavy costs of operation every year, will continue on in perpetuity, gradually getting ever larger. Meanwhile, the Minnesota Department of Corrections releases about 3,000 sex offenders from its prisons every year, on average indistinguishable from the small fraction who get committed rather than released. It has kept accurate records on each one, finding that the rate of sex-crime recidivism among them is less than 3.0 percent. Research has found that this rate is an average all around the US, and that recidivism rates of those released

from sex offender commitment facilities in the minority of states that have them are no higher than that.

Then too, all those committed except for the handful released understandably feel unjustly deprived of their chance through parole to show they can live a crime-free life. As a result, a high percentage of them are constantly involved in various appeals and other judicial challenges to their commitments, or at least to the prison-like conditions of that commitment facility. These litigative efforts are their right, and they cost the state sums totaling in the tens of millions each year beyond the annual operating costs cited above.

In short, in MSOP, the state has devised its own proverbial political tar baby. Legislators have so long and so vehemently vilified sex offenders as if they were some supernatural monsters and advocated and praised sex offender commitment as indefinite and presumptively lifetime confinement as the only thing standing between these former sex offenders and recidivism (a blatant, knowing misstatement of fact) that they fear the political consequences of ever having to admit that these myths were always false and that such endless 'commitment' was not only unnecessary, it was unjustified. Such politicians are thus stuck to the tar baby of their own creation. There is no fixing a tar baby; it can only be dismantled, and a different approach used.

In contrast to MSOP, the Minnesota Department of Corrections has created a special, strict parole program, "intensive supervised release" ("ISR"), which can effectively prevent sexual re-offense by those assigned to it through measures such as house arrest, mandatory treatment, and constant monitoring and surveillance (also enlisting local police). Surprisingly, the annual cost of all this is only \$24,000 per parolee – less than one-fifth that MSOP operating cost per detainee. Hence, in reality, for almost all sex offenders currently committed, ISR offers a safe and effective – and much cheaper – way to control them.

Research shows that almost all sex-crime recidivism occurs within five years of release. This special parole lasts longer than that (usually, ten years), thus serving as prevention during that critical period. After that, continued registration, police surveillance, and community notification measures permanently continue that protection. The real danger lies not with these known ex-felons, but instead with those who have not yet been caught and who may be plotting a first sex crime – or another one.

In one of the most serious constitutional challenges to the SPP/SDP law to date, a federal judge warned the state that failure to immediately, drastically reform SPP/SDP commitment and MSOP could result in total judicial voiding of that law and MSOP. The federal court received suggestions for such reform from a "Task Force" it appointed to study the problem. However, those suggestions do not confront the core of the problem: the political incentives to commitment and disincentives to release. Without completely rewriting the law on both, commit-

(Continued on page 8)

ments will continue to swell MSOP, while releases will remain nil, or at most, merely a trickle.

First, that Task Force did not urge reform of the actual criteria for SPP/SDP commitment. Such reform can and should curtail sex offender commitments only to those few who truly suffer from strong impulses and are irresistibly compelled by them to commit a sex crime as soon as possible.

One significant judicial advantage of this standard is that the necessary "high likelihood" of recidivism is manifest in the case of one truly lacking control of his immediate actions in response to a strong impulse. Currently, others not subject to this "volitional impairment" are also proposed for commitment. As to these, judges rely on amazingly unscientific, dishonest contentions by so-called experts as to such "high likelihood" of recidivism. This disgraces the courts and breeds disrespect for law, since all can see the patently emotional decisions to detain as just that. No one has a crystal ball. No one can predict anyone's future behavior with any accuracy. Past behavior is no inherent prologue to future behavior. If that were true, recidivism would be 100%.

Except for that very small handful of those seriously volitionally impaired, all other sex offenders have only a general predisposition for illegal sexual conduct, just as any other criminal may be tempted to commit any other crime. For this predisposition, the deterrence of the criminal law works admirably. In the period since 1990 (in which sentences for sex offenses have spiraled upward), sex crime recidivism has dropped from about 17% back then to 3% now (both here and nationally), in lockstep with upwardly spiraling sentences for sex crimes.

