the Legal Pad

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"I am not here to defend civil commitment [of sexual offenders], 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." – Jannine M. Hebert, MSOP Executive Clinical Director, Symposium on Sex Offender Civil Commitment, Metropolitan State University, April 2023.

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— & Much More in the Pipeline!

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Ten Years Ago, David S. Prescott Said It's "Time for Professionals to Speak Up" to End Post-Imprisonment Civil Detention of Sex Offenders.

How About Now?

David S. Prescott, "As Courts Censure Civil Detention Practices, Is It Time for Professionals to Speak Up?", Forensic Psychologist (Sept. 14, 2015), http://forensicpsychologist.blogspot.com/2015/09/as-courts-censure-civil-detention.html.

Text excerpts: "As in the Minnesota case [*Karsjens v. Jesson*, 109 F. Supp. 3d 1139, 1165 (D. Minn. 2015), rev'd and remanded sub nom., *Karsjens v. Piper* (*Karsjens I*), 845 F.3d 394 (8th Cir. 2017), decided [by the District Court in 2015, but reversed by the federal Court of Appeals], the Missouri case [U.S. District Court, Eastern Dist., MO, Eastern Div., Case No. 4:09cv00971 AGF, 2015, *Van Orden et al. v. Schafer et al.*, 129 F. Supp. 3d 839; 2015 US Dist LEXIS 121175 (Sept. 11, 2015); withdrawn in light of *Karsjens I* opinion of the 8th Circuit (2017, *supra*, & claims dismissed: *Van Orden et al. v. Stringer et al.*, 262 F. Supp. 3d 887; 2017 US Dist LEXIS 104136 (E.D. MO, Eastern Div., July 6, 2017)], involved a treatment program in operation for many years (roughly 15 in Missouri's case and 20 in Minnesota's) from which few have been released and no one has ever been fully discharged. On one hand it is clear that some people who are civilly committed are truly dangerous; I have worked with men who openly vow to re-offend. On the other hand, **no bona form of treatment takes a minimum of 15 years to complete**. Add to this a political climate that is at best unconducive to genuine rehabilitation, and the die for these court decisions was cast long, long ago.

For all of our profession's advances in assessment and treatment, we seem to be producing no improved outcomes whatsoever in the civil commitment arena. ...In a nation in which 'Blackstone's Formulation' – 'It is better that ten guilty persons escape than that one innocent suffer' – is taught in schools as a fundamental principle of justice, the practice of holding thousands of people indefinitely beyond the expiration of their criminal sentences ought to give anyone pause. In fact, the principle behind Blackstone's Formulation goes back to antiquity. For example, in the Bible, Genesis 18:23-24 quotes Abraham as asking, 'Will you sweep away the righteous with the wicked? What if there are fifty righteous people in the city? Will you really sweep it away and not spare the place for the sake of the fifty righteous people in it?' What are the implications for civil commitment?....

Sadly, the people working at the front lines are often directed by policy and supervisors not to openly discuss these issues. In my experience, some people care more deeply than others about balancing the rights and welfare of the community with the principle of beneficence toward clients in treatment. There is no question that there are good people at the front lines trying to do the right thing and wrestling with deeply personal questions about the way forward. Still, given that two exercises of civil commitment statutes have been deemed unconstitutional, — and in the eyes of many that is another way of saying fundamentally un-American – questions emerge for all practitioners.

At what point do professionals in these settings openly acknowledge to them/ourselves that we are participating in systems that are openly unconstitutional and therefore unlawful according to the standards on which much of the Western world [agrees]?....

With that in mind, professionals might also want to ask at what point we are violating basic human rights when we render 'treatment' that no one can ever complete?...

As a profession, we have the research, the tools, and the templates to provide prompt and adequate treatment and to reduce the harm of sexual abuse, and yet we find ourselves in political climates where we cannot use them. At what point do we as individual professionals, or as professional organizations, take a stand against practices that are clearly not working to anyone's long-term benefit?....

Personally, my belief is that we all need to talk about these issues much more than we do. Legal actions and journal articles are one matter, public dialog is something else. Critical self-examination takes courage. Perhaps it starts with all of us when we say to ourselves: All sexual abuse is unacceptable, but I will not violate the rights of others in the name of reducing harm. It is time to take a stand for the rights of *all* human beings."

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B4U-ACT – Decries Injustice of MAP SOCC

B4U-ACT, Injustices Facing Minor-Attracted People and Those Who Support Them in the Mental Health Community, https://www.b4uact.org/wp=content/uploads/2025/04/Report-On-Injustices [etc.] (retrieved August 2025).

Text Excerpt: [p. 10:] "**Harmful or Unjust Forensic Treatments**: Within the criminal legal system, MAPs suspected or convicted of violating the law are subjected to adversarial and anti-therapeutic methods that focus on behavior control to the detriment of mental health, such as polygraphy, extreme confession, and castigation for acts, thoughts, and feelings (Spencer, 2009).

Forensic treatment requires MAPs to express guilt and shame for having the thoughts and feelings that result from their age orientation. If they don't repudiate these feelings, they are considered to be a continuing 'risk' (Levine, 2002; Worrell, 2000).

MAPs also face behavioral risk assessments based on their immutable sexual feelings, degrading and arguably sexually abusive practices to measure and control those feelings (plethysmography and aversive conditioning), and unconstitutional indefinite confinement through 'civil commitment.'

Such confinement is at least partly conditioned on elimination of their attraction to minors, which usually results in life-time confinement, irrespective of their actual behavior or intent."

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SOCC 'Sexual History' Interrogation & Polygraph Exam Is Self-Incrimination. (Part 2)

Shelby Jones, "Sex Offender Prison Treatment Programs: Outdated Science Masquerading as a Legitimate Penological Objective," 13(2) *Penn St. J.L. & Int'l Aff.* 229 (2025).

"B. A Legitimate Penological Objective?

A legitimate penological objective is an important concept at play in the *McKune* decision....

[p. 253:] In *McKune*, the Court stated that the legitimate penological objective at issue is the rehabilitation of the offender inmate and the promotion of public safety.[149] Applied, it is clear that the mandated sexual autobiography serves no legitimate penological objective. For the first factor, there is no longer a valid rational connection between the mandated disclosures and rehabilitation. As is discussed later in this section, the practices of other countries that do not require disclosure render lower recidivism rates rather than the claimed 80% recidivism rate cited in *McKune*. This proves that rehabilitation is not contingent on inmates taking full responsibility for their actions in the form of potentially incriminating themselves via sexual autobiography. Therefore, there is no valid rational connection between the prison regulation and the legitimate governmental interest put forward to justify it.

There are also no alternative means of exercising the right that remains open to inmates because, as shown in *McKune*, an inmate faces punishment if he or she refuses to comply with the requirement.[150]

[p. 254:] Additionally, if the current practices require more prison resources than if the practice was abandoned. Per Part II of this comment, the process of obtaining the sexual autobiography requires time on behalf of the program administrator. That person has to conduct

(Continued on page 2)

steps to verify the information, such as self-research and using a polygraph examination. These steps take time which translates to costs related to employee salaries and the costs of performing the polygraph testing. If the treatment programs stopped this process, the resources currently tied up in administering the program could be spent elsewhere to achieve other more legitimate penological objectives.

Finally, ready alternatives that would be a *de minimis* cost to legitimate prison objectives exist and would ultimately offer alternatives for violating an inmate's Fifth Amendment rights. The legal system could repudiate the practice altogether and implement more current treatment techniques to fulfill the rehabilitative purpose of the legitimate penological objective. But, if the legal system does not want to abandon the process entirely, it could offer immunity for offender inmates so there would be no barriers to obtaining all relevant information. In 2021, the average sentence for sexual abuse offenders in the United States was 211 months or roughly 18 years.[151] Adding another 18-year sentence based upon information obtained from a sexual autobiography would just keep the inmate in prison longer rather than prioritizing the rehabilitation of the inmate.

[pp. 254-55:] Based upon this analysis, the mandated sexual autobiography does not serve as a legitimate penological objective. In the *McKune* plurality, the Court points to a 1991 study with two relevant findings supporting is finding that it serves as a legitimate penological objective.[152] The first is that denying responsibility for crimes is a primary obstacle hindering the effectiveness of therapy.[153] Second, in order for therapists to best determine which tactics to use in use in therapy, they must have an accurate understanding of the offenders' past sexual interactions and triggers, which can ultimately only be provided by the offender.[154] These findings are part of the reason why the required autobiographies are included in prison treatment programs.[155]

Yet, much like the 80% recidivism statistic mentioned in the previous section, these findings are based on an outdated study. At the time of the study, it was not certain that treatment positively affected recidivism.[156] Over the past 30 years, there have been other studies that show that treatment does indeed positively reduce the chances of recidivism.[157] There has also been much research on the biological reasons for sex offenders and what efforts are appropriate in treating this population. For example, psychoeducation has been discovered to be an effective tool in sex offender treatment programs.[158] This could be an excellent example of a ready alternative to the regulation that would accommodate the prisoner's rights at *de minimis* cost to valid penological interests. Applied to the offender treatments, psychoeducation can include the topics of 'anger management, sex roles, positive social sexuality, vocational training, sex education, social skills training, and job seeking skills.'[159]

[pp. 256-57:] In review of the descriptions of sex offender prison treatment programs in the United States, there is no mention of psychoeducation. It is time that this is integrated into the treatment programs in [place] of the unconstitutional practice of requiring sexual autobiographies. Psychoeducation would serve the same legitimate penological objective as the Court claims that sexual autobiography does: rehabilitation. Yet psychoeducation would not infringe on participants' rights in the way that the sexual autobiography does. It would not require an inmate to self-incriminate. Rather, it would develop life skills that further rehabilitate and help to ease the transition from incarceration to reentry into society, thus bolstering the true legitimate penological interest.

Another possible ready alternative to mandatory sexual autobiographies is the Good Lives Model (GLM).[160] The GLM is a comprehensive approach that focuses on both the individual as well as the committed offense to rehabilitate sex offenders.[161] The GLM aims to empower individuals with a history of offending by providing them with the abilities, knowledge, and skills to attain well-being through socially acceptable means.[162] This includes addressing shortcomings in their life plans and targeting ways to minimize the likelihood of reoffending.[163] The underlying assumption of this treatment is that those who have a history of sexual offenses do not possess the required strategies for attaining desirable outcomes such as success in romantic relationships, professional progression, hobbies, and overall happiness.[164] The GLM provides strategies needed to help achieve these outcomes.[165] This model seems to have a very different tenor than that of the rigid and penal-focused prison treatment programs.

[pp. 257-58:] Additionally, participants and clinicians have been proven to prefer group treatment programs.[166] While the United States' prison treatment programs utilize group treatment on both the federal and state levels, the ultimate goal of these programs is punishment and acknowledgement of wrongs committed.[167] As stated in *McKune*, 'acceptance of responsibility in turn demonstrates that an offender "is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary."'[168] This statement is enlightening for a number of reasons.

[NOTE: MSOP has a massive problem with resource scarcity already as to treatment. That is to say, only a minority of treatment participants are being offered even just one psychoeducational modules being offered and there is only one treatment group meeting per week, all due to a shortage of therapists.]

The first part that is particularly noteworthy is the focus on shortening the period of time that the offender inmate is in treatment. Resource scarcity is something to consider, but it should not be the focus of the treatment program. The focus should be rehabilitation.... The other penological objective the Court puts forward is the protection of the public from sex offenders.[169] Providing a haphazard treatment program that focuses on shame and punishment rather than encouragement will not protect the public.[170] If anything, it would endanger the public because the offender would not be completely rehabilitated and possibly recidivate. This would result in a high cost to both the offender inmate and the public. The offender is subjected to a Constitutional infringement without having the benefit of being rehabilitated, which then puts the public at risk. Further, in the context of the post-prison release setting for offenders, one study showed that the strict reporting requirements for sex offenders actually increase the risk of recidivism because of the difficulties offenders face in searching for and maintaining employment, procuring housing, and finding acceptance in their communities after they are burdened with the label of 'sex offender.'[171] It becomes a repetitive cycle of negative outcomes for this population that is difficult to break free from.

The other part that distinguishes itself is accepting responsibility for the crime committed. In the new research and studies referenced in this comment, none mention the acceptance of past acts acting as the gatekeeper to rehabilitation. Additionally, as explained above, it has been established that there are fraught connections between actual scientific findings and the information published in *McKune*. Therefore, it is hard to find a justification for continuing to require mandated disclosure of sexual autobiographies in prison sex offender treatment programs in light of what is now known about effective treatment techniques. Not only is it not scientifically established to affect rehabilitation, but the required disclosures of these autobiographies violate one's Fifth Amendment right to protection against self-incrimination.

C. Disparate Treatment Among State Prison Systems

[pp. 258-59:] As mentioned above, one of the consequences of a plurality opinion is that the law presented does not serve as a binding precedent for other courts to follow.[172] Therefore, Justice Kennedy's plurality opinion in *McKune* offers little to no legal guidance or clarity for lower courts to follow. In fact, most courts cite Justice O'Connor's concurring opinion,[173] but some courts follow the plurality.[174]

For example, the Ninth Circuit Court of Appeals, relying on Justice O'Connor's concurrence in *McKune*, found that 'the threat of longer incarceration via a loss of parole eligibility amounted to compulsion' in the face of Fifth Amendment violations.[175] The court reasoned that:

> Justice O'Connor made it clear in her *McKune* concurrence that she would not have found a penalty of 'longer incarceration' such as that here to be constitutionally permissible. The strength of Justice O'Connor's opinion as precedent is reinforced because it seems certain that the four dissenters in *McKune*, who argued that a loss of discretionary privileges and a transfer to less desirable living quarters under similar circumstances were sufficiently compulsive to violate Lile's privilege, would find a Fifth Amendment violation where the district court revoked Antelope's conditional liberty and sentenced him to an additional ten months in prison.[176]

This reasoning suggests that Justice O'Connor's opinion is precedent because her opinion would align with the four dissenting judges in the context of the *Antelope* case, yielding a majority. This simply illustrates how ineffectual the plurality ruling of McKune is. This court is making assumptions based on what it thinks would be appropriate and using context clues from all three opinions to piece together a legal precedent. It would be much better for there to be a majority opinion where the process for what is appropriate for disclosing autobiographies in these types of situations is clearly laid out. The Supreme Court should revisit this ruling or create a new precedent based on more current research on sex offender recidivism rates. This would likely result in the elimination of the required disclosure of sexual autobiographies and eradicate the Constitutional issues facing this population.

[p. 260:] This reasoning also emphasizes that at least in the Ninth Circuit Court's perspective, an extension of a prison sentence amounts to compulsion and is automatically a Fifth Amendment violation. This is the only concrete line drawn by *McKune*, that someone would have to be facing a longer prison sentence to amount to compulsion worthy of a Fifth Amendment violation.

Meanwhile, courts in Colorado appear to be well entrenched in the ruling of the plurality in *McKune*. In *Neilsen v. McElderry*, for example, a Colorado District Court asserted that 'there is nothing inherently unconstitutional about requiring a sex offender to participate in sex offender treatment to become eligible for or to maintain parole.'[177] This statement on its face is correct; there is nothing in the Constitution that prohibits the government from requiring an offender inmate to participate in sex offender treatment. However, this changes when the treatment programs require the participants to put themselves in a situation where they must self-incriminate. *That* is inherently unconstitutional. Other cases in Colorado also held that that the denial of earned good time credits to an inmate for refusing to admit that he or she committed a sex offense did not violate his or her Fifth Amendment right,[178] and that the denial of eligibility for good time credits to an inmate who refused to divulge his or her sexual history as required by a sex offender treatment program did not amount to unconstitutional compulsion.[179]

This lack of clarity can lead to confusion and the disparate treatment of sex offenders from state to state. ...In our complex legal and prison system, there will be divergent approaches to criminal law because of the differences in state priorities and the use of common law versus the Model Penal Code. This comment does not advocate for standardizing all criminal law across the United States. Rather, this comment advo-

cates for the standardization of practices that affect Constitutional rights. It is improper for an offender inmate in one state to be treated differently than an offender inmate in a different state in terms of his or her ability to protect himself or herself from self-incrimination.

D. International Applications

[pp. 261-68:] [The author here discusses certain countries' ideology and approach to punishment and rehabilitation of offenders, noting that at least some countries use a "future-oriented approach that focuses on reducing recidivism, taking responsibility, and preparing for an effective reintegration into society.[183]"

In the countries examined, there is no particular focus on past crimes, nor is there in particular any requirement to divulge past crimes that would expose one to retrograde prosecution for hitherto unknown offenses in the past. Specifically, the author makes the following observations about Norway's successful approach to crime, punishment, and rehabilitation:]

[p. 261-62:] "...While the United States focuses on punishment and protecting the public,[181] the Norwegian Correctional Service focuses on rehabilitating the convicted person.[182] ...As of 2021, Norway had 'a prison population rate of only 54 per 100,000, relatively short sentences, and is said to have 'exceptional' prison conditions and penal practice compared to countries outside Scanduinavia.'[184] It is important to note that ...'recidivism numbers for those released from prison after serving a sex crime sentence are ...lower.'[185] Studies have ...shown that only about three percent of released sex offenders recidivate after a mean observation period of six years.[186] Comparing a recidivism rate of 3% in Norway to the claimed 80% by the United States court system, this indicates that the current approach in the United States is not working."

[However, that claimed 80% figure has been thoroughly debunked. Recent sex-offender recidivism rates found repeatedly by the Minnesota Department of Corrections have been very close to 3% as well. The issue is not whether U.S. correctional practices are working as to sex offenses in general, but whether there is any particular need to force sex-offender inmates to self-incriminate as the price of release (i.e., to avoid deliberate systemic delay of their release).]

[pp. 263-64:] "...While Norway does utilize some of the same treatments as the United States, such as group therapy where problems are discussed openly within the group,[200] inmates are not forced to self-incriminate themselves to take part in these helpful therapies. ...It appears that a focus on growth and reintegration into society positively impacts the recidivism rates, the ultimate fear of the plurality opinion in *McKune*. Overall, Norway's practices reveal that there is no legitimate penological objective to requiring disclosure."

[This article also examines sex offense correctional practices in Israel. However, the aspect of such practices concerning disclosure of past crime in treatment can be stated very tersely:]

[p. 264:] "...Israeli law does not require sex offenders to participate in mandated sex offender treatment in prison,105 so every inmate who participates in these programs in Israel has given informed consent to do so.[206] This is an extremely pivotal difference because the compulsion present in the United States prison system is not present at all in the Israeli prison system."