Having reviewed the cases of almost all who are now detained in MSOP, I can report that only about one in twenty detainees (perhaps 35 in all out of those 700+) would meet such a rewritten commitment criterion.

Two sets of alternative criteria are now used to commit sex offenders: SPP and SDP. This is intended to lock up the maximum number through vagueness and cumulative boundless overbreadth. Unless drastic restriction is legislated, the number of the committed will also continue their upward spiral.

Second, that Task Force did not squarely confront the spectacle of old men being committed as supposed 'recidivating machines.' The forensic science is quite undeniable: Sex offenders released from prison at age 60 or above only rarely commit any later sex crime. The scientific reason is readily apparent: by such ages neither testosterone nor libido are present at levels comparable to young men. Hence, no uncontrollable reaction to "impulse" – or even just an impulse at all – exists in this age group. Recent studies strongly confirm the deeply reduced recidivism rate for ages 60-69 – perhaps now only one-half of 1%. From age 70 up, the recidivism rate is zero percent. This simply cannot be the "highly likely" re-offense constitutionally required to support commitment.

Any rewritten sex offender commitment

statute should exclude those aged 60 and above from commitment consideration, and pre-existing commitments of all in this age group should be terminated upon enactment. Commitments of all others should automatically end, if not before, as they turn age 60. Imagining old men to be lathering sex maniacs – preposterous and disgracefully spiteful!

Third, the Task Force failed to insist on a provision now in place in most of the other 19 states with sex offender commitment laws: release becomes mandatory when any of the necessary grounds for commitment no longer exist or no longer measure up to the commitment standard. Under current SPP/SDP law in Minnesota, one cannot be released even when this point is reached (for instance, as it inevitably does in middle/elder age due to greatly reduced and ultimately extinguished recidivism probability). Instead, one must satisfy a higher standard involving vague factors administered strictly against anyone seeking release as matters of both bias and politics. The comparatively low number of releases over the three decades of that commitment law to date is the only point needed here to support the need for this change.

Fourth the Task Force also ignores the standard of proof required to commit. The current standard is one of "clear and convincing evidence." But in reality, almost any evidence or testimony whatsoever – even out-of-court hearsay, is accepted as sufficient support for commitment, regardless how flimsy and uncorroborated it may be. Uncharged accusations magically appear in commitment petitions. And paid testimony by obliging psychologists at odds with known science is presented to justify commitment. Such practices turn what should be a proceeding as serious as a natural-life-sentence criminal trial into a travesty. Only applying the standard of proof "beyond a reasonable doubt" can redeem the proper gravity of a sex offender commitment case, particularly because, unlike other kinds of commitment, the outcome will likely be confinement for many years, if not natural-life.

**N**o one can predict anyone's future behavior with any accuracy. Past behavior is no inherent prologue to future behavior. If that were true, recidivism would be 100%.

Fifth, because of that gravity of the potential outcome, every sex offender subjected to a commitment petition needs all of the procedural protections that apply in criminal trials. Now, however, they have none of those rights. More than this, the Rules of Evidence (which apply to civil, as well as criminal cases) don't even apply to protect a defendant sex offender in such a commitment case. The judge can admit and rely upon anything at all, even inflammatory and baseless second-hand assertions. In any court otherwise, this would be an outrage. Again, the Task Force never even considered this.

Sixth, the entire rationale for commitment of a sex offender must be exclusively and firmly based on psychological science. Otherwise, the proceeding is nothing more than a hate-fest advocated and decided on nothing more than emotional revulsion. Therefore, apart from the facts of the case, the only evidence and testimony allowed must be scientific, and the decision must be exclusively based on science, not conjectural possibilities.

Currently, testimony by psychologists of their subjective impressions – often based only on reading the record (often riddled with errors, uncorroborated hearsay accusations, and all manner of baseless suspicions) – is relied upon by judges in ordering commitment. Research consistently shows that such "clinical assessment" is approximately 90% incorrect even when using correct records and interviewing the defendant – in other words, worse than merely flipping a coin (50% wrong). Such testimony and report contents have no place in such a grave proceeding. Such inaccuracy makes a mockery of science. Without science, there simply is no expertise.