[Finally, this article also examines the Canadian correctional system in its treatment of sex offenders. At page 267, it very succinctly dispatches any notions of forced self-incrimination or any requirement to divulge a sexual autobiography:]

"A stark difference between the United States and Canada is the use of polygraph testing. Compared to the United States, where the polygraph test is structured into the treatment program, Canada does not utilize polygraph testing to monitor sex offenders' treatment progress.[223] But even more pivotal, Canada has no requirement that sex offender participants provide a complete sexual autobiography in order to participate in treatment.[224]"

[p. 268:] Ultimately, the international exploration of sex offender treatment programs illustrates that there is no legitimate penological objectives in requiring a sexual autobiography. As mentioned in Part II, the court justified the disclosure of sexual autobiographies under the lens of fulfilling the legitimate penological objective of rehabilitating the inmate and protecting the public.[227] The only legitimate penological objective this requirement fulfills is punishment, but the offender is already serving his punishment in the form of a prison sentence. Thus, the mandatory autobiography requirements violate an offender's Fifth Amendment rights and should be eradicated.

[pp. 268-69: **CONCLUSION**

In the wise words of Justice O'Connor, 'prison walls do not form a barrier separating prison inmates from the protections of the Constitution.'[228] Nor should a required prison treatment program form a barrier to the protection of the Constitution. The United States practice of requiring mandatory sexual autobiographies for sex offender inmates to participate in sex offender prison treatment programs should be barred. This is an unconstitutional act against the offender inmate because of the ability for this information to be used against him or her in court. The purported legitimate penological objective of this requirement is not a strong enough argument to justify this infringement upon a sex offender's right. Its stated legitimate penological objective of rehabilitation of the inmate is simply a mask for justifying further punishment of these individuals. This cannot be allowed.

'That was his right because he was an American citizen, because he was a human being. As such he was entitled to all the respect and fair treatment that befits the dignity of [humanity], a dignity that is recognized and guaranteed by the Constitution.'[229]

This comment advocates for disposing of this cruel requirement by finding it unconstitutional. There is no reasonable explanation for why this practice endures other than the fact that it is an under-explored area of our criminal legal system. With the new research and information that is available pertaining to the effectiveness of cognitive therapy for reducing rates of recidivism, the U.S. legal system no longer needs to rely on outdated and inaccurate information, especially information that results in a Constitutional violation for a subset of the population. The court system should mandate that the U.S. prison system stop enforcing the requirement of providing a complete sexual autobiography for sex offender inmates to participate in prison sex offender prison treatment programs. The excuse of legitimate penological objective can no longer be accepted as the justification for this unconstitutional behavior against sex offender inmates. Offender inmates are already paying the price for their crimes, and the current practice of mandated disclosure rises to the level of injustice."

Notes to Part 2:

149 *McKune*, 536 U.S. at 34.

150 *Id.*

151 Quick Facts – Sexual Abuse Offenders, U.S. Sentencing Commission.

152 *McKune*, 536 U.S. at 34.

153 *McKune*, 536 U.S. at 33; *H. Barbaree*, Denial and Minimization among Sex Offenders: Assessment and Treatment Outcome, 3 *Forum on Correct1ions Research*, No. 4, 30 (1991)..

154 *McKune*, 536 U.S. at 33.; see *Barbaree, supra* note 153.

155 *Werth, supra* note 1387

156 *Hanson et al., supra* note 121.

157 *Id.* ("The largest review is the meta-analysis conducted by Losel and Schmucker (2005; Schmucker & Losel, 2008), who combined 69 studies to compare the recidivism rates of 9, 512 treated sexual offenders to 12,669 untreated sexual offenders. They concluded that there was a positive treatment effect on sexual and other recidivism and that cognitive-behavioral programs were more effective than other psychosocial approaches.")

158 *Rozenberg & David Potik, supra* note 2 (The definition of psychoeducation is an intervention with systematic , structured , and didactic knowledge transfer for an illness and its treatment, integrating emotional and motivational aspects to enable patients to cope with the illness and to improve its treatment adherence and efficacy.")

159 *Id.*

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

165 *Id.*

166 *Id.*

167 *Hanson et al., supra* note 121.

168 *McKune v. Lile*, 536 U.S. 24, 36-37 (2002).

169 *Id.*, at 24,

170 *Jean Proulx, Franca Cortoni, Leam A. Craig, & Elizabeth J. Letourneau, The Wiley Handbook of What Works with Sexual Offenders: Contemporary Perspectives in Theory, Assessment, Treatment, and Prevention* 413 (John Wiley & Sons, Inc. 2020).

171 *Does et al. v. Snyder et al. supra* note 143; see *J.J. Prescott & Jonah E. Rockoff*, "Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?, 54 *J. L. & Econ.* 161 (2011).

172 *Comm. v. Brown, supra* note 112.

173 *Doe v. Heil, supra* note 115; *Antelope, supra* note 118.

174 *Smith v. Doe*, 538 U.S. 84 (2003), *Conn. Dept. of Public Safety v. Doe*, 528 U.S. 1 (2003). *United States v. Rogers*. 988 F.3d 106 (1st Cir. 2021), etc.

175 *Antelope*, 395 F.3d at 1128.

176 Id. at 1138.

177 *Nielsen v. McElderry*, 2019 U.S. Dist. LEXIS 132484, 26 (D. Colo. 2019).

178 *Wirsching supra* note 117 , at 1204-04.

179 *Searcy v. Simmons*, 299 F.3d 1220, 1227-28 (10th Cir. 2002)

183 Operational Strategy for the Norwegian Correctional Service (2021-2026), Kriminalomsorgen, https://img3custompublish.com/getfile.php/4888894.823.ijuubwissujnwu/KDI_strategibrosjyre_TRYKK_FINAL2_Engelsk.pdf?return=www.kriminalomsorgen.no (last visited Feb. 1, 2024).

181 *Hill v. Burke*, 422 F.2d 1195 (7th Cir. 1970)

182 Operational Strategy (etc.), *supra* note 183.Sandbukt,

184 *Ingeborg Jenssen Sandbukt*, "Reentry in Practice: Sexual Offending, Self-Narratives, and the Implications of Stigma in Norway," *Int'l J. of Offender Therapy and Compar. Criminology*, 2021 at 930.

185 *Id.*

186 Operational Strategy

200 *Elvira S. N. Cooper & Helge Holgersen*, "Treatment Experiences of Child Sexual Offenders in Norway: A Qualitative Study," *J. of Child Sexual Abuse* (2016).

206 *Moshe Birgir, Tal Bergman-Levy, & Oren Asman*, "Treatment of Sex Offenders in Israeli Prison Settings," *The J. of the Am. Acad. Of Psychiatry and the L.* (Feb. 2011), https://jaapl.org/content/39/1/100#xref-ref-3-1.

223 Current Practices in Canadian Sexual Abuser Treatment Programs: The Safer Society 2009 Survey, *Gov't of Canada*, https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2010-02/sss/index-en.aspx (last visited Feb. 4, 2024).

224 *Id.*

227 *McKune v. Lile*, 536 U.S. 24 (2002).

228 *Turner v. Safley*, 482 U.S. 78, 84 (1987).

229 *Screws v. United States*, 325 U.S. 91, 134-35 (1945) (Murphy, J. dissenting).

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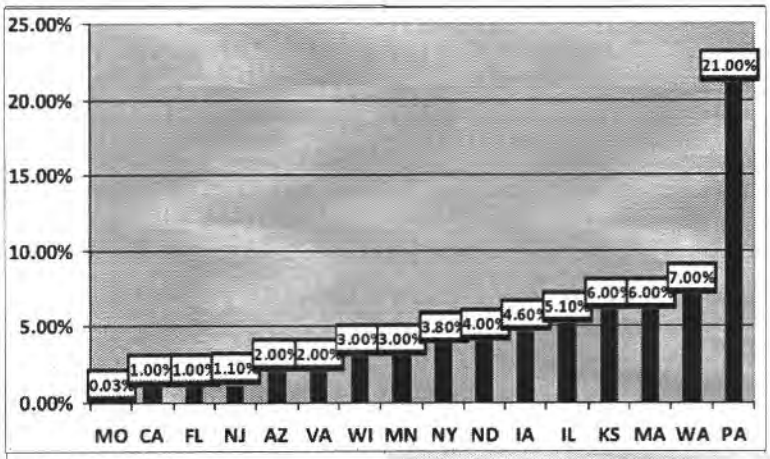
SOCCPN 2025 Report Excerpts - Part 3

[p. 38:] Gender Diversity

- Female Clients

Four programs currently have individuals identified as female at birth who are

(Continued on page 4)



Conditional Release Clients			
Program	Current # CR	# Pending Placement	Wait Time for Placement
Arizona	1	unknown	Unknown
California	22	21	769
Illinois	115	0	≤60
Iowa	10	0	Unknown
Kansas	7	0	n/a
Missouri	13	5	1365
Minnesota	65	2	58
New Jersey	82	0	180
New York	116	4	Unknown
North Dakota	0	0	n/a
Pennsylvania	2	0	40
Virginia	262	Unknown	Unknown
Washington	50	7	Unknown
Wisconsin	65	7	710

civilly committed:

- California
- Illinois
- Minnesota
- Virginia

Of the four programs, only Illinois has more than 2 females at birth in their program (23).

[p. 39:] Percentage of Gender Diverse Clients

16 programs reported currently having gender diverse residents:

[Editor's Note: The report does not explain Pennsylvania as the sole outlier on this.]

[p. 44:] Current Trends: [Each SOCC system was asked if items below had increased or decreased from last year:]

Item	Increased	Same	Decreased
Clinical staff vacancies	5	6	6
Non-clinical staff vacancies	2	5	10
Treatment hours	2	3	12
Programming hours/ opportunities	2	2	13
Staff morale	4	6	5
Client morale	3	3	9

[Editor's Note: Overall, these comparative numbers of systems generally reflect a worsening of matters in most SOCC systems from 2024 to 2025. This includes substantially larger senses of worsening as to non-clinical vacancies, treatment hours and other programming opportunity hours per week/month, and a pronounced sinking of client morale in most systems.]

[p. 51:] Conditional Release/Provisional Discharge

[p. 52:] Duration to Placement Total Ever CR (N=9):

What is the average number of days from approval for CR before they were placed in CR for all clients ever placed on CR?

Range: 1 day – 13 years

Median: 99 days

6 of 9 programs: less than one year

3 of 9 programs: more than one yea(See table this page, upper-right.)

[p. 53]: See pie charts, next column.

[p. 53:] Age of CR Clients

Average Age at Placement (N=11) % of Current Clients Up To Age 60 (N=12)

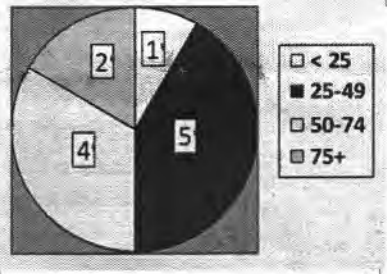
Range: 30-60 years old

Median: 54.04 years old

Mean: 51.4 years old

[See pie charts from page 53 on page 5, post.]

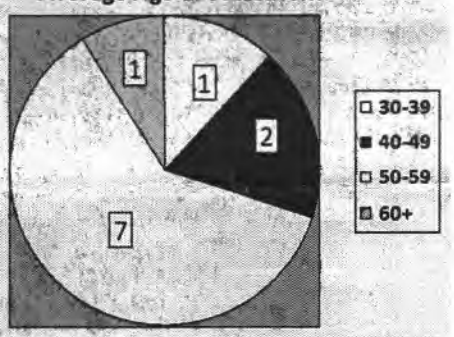
Percent Age 60+



[p. 55:] **CR Placements (N=14)**

Conditional Release Placements Include:	Yes	%
Legally mandated proximity restrictions (e.g., those with child offense cannot reside Within 2000 feet of schools).	12	86%
Required opportunity for public comment **before** placement	2	14%
Required community notification of placement **before** placement	5	36%
Required community notification of placement **after** placement	7	50%
Other: LE in placement jurisdiction determines community notification individually by Tier.	2	14%

Average Age at Placement



[p. 59:] **Static-99R**

What is the average Static-99R score for clients on CR? (N=10)

Range from 1.25 – 6.3

Median score is 4.7

Average score is 4.3

Static-99R scores into risk categories:

Score	Label for risk category
-3 – 1:	Low
2, 3:	Low-Moderate
4, 5:	Moderate-High
6 plus:	High

[See next page for more charts and tables and article end.]

[p. 62:] What percentage of all clients ever released to CR returned to the secure treatment facility or jail/ prison:

Outcome	Range Across Programs	Median Across Programs	Average
For technical violations? (N=10)	3% to 85%	22.7%	28.9%
As a result of non-sexual offense charges (N=11)	0%-26%	4.1%	6.28%
As a result of sexual charges? (N=12)	0% to 7.2%	0.95%	1.74%

[p. 61:] What percentage of all clients ever released to CR:

Outcome	Range Across Programs	Median Across Programs	Average
Remain on CR without returning to custody (N=12)	0% to 73%	20.75%	29.9%
Were unconditionally discharged without returning to custody (N=11)	10%-72%	33.3%	35.5%
Had at least one return custody period for violations (N=12)	16.8% to 85%	27.7%	33.5%
Died on CR (N=12)	0% to 17.8%	3.4%	4.7%

[p. 63:] **Client Placement on CR (N = 8)**

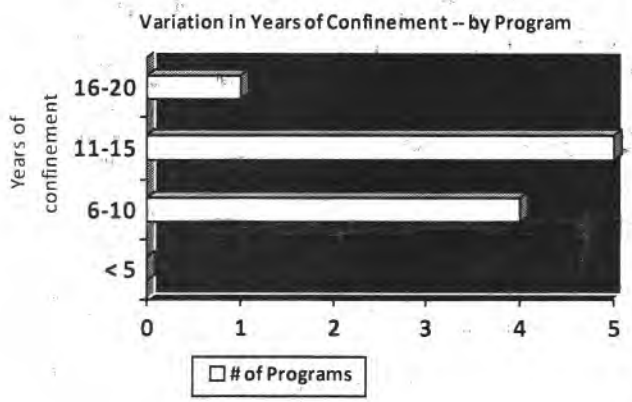
What kinds of NON-sexual offense charges have been filed, if any?

Failure to register
Tampering w/GPS; absconding; escape from custody
Theft of property/Petit larceny/shoplifting
DUI/Drugs
Homicide/Murder, unlawful imprisonment
Criminal mischief, public lewdness, fleeing officer
Possession of unregistered phone and social media accounts
Assault, Aggravated Harassment, Menacing, Weapons
Promoting prison contraband

[p. 66:] **CR – Removal of Conditions**

What is the average length of stay in the inpatient program prior to clients being released on CR in the community? (N=10)

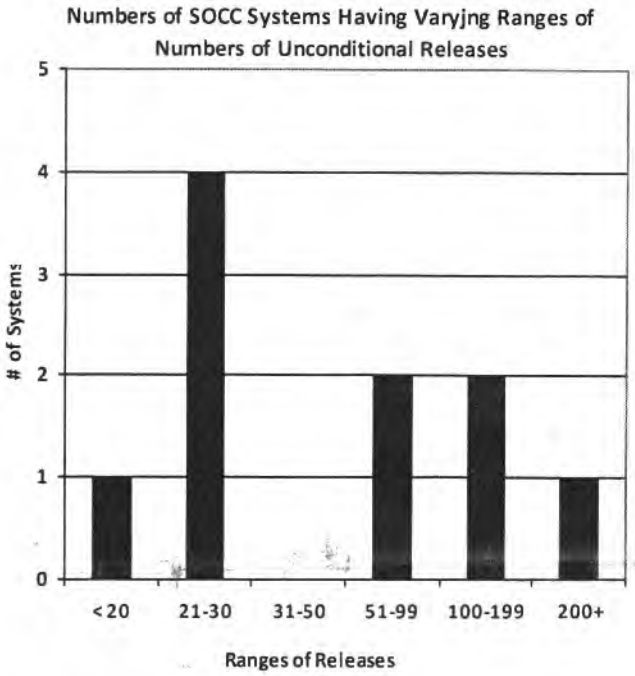
Range: 5.8 years to 17.5 years
Median: 11.3 years
Average: 11.24 years



[p. 67:] **Unconditional Discharge**

Of all clients ever placed on CR, how many have been unconditionally discharged? (N = 11)

Range: 20-266 clients
Median: 44.5 clients
Average 89.6 clients



[End of excerpts]

[See combined editorial comments after the next article below.

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MSOP Client Data , as of Oct. 15, 2025

Source: MSOP

Total clients in MSOP facilities (excluding those awaiting Provisional Discharge Placement, total): 758

In Moose Lake: 436

In St. Peter:

- secure perimeter: 195
- Community Preparation Services : 127

Discharged to date:

- Clients granted full discharge by Commitment Appeals Court: 34
- Clients on provisional discharge living in communities: 68
- Clients awaiting community placement post-grant of provisional discharge: < 10

Age Distribution among those confined:

Range of all confined clients: 20-91

Age ranges:	Number
18-25:	7
26-35:	53
36-45:	173
46-55:	183
56-65:	205
65-91:	137

Average age of all confined: 53 years

Race Distribution of confined clients:

Amer./Alaskan natives:	62
Asian/Pacific Islander:	<10
African American:	112
Multiracial	<10
White	519
Other/Unknown:	56

Education Distribution:

Elementary:	12
Some high school:	51
High school diploma:	326
GED:	227
Some college:	88
College degree:	32
Unknown:	9

Civil Commitment by County

Hennepin:	133
Ramsey:	78
Other five Twin Cities metro counties:	80
All non-metro counties:	467

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Combined Editorial Observations about 2025 SOCCPN & MSOP Data

MSOP headlines its assertion that 34 individuals have been fully discharged from their SOCC commitments in Minnesota. Yet, first bear in mind that this is over the 31+ years that MSOP has been in operation.

When contrasted with the number of those still held presently in MSOP confinement (758), plus those who are only on provisional discharge status (68, some for five years or more), and the 110 who have died in confinement after trying unsuccessfully to regain their freedom—some for two decades or more), and those 34 who made it all the way to the finish line, the total overall is 970 people.

Thus, the ratio of those living graduates from MSOP confinement and control is actually just 34/970 or 3.5% over that 31+ years of operation. That is a dismal failure – if the goal was to treat people efficiently

and to release them with no more delay than unavoidable.

There is a reasonable case to be made, however, that the goal was in fact instead always a political one of trying to retain in confinement the maximum percentage as to whom any plausible excuse to do so could be generated. The 110 who died while waiting for release would surely appear to support this alternative hypothesis.

Another fact that appears to lend support to this view is that the number of current confinees out of the 758 total who are ages 18-35 (the well-known peak for commission of sex crimes) is only 60 (7.9%).

Being generous to MSOP, we could, for sake of argument, allow ten years for a preceding sentence for that sex crime (most recent one, if more than one). This is a reasonable estimate of time-served given that most of those sentences were imposed decades ago, before the most radical phase of sentence inflation that has occurred most recently.