Hence, judges must be exclusively bound by science. However, judges have adopted various unscientific so-called "factors" to decide these cases, simply made up from what judges baselessly deem as their own supposed expertise in human nature and behavior. Often, these factors are taken from the mere views of a psychologist without any support in empirical research or any demonstrated specific applicability to sex-crime recidivism likelihood. In Minnesota, the "Linehan factors" are the classic example – derived solely from impressions – many based on mere demographics – by John Monahan, Ph.D. (actually a criminologist instead), addressing probability of future violence, not sex crimes. The tacit judicial assumption that factors prompting violence and sex-crimes are the same or similar is simply false. This shows the dangerous tendency by judges toward "armchair psychology." Would you choose to be operated upon by an armchair surgeon? Countless sex offender commitments have been affirmed on appeal merely because of this false judicial assumption of applicability of Monahan's personal sociological impressions about causes of violence, not sexual recidivism. Appalling!

**R**ecent studies strongly confirm the deeply reduced recidivism rate for ages 60-69 – perhaps now only one-half of 1%. From age 70 up, the recidivism rate is zero percent. This simply cannot be the "highly likely" re-offense constitutionally required to support commitment.

The bottom line: Statutes must be rewritten to restrict findings in sex offender commitment cases to valid, well-documented scientific conclusions. Unscientific, inaccurate "clinical" impressions must be statutorily excluded. And the statute must expressly bar judicial adoption of decisional "factors." The factors must be spelled out only in the

statute, and each must comport with known science. Otherwise, commitments of sex offenders are simply a new kind of lynching party.

Seventh, the Task Force did suggest that pre-petition screening be done by an independent panel of experts (not, as at present, by psychologists employed by the Department of Corrections, which has a vested interest in commitment of those it has by then already decided are "Tier 3" most-probable recidivists, based on non-psychological factors). However, this suggestion would allow a county attorney to seek commitment in the face of a negative finding by that suggested independent panel, or as to someone not screened by that panel. This Task Force suggestion was a classic instance of death just before the finish line. Such a panel should exist, but a negative finding must preclude commitment. Only those receiving a positive finding by that panel should be subject to such a petition. And of course, that panel must be bound to the same principles strictly of known science, not conjecture and speculation.



Trial to the Court

Eighth, the Task Force called for a statewide court of retired judges to decide SPP/SDP commitment cases. That removes political influence, but not personal bias. There is no simple cure for bias, but standards conforming to science will reveal a decision based on bias. However, the 2014 Legislature shelved this proposal, citing insufficient retired judges to preside over such cases. What does this say about the number of such commitments? Further, the fact that current petitions for release/termination of an SPP/SDP commitment are determined by the Commitment Appeal Panel ("CAP"), comprised of both sitting and retired judges, telegraphs the lack of legislative concern about either political influence or personal bias.

That specific recommendation also would allow input by MSOP staff themselves and perhaps by that screening panel into a 'centralized judicial databank' of claimed science, perhaps as exclusive sources for such scientific assertions. This ignores the institutional bias against sex offenders that has corrupted so many decisions by MSOP staff to date (e.g., declined releases, treatment demotions, and even 'start-over' directives). Bear in mind that, to hear MSOP staff tell it, no one should ever be released, regardless how old they get. Psychology is a 'soft science.' Fanaticism always utterly destroys science. Therefore, outside sources must also be consulted in the ongoing process of winnowing the truth and  
(Continued on page 9)



revising conclusions with later scientific evidence. Otherwise, decisions based on a databank of prior decisions only leads to consistent errors of science and consequent institutionalized injustice recalcitrantly refusing to acknowledge earlier mistakes leading to lifetime confinement based on disproven junk science.

**T**he tacit judicial assumption that factors prompting violence and sex-crimes are the same or similar is simply false. This shows the dangerous tendency by judges toward "armchair psychology." Would you choose to be operated upon by an armchair surgeon?

Last, the Task Force called for reduced levels of confinement (on the low end, something like treatment-based, locked 'halfway houses') for those not needing high-security confinement. If the first of my suggestions, above, is adopted, this becomes unnecessary, since only those who actually lack self-control would be committed. However, if this specific Task Force proposal is adopted, it should not be used to make a commitment easier for prosecutors to obtain, or to reduce the profound gravity of the proceeding or the commitment decision. This should be clearly spelled out in any rewritten commitment statute.