Being exceedingly generous to MSOP, we could then also allow an additional ten years for MSOP treatment before release (still an excessive length of time compared to treatment programs in most sex-offender treatment programs elsewhere).

Using the three figures of current confinees shown at left (60, plus 173 and 183, or a total of 416 for all those up through age 55 now confined), we might extravagantly say that this is the outer-most end of reasonable confinement in MSOP. This would be true even if no other compounding facts are considered involving the MSOP "Matrix" treatment modality (unaccepted anywhere else) or other practices in MSOP that introduce additional delay of release.

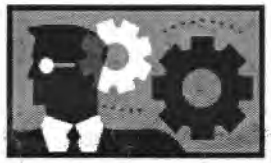
Numerically, this leaves 342 MSOP confinees (those now ages 56 through 91). With the exception of the relatively small number who may have committed a sex crime after age 35, this leaves a much larger number (whose crimes were committed at any age) who now remain confined after at least 15 years of confinement so far. Indeed, this period often extends significantly longer (most notably, especially as to those now in their senior years).

This is not a portrait of a treatment system working diligently to complete a necessary task and to release treatment graduates. (In fact, MSOP never graduates any of its confinees, and indeed, it almost always opposes release when confinees petition the release tribunal.) It is a system groping for any excuse to seemingly justify further confinement, and each time any confinee petitions for release again, it will trot out those same old excuses, and even add some new ones — as if the confinee is getting worse, not better over the years.

Separately, after claiming for years that very few of its confinees have so much as a GED, MSOP now concedes that only 63 out of that 758 total confined do not already possess either a GED (227 do) or a high school diploma (326 do) although without further post-secondary education. Further in fact, an additional 120 have a college degree or at least some college. Laying a charge, as MSOP has sometimes implied, that most MSOP confinees are cognitively impaired or just plain dumb, could not be farther from the truth.

When there were far more MSOP therapists than presently, there also were more teachers in MSOP, apparently on the claim that many of those with such high-school completion or equivalency had forgotten so much of their education that they could not pass 10th-grade standards tests as to simple English skills and/or mathematics skills. This claim was based on the "PIAT" test — widely rejected among educators as skewed toward minimizing scores.

This claim further appears dubious, since confinees appear not to have had any difficulties answering written questions or performing calculations required in jobs such as in the Industry area of vocational education.



Since education has been counted by MSOP as part of its provision of treatment, this served a function of increasing the apparent amount of treatment ongoing in MSOP. However, now MSOP has found it very difficult to hire and to retain therapists, sharply limiting the number of treatment hours per week to just two, plus a single staff-assigned module for a small number of selected confinees (1.5 extra hours). In light of this change of circumstances, the MSOP requirement to participate in such remedial education for those found to be in need of it has not been enforced as a precondition to being hired for jobs.

Finally, it is worth noting even though not a matter internal to MSOP, that 55% of the state's population (per the 2020 census) lived in the 7-county metro area. Hence, out of the 758 confinees, it could be expected that 417 would have come from that metropolitan area of Minneapolis-St. Paul and surrounding five additional counties.

However, in fact, only 291 (38%) came from that area. The other 467 confinees (62%) came from elsewhere in the state. This would seem to suggest that outstate areas differentially use SOCC more often, although the difference in motivation is not known to this writer.

Turning to the SOCCPN 2025 Report, first, the table at the foot of page 4 reveals that the reduction in available treatment hours and other opportunities for treatment participation and congruently in client morale is widely experienced in other SOCC facilities, just as in MSOP.

With regard to "Conditional Release" (Provisional Discharge in MSOP, also a table on page 4), the number of clients on that status vary widely from one system to another, and not typically congruently to the number of clients in the system overall or in confinement specifically.

Notable on this point is California, for instance, which, despite its confined population centering on 1,000, has only a very small number (22) on Conditional Release ("CR"), with one of the longest times listed to achieve placement onto CR. This is largely due to the practice of California courts to withhold a judgment of commitment for years after the commitment hearing, hoping that the confined person can advance through treatment to the point of CR before having to find that person subject to commitment.

At the ether extreme, Kansas has almost never released anyone and likewise has not ended almost any commitments, explaining the lack of significant numbers in that table.

Somewhere between, Virginia's SOCC size is seemingly belied by the fact that it lists 262 in confinement, but failing to mention that approximately 560 more are on CR in that state — mostly reflecting a policy choice of the heads of that state's SOCC system. Yet very few have been given full discharge of their commitments.

As the reader may recall, Static-99R scores are based on personal history and hence are almost completely inflexible once calculated for the rest of the offender's life. Hence, it should not surprise that Static-99R scores remain high at time of release; their unchangeability means they have no discerning predictive power of use at time of release.

Static scores (cited on the right side of page 4) have always had numerous problems that greatly reduce, if not entirely negate any meaning as to future recidivism probability. With the change in management of the Static organization (now privatized and renamed -"SAARNA"), these problems have largely remained in place or have been worsened by various sampling and scoring changes. Overall, Static has become an icon representing the lack of valid, reliable science in attempts to predict one's likelihood of recidivating at any later point in time.

Finally at lower-right on page 4, twelve respondng systems gave an average of 86% of those systems having substantial limitations on where one can reside ("proximity restrictions") after release to CR.

The two pie charts at page 5, upper-left attempt to provide data regarding the relationship of age as to those in confinement and those at time of release to CR, respectively. However, because the structure of the data presented, these two charts are not parallel and lack narrative clarity as well, rendering these portrayals uncertain in meaning and therefore useless.

The two tables immediately below those charts point up a somewhat startling fact: fully one-third of those released to CR experienced revocation of that release However, the good news is that less than 2% of these were caused by sexual misconduct charges., and only about 6.5% were for non-sexual offense charges.

In both cases, it is useful to bear in mind that charges do not equate to convictions; hence, the percentage of such convictions is likely to be significantly less than these already low charge figures. All of the rest were merely technical violations of rules of release.

Given that those under SOCC are regarded as the 'worst of the worst,' it is very reassuring that only such modest re-offense figures resulted from these CR experiences. In fact, these numbers are just as low, if not lower, than the experience of releasees directly from prison without SOCC. However, to be clear: Because these rates of reoffense are essentially identical to the prison-release rates, both the need for, and the utility of SOCC is severely impeached by this equality. This is the chief takeaway from the 2025 SOCCPN report, and it confirms independent research, some of which this newsletter has already reported. At the very least, it calls into profoundly serious question whether, instead of SOCC, there are other protocols for treating and managing sex offenders that are far more effective than SOCC, far less expensive, and unquestionably less life-depriving for those committed than SOCC has been. In this last connection, see the survey question and responses at page 62 of the SOCCPN 2025 Report, repeated *supra* at page 5, right column, top box, second question, inquiring about the average length of confinement before release to CR among the ten systems responding (11.24 years). Any treatment program requiring such toxic length to complete is unethical *ipso facto*.

It is almost equally appalling that, of eleven responding states, the median number of individuals ever released from commitment unconditionally (altogether) over all years of operation of such systems, most of which have been in existence since the millennium, if not before, is only 44. Only three of these eleven systems ever ended the commitments of 100 or more clients. This suggests that the total of these responding states is only roughly 500 to date in the aggregate. In that time, and currently, there have been (and by far, mostly still are) roughly 7,000 confinees. Even if this is just the product of unintentional failure, it is unconscionable and in need of termination — now.

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Levenson on Needs & Preferences of Clients of Mandated SO Treatment (Part 2)

Jill S. Levenson et al., "Learning from Consumers of Mandated Sex-Offending Programs: 'It's Not Treatment, I Wish It Was.'" 0(0) *Sexual Abuse* slip pp. 1-30 (2023).

[Part 2:]

"Qualifications of the providers

...One participant expressed dismay, saying that 'the SOTP "therapist" has a master's in Anthropology! She had zero ethics, had no idea what she was doing.' Another simply declared 'They need more training.'

[p. 14:] *Unscientific interventions and structural program barriers.*

Many participants encountered what they perceived as 'unscientific' or 'outdated' treatment methods, along with rigidly structured programming without individualization or a clear path to completion. For example, one respondent referred to what he called 'false science,' and another shared in detail his experience of a program that he believed 'held onto several archaic and untrue

(Continued on page 7)

positions very stubbornly .... they insisted the re-offense rate was nearly 99%.' He said that he brought in a Hanson et al. meta -analysis that showed a low recidivism rate and 'met with their disfavor... they were constantly telling me that all sex offenders were liars, were incapable of showing or feeling empathy, etc.' Others also commented that when they challenged providers, they were ignored or experienced negative consequences as a result. 'You basically had to go by her thought agenda, or you would get shut down, sometimes hard.'

Many respondents expressed distress at what they perceived to be intrusive questioning or 'invasive' practices: 'they force, under threat of revocation, one to undergo unscientific and torturous procedures' (referring to penile plethysmograph (PPG) and polygraph exams). One described his assessment:

> A negative experience was being forced to pull my pants down, have a device attached to my penis and to watch two hours-worth of nude and semi-nudes of children and adults to determine what my sex orientation was – very shameful experience.

Another described a similar incident: 'I will never forget having to take the computer test and look at pictures of children and rate their attractiveness. I cried for hours. My daughter was two at the time.' Said one more: 'I felt like I was living in the movie *Clockwork Orange*.' Polygraph exams also ignited much angst. Many expressed a fear of 'failing' even if they were being truthful. One narrative said, 'everything described or discussed in group would be handed to probation/parole and verified by a biased polygraph then used in revocation.' While a few comments described the positive experience of a polygraph being used for confirmation of low risk or treatment progress, many questioned its utility, and one said his 'therapist refused to believe my responses in session even though polygraph supported [it] all.'