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## Hebert's Revealing Admission

Jannine M. Hebert, MSOP Executive Clinical Director, Comments at Metropolitan State University, April 2023 Seminar (Run Time: 42:40.)

Text Excerpt: "I am not here to defend civil commitment and in fact I went and took a job at MSOP because I think civil commitment is ridiculous. And I think that change can happen from lots of places.... Sometimes people do it from within...."

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## A Common Sexual Reality

Thomas Donahue, "Sexual Reality (individually submitted essay) (November 2023).

Editor's Introduction: Personal accounts usually are out of the mission of *the Legal Pad*, even when they are on the topic of atypical sexuality. Nonetheless, sometimes particularly insightful, eloquent, and moving exceptions merit the space in *tLP* pages to provide us all with perspective and understanding. Chalk this one up to just such a learning experience.

Text: "Over the course of the last several decades, there has emerged in this country much discussion, controversy, and hysteria surrounding the topics of sex and sexuality. From the gay rights movement of the late sixties and seventies to the current battle over gender affirming care, it seems as

though we have grown increasingly obsessed when it comes to who is sleeping with who and who is doing what with their own bodies. At times, it appears as though our culture has progressed by leaps and bounds with regard to accepting who we love and what we are allowed to be. Yet we are witnessing on a daily basis how conservative politicians and religious zealots are pushing to further rescind our rights and liberties.

A recent edition of a newsletter I subscribe to featured a snippet of information defining the 'LGBTQIA2S+' spectrum of sexual orientation as lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, and two-spirit. The '+' indicates that the list is not complete. Try fitting that onto a bumper sticker! This list does not include *straight* or *cisgender*, although the spectrum was created to differentiate minorities from these categories. Have we left anybody out? I believe we have.

This seemingly ever-growing list has got me to thinking about where I fit into this vast spectrum of sexual orientation. Which sexual identity do I align with? With whom do I stand in solidarity? Actually, I have been pondering these questions for much of my life, and to be perfectly honest, I do not know that I clearly identify with any of these labels, nor am I convinced that I should.

I'll spare the reader the complete and detailed version of my sexual history, but suffice it to say that my first sexual experience was with another boy when we were both about ten years old. We had found a pornographic magazine that belonged to one of our fathers, and soon we were acting out the scenes depicted in those sacred pages. I doubt that we realized what we were doing, but I know we both enjoyed it and we continued to do it on a number of occasions until my friend moved away. We also knew enough to keep what we did a secret.

Did that experience define my sexuality? Was I destined to be homosexual? I can't say with certainty, but from that moment on, I began to think about boys and girls in a sexual way. As I matured, however, it was boys who came to dominate my fantasies.

During those formative years, the message I received from society in general, and my religion in particular, was abundantly clear! Homosexuality was wrong. At that time in my young life, the last thing I needed or wanted was to be thought of as gay. Thus, I quickly learned to repress my feelings.

Besides, although I harbored sexual urges toward boys, I simply could not be gay. I most definitely was in no way effeminate. I liked to play sports and go fishing and all the other things boys were supposed to do. Plus, I was going to grow up and get married and have children, and I couldn't very well do that if I was gay...or could I?

I still thought about girls then, and during my later teens and into my young adulthood, had several girlfriends with whom I enjoyed sexual relations, and at one point, I even got married. Did this mean I was

bisexual? Or was I only doing what I thought was expected of me?

Throughout my adolescence and later teen years, I began to notice an underlying and pervasive theme. While I continued to develop and mature physically, the object of my fantasies did not. The more I tried not to, the more I thought of younger boys in a sexual way. It was as if I had become fixated on that first experience, and I was trying to relive it over and over again.

This confusion and conflict caused no small amount of distress in my life. In my early teens, I had experimented with drugs and alcohol, but as the years progressed, I used substances as a means of dealing with my inner turmoil. Everything I did from that time forward became an effort to hide my deep, dark secrets.

I'm not exactly certain when I first heard the word *pedophile*, but it was most likely during my early twenties when the Catholic priest sex abuse scandal became headline news in Boston. The local news media repeatedly referred to the accused and convicted as 'pedophile priests.' Being unfamiliar with that word, I consulted the dictionary. According to Merriam-Webster, a *pedophile* is 'one afflicted with pedophilia,' and *pedophilia* is defined as 'sexual perversion in which children are the preferred object.'