[pp. 14-15:] A common complaint was a 'generic' or 'one size fits all' approach, pointing out that without individualized and explicit goals, the treatment was not a good fit or appropriate for their needs. Some observed a perceived lack of oversight over an 'ineffective curriculum' or 'no curriculum' by courts or state regulators. Programs were described as 'rudderless ...facilitator did not have clearly defined goals for session' and that there was 'no "path" for completion of treatment.' One person reported that it soon became clear that 'no one was graduating or completing the curriculum (no workbook, only weekly handouts to move from 'Weekly' to 'Monthly Individual' status.). Another explained: 'there is no set timeline. That's what's been so maddening and has produced such feelings of helplessness. There are no progress markers.'

Discussion

[p. 17:] ...We might sometimes doubt that a client is being honest with us, which can feel frustrating. Because we feel responsible for preventing future victimization, we might be eager to defend against perceived manipulations. We might be better able to create conditions that encourage honesty, however, if we reframe resistance as ambivalence (a simultaneous struggle between a genuine desire for change and the need to maintain what is familiar) or self-protection (concern about disclosing unlawful behavior or paraphilic interests due to fear of judgment and consequences).

[p. 18:] ...[G]iven evidence of DNA exonerations in sexual assault cases (Saber et al., 2022),it is possible that a small number of our clients were indeed falsely accused or wrongly convicted. This creates an inherent dilemma for both the mandated client and the treatment provider, but denials should be explored in treatment and not unilaterally dismissed as untrue. Second, we should be willing to hear the discomfort of clients who underwent PPG and computerized sexual interest assessments."

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Padilla & Washington Studies Show That Aging Is the End of Sexual Recidivism — No Matter What.

Tamara Rice Lave, Franklin E. Zimring, "Assessing the Real Risk of Sexually Violent Predators: Doctor Padilla's Dangerous Data, 55 *Am. Crim. L. Rev.* 705 (Summer 2018)

[p. 735:] "Age is a key difference between the groups studied by Padilla and Washington State that can explain the significant difference in recidivism rates. The Washington group is much younger on average than the SVP population in California, and the effect of age on sex crime risk is huge in the Washington data. Here is the age-specific sex offense risk published in detail for the first time in 2007 by the Washington authors in their third report on the project. Only average age of release was published in the 1998 study,[225] and the 2003 study contained no age information at all. [226]

The 33% aggregate rate for sex felony combines age groups with radically different risks of sexual recidivism, ranging from 39% to 0%. In the Washington study, no offenders who were fifty or older when released had *any* later reconvictions.[228]

[p. 740:] Despite the critical importance of dangerousness, the Supreme Court upheld the constitutionality of Kansas's SVP law without requiring any actual proof that SVPs would commit predatory sex crimes if released. If the justices had looked for empirical proof instead of simply deferring to the assertions of the Kansas legislature, they would have seen that sex offenders actually have a low recidivism rate. Indeed, the DOJ has published three major studies-in 1997, 2003, and 2016---that have all shown that the vast majority of convicted sex offenders do not recidivate once released from prison. Of particular note is the 2016 DOJ study, which found just 5.6% of 20,422 convicted sex offenders were rearrested for rape or sexual assault within five years of release from prison.[248]

And yet sexually violent predator laws are necessarily premised on the idea that SVPs are different than run-of-the-mill sex offenders, which means the DOJ studies may be irrelevant in assessing their danger. What we really need then are studies that look specifically at how released SVPs perform in the community, but conducting such a study is difficult because most SVPs are never released. Indeed, we know of only two studies that have examined how released SVPs fare in the community. The Padilla study was shut down after it showed a 6.5% recidivism rate for 4.8 years at risk in the community. The Washington State Institute study, which initially appeared to support the notion that SVPs are extremely dangerous, ended up being consistent with the Padilla results once attention was focused on the offenders' age.

Padilla's study and the statistics in Table 2 from the Washington study undermine any theory of fixed levels of sexual violence risk. The men in Washington who were fifty or older when eligible for SVP status had historical records of prior sex offending that were almost certainly as long as the younger group. When had they become so low risk that no member of the population re-offended? It can't have been that a treatment program succeeded, because they weren't treated. Age alone seems to have diminished the propensity to sexually offend. If so, the notion of fixed and immutable danger requires reconsideration.

Even though most of the SVPs that California locks up are over fifty now, it is unlikely that they will ever be released. Like all other SVP states, California now makes commitment indeterminate[249] -- in effect presuming that the risk a person poses at the age of forty remains the same when he is fifty, sixty, or even ninety. The Padilla study demonstrates why states should be required at the very least to prove recidivism danger at regular intervals, as California used to do. Putting the burden on the committed person to prove he is no longer dangerous is not a legitimate alternative. The politics of crime and fear of sex offenders mean that someone like Mr. Hendricks, who is now eighty-three-years-old and confined to a wheelchair, will never prevail.

[p. 741:] The ironic result of allowing state governments to make up their own theories of prospective sexual danger and never to test their hunches goes beyond the wasteful and unjust incarceration of elderly men with histories of sex offenses. Detailed and careful empirical study could provide much better evidence of the age and other characteristics of persons who have significant offending risks. For that reason, we urge the Bureau of Justice Statistics to resurrect and continue the Padilla study with what would now be a significant follow-up period. Until such research is conducted, we will never know whether the true legacy of *Kansas v. Hendricks* includes not just unjust confinement but also an allocation of limited resources with no focus on populations of maximum danger. Justice and community safety demand the truth."

Table 2. Washington Sex Offense Recidivism by Age at Inclusion in Risk Group

Age	Conviction of Sex Felony	Number of Persons
18–29	39%	(N = 28)
30–39	18%	(N = 57)
40–49	29%	(N = 34)
50+	0	(N = 16)
TOTAL	23% (31)	(N= 135)

Source: *Milloy*, "Six Year Follow-Up" (2007)[227]

Notes:

224. *See Milloy*, Six Year Follow-Up 2007, *supra* note 214, at 3. The authors use an average to emphasize the difference between the two studies. The authors acknowledge, however, that recidivism is most likely to occur the first year after release, dropping every year after that. As Harris and Hanson explained, "For all crimes (and almost all behaviours) the likelihood that the behaviour will reappear decreases the longer the person has abstained from that behaviour. The recidivism rate within the first two years after release from prison is much higher than the recidivism rate between years 10 and 12 after release from prison." *Andrew J.R. Harris & R. Karl Hanson, Pub. Safety & Emergency Preparedness Canada*, Sex Offender Recidivism: A Simple Question 1 (2004), https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/sx-ffndr-rcdvsm/sx-ffdr-rcdvsm-eng.pdf. Harris and Hanson found that the rate of recidivism in the populations they studied decreased by half every five years. *Id.* at 9.

225. SCHRAM & MILLOY, *supra* note 214, at 4.

226. *See* MILLOY, SIX YEAR FOLLOW-UP 2003, *supra* note 214.

227. *Milloy*, Six Year Follow-Up 2007, *supra* note 214, at 6-7.

228. *Id.* at 7.

247. *See Jones v. United States*, 463 U.S. 354, 374 (1983) (Brennan, J., dissenting).

248. See *Durose et al., supra* note 94, at tbl. 2.

249. *Deirdre M. D'Orzio et al., Cal. Coal. on Sexual Offending*, The California Sexually Violent Predator Statute: History, Description, & Areas For Improvement 17 (2009), https://ccoso.org/sites/default/files/CCOS0%20SVP%20Paper.pdf.

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Living Arrangements for SOs Post-Release

Shawn M. Rolfe et al., "Living Arrangements for Sex Offenders in Ohio: Effects of Economics, Law, and Government Assistance Programs," 98(5) *The Prison Journal* 544-559 (Nov. 2018),

Text excerpts:

Results

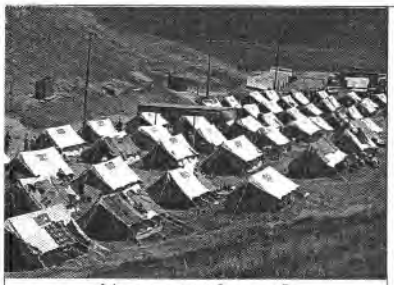
p. 551: "...Of the 188 respondents included in the analysis, 35.6% were currently living with a family member, and 64.4% had some other form of housing arrangement than a family member. Ages ranged from 19 to 86 years, with a mean of 45.3 years.... Of the respondents, 77.1% were White and 22.9% were non-White. The percentage of respondents that identified as Megan's Law registrants was 55.9%, with the remaining 44.1% of respondents classified as Adam Walsh Act registrants. The average respondent education level prior to their sexual offense conviction was 13.4 years; that is, individuals had some college with a standard deviation of 1.99 years. Fifty percent of the respondents stated that they were employed at the time of this survey. Respondents had an average income of US$10,515, with a standard deviation of US$16,687. Nearly half (47.9%) of RSOs reported that they received some form of state and/or federal aid, and 52.1% did not receive any type of governmental assistance. The average number of months that an RSO has been on the registry was 64.4, with a standard deviation of 47.5 months. The respondents averaged 2.4 arrests with a standard deviation of 3.9 arrests since they were 18 years old. Nearly half (48.4%) of RSOs were currently on probation or parole at the time of the survey, with the remaining 51.6% reporting that they were no longer under this type of supervision.