Well, that didn't sound good at all. Not only was I possibly homosexual, but according to that definition, I was most likely a pervert as well. At this revelation, I experienced what today would be referred to as a mental health crisis, which only seemed to exacerbate my substance abuse issues. Thus, I vacillated frequently between the prospect of seeking psychiatric counseling and committing suicide. In the end, I was too frightened to do either, so instead I did nothing.

In my mid-to-late twenties, I met a woman with whom I became romantically involved. When I began dating, I confessed to her that I had not been exclusively heterosexual and didn't know that I wanted to be. She seemed unphased by this admission and within three months, she became pregnant. Thinking that it was the right thing to do, we were married two months later. My wife also had a son from a previous relationship, and despite my latent sexual attraction to pubescent boys, I had convinced myself that I could be a good husband and father.

Unfortunately, my wife suffered a miscarriage during her first trimester, and our marriage suffered an irrecoverable collapse. In retrospect, I wonder if I ever truly loved the woman, or if I only stayed with her to be close to her young son and his friends. Although nothing inappropriate ever occurred, there was a significant amount of temptation and desire before I removed myself from the home.

This separation led to a severe bout of depression, and, believing it was the only way I would ever be free of this internal conflict, I attempted to end my life by means of a medication overdose. After a brief hospitalization, I concluded that as long as these sexual thoughts remained relegated to my mind and I never acted upon them, all

would be well.

For several years, my plan succeeded. That is, until I rented an apartment with a co-worker. This move gave me unfettered internet access and that was like pouring gasoline on a smoldering fire. What began as a mission to obtain additional information about my condition and treatment options exploded into a full-blown pornography addiction.



When I started to research the subject of pedophilia, I was introduced to the concept of 'Greek Love' and pederasty. From there, I discovered a number of online communities that supported and encouraged like-minded individuals by openly discussing their physical and emotional attraction to boys. To avoid the negative connotations associated with the word *pedophile*, and to differentiate themselves from those attracted to young females, members of these communities referred to themselves as *boy-lovers*.

Finally, after years of alienation and self-recrimination, I was able to identify with individuals from all over the world who shared the same attractions. At last, I had found some place to belong. This then defined who, or what, I was: a boy lover – a homosexual pedophile. Yet the word *pedophile* had been hijacked by the mainstream media to label child molesters and child rapists, something I had never been, nor will ever be. It has never been my desire to intentionally cause harm to a child, as mixed up and distorted as it may sound to the majority of the world. All I ever wanted was to love a boy. Yes, there is a strong sexual component to my attraction, but there is also an overarching desire to care for and mentor a boy as he navigates his way through life in this crazy world.

I did not choose to be attracted to boys any more than I chose to have brown hair and eyes. I did not wake up one day and decide to be a pederast – and I mean that in the truest sense of the word; from the Greek *paidēraistes*, a lover of boys. Believe me when I say I have tried everything within my power to change this fact, but it has only led to further strife and turmoil in my life. I am what I am, and as I've often said, we cannot choose our attractions, but we can choose our actions.

Sadly enough, I have not always chosen my actions wisely. As I have written above, my introduction to the internet also introduced me to the dark world of child pornography. The viewing of this material quickly became an addiction and that addiction has resulted in not one, but two prison sentences.

So where does that leave me? Where do I  
(Continued on page 10)

fit in? Or do I fit in? Am I gay? I don't feel attracted to adult males, so I'll have to say I am not. Am I bisexual? I no longer feel any sexual attraction to females of any age, so again I'll have to say no. I'm neither lesbian nor transgender. I'm not queer or questioning. I'm not intersex, asexual, nor two-spirit. Perhaps I come under the '+' designation.

In recent years, I've become aware of the term *minor-attracted person* (MAP). This seems to me to be an innocuous label as opposed to the now demonized *pedophile*. Perhaps one day we will see the LGBTQIAS2+ spectrum expanded to include MAPs.

In the not-so-distant past, homosexuality was considered a mental disorder and those afflicted with this 'illness' were labeled as deviant and thought to be incurable. Today it is widely accepted that gay people are born that way.