The odds of living with a family member are influenced by three variables measured in this study. First, there is a 66.7% decrease in the odds of living with a family member for RSOs who receive some form of government assistance from either the state or federal government or both... Second, for every thousand dollar increase in total gross income in 2011, there is a 2.9% decrease on the odds of living with a family member.... Finally, the odds of an RSO living with a family member increases by 136.6% if they were on probation or parole....

Discussion

p. 554: Previous studies have shown that SORN does not reduce recidivism nor improve the reintegration process of sex offenders into the community (Duwe & Donnay, 2008; Hanson & Bussiere, 1998; Jennings et al., 2012; Ragusa-Salerno & Zgoba, 2012). In addition, a number of collateral consequences have been identi-

(Continued on page 9)



Your next home?

fied for SORN. Included among these are that many RSOs relay heavily on supportive family members for stability in the areas of housing, financial, and social support (Burchfield & Mingus, 2008; Conner, 2015; Tewksbury & Levenson, 2009. This extension of collateral consequences is supported by our findings showing 35.6% of the respondents currently living with a family member. This is not entirely surprising given that ex-offenders tend to gravitate toward family members for housing during the reintegration process (Roman & Travis, 2004; Visher, 2007). Furthermore, the best predictors of living with a family member for RSOs in this sample were income, receiving government assistance, and being on probation or parole. Intuitively, the subjects with lower incomes and those who were on probation or parole at the time of date collection were significantly more likely to live with family members. Those with lower income lack the necessary resources to provide for their own basic needs. In addition, the data showed that RSOs receiving some form of government assistance were significantly less likely to live with family members. Despite mixed results on government assistance programs, this study found that they do not work in assisting RSOs to transition out of their family member's homes."

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Burchfield, K.B., & Mingus, W. (2008). Not in my neighborhood: Assessing registered sex offenders' experiences with local social capital and social control. *Criminal Justice and Behavior, 35*, 356-374

Conner, D.P. (2015). Support partners of registered sex offenders: Exploring their experiences, identities, and perceptions (Unpublished doctoral dissertation). Univ. of Louisville, KY.

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Ragusa-Salerno, L., & Zgoba, K.M. (2012). Taking stock of 20 years of sex off ender laws and research: An examination of whether sex offender legislation has helped or hindered our efforts. *Jour. of Crime & Justice, 35*, 335-355.

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Holistic Treatment and Support for MAPs

Lievesley, R., Harper, C.A., Woodward, E., "Toward a Holistic Approach to Treatment and Support for People with Attractions to Children," (2025), 17(7) *Current Sexual Health Reports*, DOI: https.doi.org/10.1007/s11930-025-00403-x, reviewed in 5(2) *B4QR* 16 (Spring, June 13, 2025).

Text Excerpts: [p. 16:] "In this review article, Rebecca Lievesley, Craig A. Harper, and Elie Woodward present a compelling argument for rethinking therapeutic interventions for individuals who are attracted to children. They contend that traditional, prevention-focused treatment models are insufficient and advocate for a more comprehensive approach that emphasizes psychological well-being, stigma reduction, frustration management, and therapeutic engagement.

[pp. 17-18:] The third treatment target was 'Frustration Management,' and here the authors argue that sexual frustration is a significant challenge for individuals with attractions to children, stemming from the conflict between their desires, societal norms, stigma, and the lack of legal sexual outlets. Unaddressed frustration can lead to psychological strain, maladaptive coping, and risky behaviors, making it an important area for therapeutic intervention. The authors cite research demonstrating that barriers to sexual expression are often linked to sexual offending, particularly for those who have no legal outlets for their attractions. Therefore, the authors explore the possible ameliorative effects of alternative sexual outlets such as erotic stories and AI-generative content to address sexual frustration, though they note that more research on such outlets is needed. Still, they address the burgeoning literature relating to the use of sexual outlets that do not involve real minors in a 'controlled setting,' and under close clinical supervision.' For instance, the therapist may work with clients to help them identify ways of achieving sexual satisfaction in conformity with social and legal norms. The authors argue that such interventions may help reduce frustration–based motives that contribute to the risk of illegal behavior.

[p. 18:] Finally, under the treatment target 'Controlling or Changing Attractions,' the authors discuss the complexity and controversy surrounding whether sexual attractions to children can or should be changed. While some individuals with the attractions express a desire to modify their feelings, often to align with societal norms, or alleviate personal distress, others prioritize learning to manage their attractions in legal ways. The desire for change is not universal, with some rejecting treatment goals focused on altering their attractions. The authors note that evidence regarding the effectiveness of treatments aimed at changing sexual attractions is limited, with direct efforts to alter these feelings generally showing inconsistent success. They caution against approaches that resemble sexual orientation conversion therapy due to ethical and practical concerns....

[p.20:] ...[W]hile the authors' discussion of legal sexual outlets for MAPs is vitally important, their tone warrants some questions. Specifically, they never explain precisely what they mean by helping patients explore legal ways to express their sexuality under 'close clinical supervision.' The wording seems to indicate that such outlets are akin to a dangerous medicine to be carefully administered, rather than a basic component of psychological and physiological well -being. Finally, the authors' reference to the alleged efficacy of 'arousal reconditioning' deserves scrutiny. For instance, the study they cite (Gannon et al., 2019) relied on a forensic sample and it measured only recidivism – not a change in underlying sexual attractions. ...[P]ast use of such treatment on gay, lesbian, and bisexual people has been known to cause serious psychological harm, including severe depression, anxiety, and suicidal tendencies (APA, 2021). Thus, its use on people who are attracted to minors could be dangerous and unethical. ... [T]he poor evidence for the safety and effectiveness of 'arousal reconditioning' techniques as well as the serious ethical pitfalls makes this a form of treatment that should be approached with extreme skepticism."

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The Critical Importance of Age & the Bayes Theorem as to Recidivism

Excerpts from: *Theodore Donaldson & Richard Wollert*, "A Mathematical Proof and Example That Bayes Theorem Is Fundamental to Actuarial Estimates of Sexual Recidivism Risk," 12 *Sexual Abuse: A Jour. of Research and Treatment* 56-85 (2008) [All emphases supplied]

ca. p. 60: "...the unique power of Bayes Theorem for weighting evidence and, as a result, estimating the level of certainty with which any legal or scientific theory (hereafter symbolized as "R") may be held on the basis of a specified set of evidence (hereafter symbolized as "S")....

"...*R. Wollert*, "Low Base Rates Limit Expert Certainty When Current Actuarial Tests Are Used to Identify Sexually Violent Predators: An Application of Bayes' Theorem," 12 *Psychology, Public Policy, and Law* 56-85 (2006) presented evidence that all current actuarials are largely useless for identifying future sexual recidivists because they incompletely specify the **negative effects of age on recidivism**; he also emphasized that even revised and more accurate actuarials might be useless for this purpose **because the base rate of sexual recidivism has dropped dramatically in the United States in recent years**...."

ca. p. 60-61: ...*D. Mossman*, "Another Look at Interpreting Risk Categories," 18 *Sexual Abuse* 41-63 (2006) argued that it is inappropriate for an expert to attribute a tabled recidivism rate for a given actuarial score in one population to an SVP respondent in a different population unless the expert verifies that the Bayesian coordinates (i.e., actuarial accuracy and the recidivism base rate) are the **same** in both populations."

ca. p. 67: "These considerations point to the conclusion that those who use actuarial tables for the purpose of risk assessment are actually effecting an application of Bayes' Theorem. It is therefore self-contradictory and misleading for any experts who use actuarial instruments to testify that Bayes Theorem is a novel and idiosyncratic approach to risk assessment."

ca. pp. 68-69: "...Conversely, by acknowledging the scientific legitimacy and value of Bayes' Theorem, researchers and expert evaluators gain access to a method of analysis that may be quite advantageous in some situations for reaching certainty opinions about the risk of sexual recidivism in SVP cases. For example, suppose that the five-year base rate for sexual recidivism among prison releases in California, Iowa, Minnesota, and Washington were found, as seems realistic from documents recently disseminated by state and federal agencies (*G. Adkins, D. Huff, & P. Stageberg, The Iowa Sex Offender Registry and Recidivism*, Iowa City, IA: *Iowa Department of Human Rights*, December 2000; *J. Padilla, Response to Court Order by the Honorable Robert A. Barclay*. California: *Psychology Department, California Department of Mental Health*, October 10, 2006; *P.A. Langan, E. Schmitt, & M. Durose, Recidivism of Sex Offenders Released from Prison in 1994*. Washington, DC: *U.S. Department of Justice*. 2003; *Minnesota Department of Corrections, Sex Offender Recidivism in Minnesota*, retrieved on 7.13.07 from http://www.corr.state.mn.us/ (April 2007); *Washington State Institute for Public Policy, Sex Offender Sentencing in Washington State: Recidivism Rates*. Document No. 05-08-1203. Olympia, WA. (April 26, 2005), to approximate 5% rather than the 12% reported in Table 3. On the assumption that the values of P(Sj|R+) and P(Sj|R-) from table 3 are generalizable to offenders from these states, solving equation (6) shows that the estimated recidivism rate **does not exceed 15%**.... This result, in turn, underscores the extreme caution that experts in these states need to exercise before claiming that they are reasonably certain that a civil commitment candidate is likely to sexually recidivate. More generally, it points to the conclusion that, in the absence of adequate disclosures and qualifications, applying a risk instrument to populations with different

recidivism rates than the sample on which it was developed is a very poor professional practice (*A.E. Amenta, L. Guy, & J.F. Edens*, "Sex Offender Assessment: A Cautionary Note Regarding Measures Attempting to Quantify Violence Risk," 3(1) *Jour. of Forensic Psychology Practice* 39-50 [2003]). It is so poor, in fact, that it potentially violates section 9.02b of the *Ethical Principles of Psychologists and Code of Conduct* (Washington, DC, *American Psychological Association*, December 2002), section VII.D of the *Specialty Guidelines for Forensic Psychologists* (Washington, DC.: *American Psychological Association*, March 9, 1991), and various standards (e.g., 11.15, 11.16, 11.18, 12.143, 12.16, 12.17) cited in the *Standards for Educational and Psychological Testing* (Washington, DC: *American Educational Research Association, American Psychological Association, & National Council on Measurement in Education*, 1999).

... [illegible] ... a Bayesian framework may be relied upon to derive certainty opinions concerning whether or not a respondent is positive for a mental disorder, suffers from a volitional impairment, or is predisposed to the commission of sex crimes to such a degree that he represents a menace to the community (*Richard Wollert*, "Poor Diagnostic Reliability, the Null-Bayes Logic Model, and Their Implications for Sexually Violent Predator Evaluations," *Psychology, Public Policy, and Law*, in press)."

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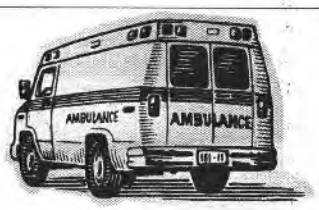
Healthcare? What's That?



About Healthcare – Does This Sound Familiar?

"Although the presence of guards and shackles imply that health care workers are vulnerable when caring for incarcerated patients, the literature shows that, in fact, incarcerated people are the ones who are vulnerable when they need medical care. Health information and records are routinely lost during transitions between prisons and hospitals, leading to fragmented care and diagnostic delays. Incarcerated people are less likely to receive routine screening tests like colonoscopies than the nonincarcerated. Within hospitals, the presence of shackles can keep doctors from fully examining their patients, the presence of guards can prevent patients from sharing important medical information or critical symptoms with their doctors, and doctors and nurses – influenced by their own biases – may be inclined to disbelieve or distrust the symptoms or experiences of an incarcerated patient. Finally, because the medical needs of an incarcerated patient must be filtered through the prison bureaucracy, it may take much longer for a patient to reach the hospital from the prison, which means that they may be much sicker by the time they arrive." – from an article in *Time*, summarized in *The Broadcast* newsletter, Vol. 13, No. 1 (Winter, 2025), p. 3.

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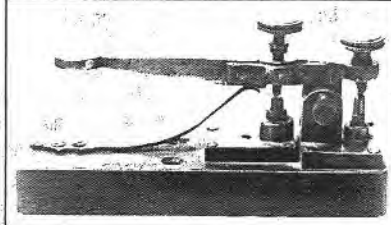
Blanket Ban from Internet Use or Social Networking Websites: Is This Constitutional?

Blanket Ban from Social Networking Websites or Internet Altogether on SOs on Parole-Probation Violates First Amdmt

(eds.), "Blanket Ban on Certain Sex Offenders Using Social Networking Websites Was Not Narrowly Tailored to Registrants, Thus Violating First Amendment," 38(6) *West's Criminal Law News NL 50* (March 11, 2021).

Abstract: "New York's Electronic Security Targeting of Online Predators Act (e-STOP) and implementing directive, which prohibited certain sexual offender registrants on community supervision from accessing 'commercial social networking websites,' were not narrowly tailored in their application to four registrants, and thus violated First Amendment as-applied under intermediate scrutiny, though state had substantial interest in protecting children from internet-facilitated sex crimes, and registrants' crimes were heinous; blanket ban applied to registrants, who committed crimes against minors or who were 'level-three' offenders, without evidence that offenders posed particular threat of internet-based recidivism, and less-restrictive alternatives, including computer monitoring software, were available."



Instant Messaging?

[Opinion: *Jones v. Stanford*, 489 F.Supp.3d 140 (E.D. N.Y. 2020):]

Selected Headnotes:

6. **Constitutional Law – Sex Offenders; Mental Health – Sex Offenders**

"New York's Electronic Security Targeting of Online Predators Act (e-STOP) and implementing directive, which prohibited certain sexual offender registrants on community supervision from accessing 'commercial social networking websites,' were not narrowly tailored in their application to four registrants, and thus violated First Amendment as-applied under intermediate scrutiny, though state had substantial interest in protecting children from internet-facilitated sex crimes, and registrants' crimes were heinous; blanket ban applied to registrants, who committed crimes against minors or who were 'level-three' offenders, without evidence that offenders posed particular threat of internet-based recidivism, and less-restrictive alternatives, including computer monitoring software, were available."

8. **Constitutional Law – Prohibition of Substantial Amount of Speech**

"While a regulation of speech will not be invalid under intermediate scrutiny simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative, the availability of less restrictive alternatives can demonstrate why the regulation at issue is substantially broader than necessary."

9. **Constitutional Law – Sex Offenders; Mental Health – Sex Offenders**

"New York's Electronic Security Targeting of Online Predators Act (e-STOP) and implementing directive, which prohibited certain sexual offender registrants on community supervision from accessing 'commercial social networking websites,' were not narrowly tailored in their application to social media websites, and thus violated the First Amendment, though state asserted that registrants had alternative forums for speech, and ban was limited to social media sites that allowed minors to create profiles; ban proscribed use of all social media sites for all purposes, including those that did not pose risk to children, illicit communication comprised minuscule subset of social networking activity, and social media played critical informational role in modern society."

13. **Civil Rights – Preliminary Injunction**

"Loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury, as required for issuance of a preliminary injunction."

19. **Civil Rights – Criminal Law Enforcement; Prisons**

"Facial injunction was warranted to preliminarily enjoin application of New York's Electronic Security Targeting of Online Predators Act (e-STOP) and implementing directive prohibiting use of 'commercial social networking websites' by sexual offender registrants ion community supervision who had not used the internet to facilitate the commission of their underlying sex offense, in action by four registrants challenging law as violating First Amendment facially and as applied; ban outlawed substantial amount of protected speech as compared to its legitimate sweep, ban was likely unconstitutional as applied to all plaintiff-registrants and to two of the three categories of registrants covered by statute, and ban's proscription was not amenable to judicial reading that would remedy the constitutional deprivation."

Opinion Text Excerpts: [p. *5:]

"**ANALYSIS**

Plaintiffs Make a Clear and Substantial Showing That They Are Likely to Succeed on the Merits.

...Because e-STOP and Directive 9201 are not narrowly tailored as to the subset of Registrants to whom they apply nor to the websites proscribed, Plaintiffs sufficiently demonstrate that they are likely to succeed on their claims that the Ban is unconstitutional.

[p. *6:] In *Yunus v. Robinson*, Judge Nathan adopted a Report and Recommendation preliminarily enjoining a special condition of parole that 'prohibit[ed plaintiff] categorically from accessing a commercial social networking website.' Case No. 17-cv-5839 (AJN), 2019 WL 168544, at *15 (S.D.N.Y. Jan. 11, 2019) (quotations omitted). *Yunus* reasoned that 'while in some contexts parolees receive a lesser degree of constitutional protection,' '[u]nder *Packingham*, blanket limitations on an individual's ability to access social media will receive intermediate scrutiny, even when imposed as conditions of parole.' *Id.* at *16....

[p. *7:] ...Yunus [stated:] 'There is no indication in *Packingham* that parolees are exempted from the Court's decision ...[T]he Court was clear that the distinction between those who are presently under the supervision of the criminal justice system and those who no longer were was a not a basis for its holding[.]' And any ambiguity about the scope of *Packingham* is further foreclosed by the Second Circuit's reliance on *Packingham* in *Eaglin*: "The government argues that Eaglin [a defendant on supervised release] has no constitutional right to access the Internet. We reject that position as outdated and in conflict with recent Supreme Court precedent. The Supreme Court forcefully identified such a right in *Packingham*....' 913 F.3d at 95 (citations omitted).[4]

[p. *10:] ...*Eaglin*, 913 F.3d at 98 ('[I]mposing an Internet ban would arguably *impair* Eaglin's ability to receive needed educational or vocational training, medical care, or other correctional treatment in the most effective manner – one of the goals of sentencing.... [A]ccess to the Internet is essential to reintegrating supervisees into everyday life, as it provides avenues for seeking employment, banking, accessing government resources, reading about current events, and educating oneself.') (quotations and citations omitted)."

Note:

"Defendants cite *United States v. Savastio* in support of their claim. In a non-precedential opinion, the Second Circuit deemed *Packingham* 'inapposite' to its review of a probationer's internet monitoring condition because *Packingham* dealt with restrictions on people 'no longer subject to the supervision of the criminal justice system' and because the monitoring condition at issue did not amount to 'an outright ban on Savastio's access to all forms of social media.' 777 F. App'x 4, 7 (2d Cir. 2019). *Savastio* also determined that it was not bound by *Eaglin*, because *Eaglin* 'rejected special conditions that altogether prohibited the defendant from accessing the Internet without the specific approval of his probation officer.' *Id.* at 6-7 (citations omitted). But unlike *Savastio*, the Ban here is akin to the type of blanket restrictions found in *Eaglin* and *Packingham*. Thus, *Eaglin*'s clear proscription governs: a Registrant 'has a First Amendment right to be able to email, blog, and discuss the issues of the day on the Internet while he is on supervised release.' *Eaglin*, 913 F.3d at 96."

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