In 2013, the American Psychiatric Association removed pedophilia from its Diagnostic and Statistical Manual of Mental Disorders (DSM-V), thus declaring it is not a mental illness, but a choice. Maybe one day we, as a society, will come to the understanding that sexual orientation of any kind is not a choice, but rather something we are born with.

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## B4QR Review

### Applying Desistance Principles to MAPs

**B4QR Review:** *Lievesley, R., & Harper, C., "Applying Desistance Principles to Improve Wellbeing and Prevent Child Sexual Abuse among Minor-Attracted Persons," (Journal of Sexual Aggression [2021]), B4U-ACT Quarterly Review, Vol. 1, No. 2 (Spring 2021), pp. 19-22.*

**Review Excerpts:** [p. 19:] "This article is founded on the premise that the most effective way to help MAPs to refrain from engaging in illegal sexual behavior is to attend to their mental health and psychological well-being. Lievesley and Harper contend that a public-health approach will be more successful in keeping MAPs happy and law-abiding than the currently prevalent forensic approach...."

Criticizing what they consider to be a tendency of many scholars to overcomplicate the psychology of MAPs, Lievesley and Harper argue that there already exists an effective method for helping MAPs to move toward self-integration that will strengthen their resolve to remain law-abiding. That method is the Integrated Theory of Desistance from Sexual Offending (ITDSO), which was developed by Göbbels et al. in 2012 for use with those convicted of sex crimes with children. The four distinct phases of the ITDSO method are briefly described: 1) the 'decisive moment,' when persons see the problematic nature of their illegal behavior and acknowledge the need to change; 2) rehabilitation, wherein the persons engage with treatment that allows them to work toward a more positive, law-abiding self-identity; 3) re-entry into the

community in such a way that those individuals can count on solid support and build up social capital; and finally 4) 'normalcy,' which posits a social environment that will itself reinforce the new skills and identities that have been developed in the treatment programs....

[p. 20:] "...MAP well-being, which should be the primary goal of counseling, is here construed as intrinsically valuable rather than as a (mere) 'necessary means' to the prevention of sexual abuse. The authors are thereby reversing a dominant thread in MAP literature: rather than discussing mental-health issues from a forensic perspective, Lievesley and Harper take a clearly forensic topic and defend a mental-health-first approach.

During the 'rehabilitation' phase, the MAPs are encouraged to develop a more positive image of self, which will normally involve integrating their attraction to minors into a broader, prosocial self-identity. Rather than going through 're-entry,' the help-seeking MAPs simply continue their law-abiding lifestyle, with the hope that they will experience a type of 'normalcy' that allows them to feel fully at home with themselves and those close to them. One of the many strengths of this paper is that it construes 'MAP normalcy' as a fully integrated, egosyntonic MAP sexual identity, rather than as the repression of their sexuality and/or the illusory attainment of a normative (i.e., teleiophilic) sexual attraction.

The authors stress that any formalized treatment should be strictly non-judgmental. They argue that 'accepting one's attraction as a MAP may be a key distinguishing feature of the initial decision to engage in help-seeking.' They advocate that professionals adopt a non-forensic approach so that MAPs can 'explore and integrate deeper emotional states, such as shame and fear.' They recommend 'compassion-focused techniques' that will help MAPs to 'work through experiences of (self-)stigmatization' and ultimately to live constructive lives with their attractions, rather than being dominated by them.

[pp. 20-21:] Lievesley and Harper lament the fact that there are very few mental health professionals who possess the knowledge, the attitudes, and the skills that are needed to provide proper counseling to MAPs. The training programs for most therapists pay little attention to the reality of attraction to minors, and the attention they do pay tends to be negative, being strongly biased toward misconceptions about MAPs' lack of control and toward beliefs about the changeability of the attraction.

[p. 21:] The authors criticize much of the current legislation on mandatory reporting, stating that it discourages many MAPs from seeking the counseling support that would help them. They consequently make a plea for laws that allow for constructive treatment of MAPs, citing German laws as a good model. They also consider the importance of providing legal ways for MAPs to attain some type of sexual satisfaction, since such satisfaction has been identified as a primary human good. They confess that 'a precise route to achieving this is

morally unclear,' and they recognize that the legal obstacles are daunting. Meanwhile, online communities can play a crucial role in helping MAPs to receive sound counseling and develop coping strategies....

Arriving at 'normalcy' will mean that MAPs no longer experience fear and shame but can 'live productively with these attractions in a healthy and law-abiding way.' The burden of stigma will to some extent be relieved by their own self-acceptance and their ability to be open with friends and family. Referring to data from the survey of MAPs conducted by B4U-ACT in 2011, the authors conclude that 'a focus on mental health treatment, shame reduction, and psychological wellbeing' will not only be more in accord with the self-identified goals of MAPs but will also be the best support for helping them lead fulfilling and productive lives.

[pp. 21-22:] While the authors' humanistic approach is to be commended, we offer two caveats. First, even though they criticize traditional forensic approaches and make use of established non-forensic therapeutic approaches that address similar needs among other marginalized populations, their framework is still adapted from a forensic one and framed in the article primarily as an abuse-prevention strategy. As a result, without extreme care taken by its developers and users, and without feedback from MAPs, the framework (or its implementation by clinicians) could still contain harmful or needlessly stigmatizing elements. This is particularly true when those MAPs receiving assistance are not at risk of harming children, or when clinicians are not aware of the subtle but powerful ways in which MAPs can be stigmatized by emphasizing abuse prevention.

One of the many strengths of this paper is that it construes 'MAP normalcy' as a fully integrated, egosyntonic MAP sexual identity, rather than as the repression of their sexuality and/or the illusory attainment of a normative (i.e., teleiophilic) sexual attraction.

Secondly, although the article condemns the social stigma against MAPs, it still leaves the impression that the main burden should be on the individual rather than on society itself. Its frequent use of terms such as 'self-identity,' 'self-esteem,' 'self-acceptance,' 'self-concept,' 'self-control,' and 'self-stigmatization' may cater to the preconceptions of the therapists whom the article rightfully criticizes as woefully unprepared to help MAPs. True improvement of MAP mental health requires that the larger society accept MAPs as fully human and undeserving of stigma."

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## B4QR Review

### When Virtuous Pedophiles Meet Online

**B4QR Review:** *Nielsen, M.H., Aaskov, L., & Larsen, J.E., "When Virtuous Paedophiles*

Meet Online: A Sociological Study of a Paedophile Community." (*Sexualities: https://doi.org/10.1177/2F1363460720979306* [2020]), *B4U-ACT Quarterly Review*, Vol. 1, No. 2 (Spring 2021), pp. 17-18.

**Review Excerpts:** [p. 17:] "This article examines the online forum Virtuous Pedophiles (VP) and the support it provides for minor-attracted persons (MAPs) who participate in it. It evaluates the forum as positive overall in the help it offers its participants, contrasting it with other online forums that do not encourage MAPs to be 'virtuous.' The authors express the view that greater public knowledge of the VP forum would help to eliminate much of the stigma that now surrounds the figure of the MAP...."



Briefly reviewing the findings of nine previous studies on online forums, the article points out the differences between forums that are virtuous (those who oppose changes to sex laws) and those that are not (commonly referred to as 'pro-contact'). It points out that almost all the forums discuss the many difficulties MAPs face in understanding their attraction and struggling to manage it. Many MAPs are reported to suffer 'hope deprivation' and to feel overwhelmed by the stigma imposed by society even when they have absolutely no intention of acting illegally.

The article introduces a bit of confusion in contrasting what it calls the 'pedophile character' with the 'virtuous pedophile character.' Although at the start of the article the authors use the expression 'public pedophile character' to indicate the distorted view that most people have of MAPs, the modifier 'public' is dropped in the rest of the article. It would have been better to use the modifier throughout to make it clear that what pedophiles are struggling with is not pedophilia in itself but the negative image of it that prevails in the public mind.

[p. 18:] "...The authors found that the VPs insist on distancing themselves from 'pro-contact pedophiles,' whom they consider to be irresponsible and immoral. The VPs also express negative feelings toward 'non-pedophiles' and blame them for the opprobrium that is unjustly heaped upon MAPs."

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## the Legal Pad

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