

in this issue

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to P.O. Box 3226, San Marcos,
Texas 78666 for a chance to be
featured in the next issue!



We feel like this Public Awareness Event was a huge success, as this was a great opportunity for networking and education. We have formed our own “family”, and when we fight for our own, we fight for all.

HUGE WIN!!! – SORNA Declared Unconstitutional

By **Florida Action Committee**
| August 24, 2022

YES, you read that correctly. A
Pennsylvania Trial Court has declared
SORNA Unconstitutional.

The court wrote, “we find that SORNA* is unconstitutional as a legislative scheme in both its use of a constitutionally infirm irrebuttable presumption and the punitive effects of its registration and notification provisions, as well as in its application to this Defendant, who has a strong support structure, is educated, is working, is an excellent candidate for rehabilitation, and is highly unlikely to reoffend”

The Court also found that “based on the evidence of scientific and academic consensus presented, we find that SORNA laws do not have the effect on recidivism and public safety anticipated by the Legislature, and that they are not rationally related to the purposes for which they were enacted.” This is one of the first cases (to our knowledge) where the scientific and academic studies have been considered and used in formulating the court’s decision.

*Sex Offender Registration and
Notification Act



The Driver’s License Bill

Excerpt By **Texas Voices** | September
14, 2022

One interesting thing I noticed is that back in 1999, during the 76th legislative session, the following language was added to Chapter 62- code of criminal procedure:

*(c) Notwithstanding Chapter 730, Transportation Code, the department shall maintain in the database, and shall post on any department website related to the database, **any photograph of the person that is available through the process for obtaining or renewing a personal identification certificate or driver's license under Section 521.103 or 521.272, Transportation Code. The department shall update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license.***

This may be a good point to bring up. It appears that (originally) DPS was supposed to maintain and update the registry with information from the driver’s license/ID. It does not work that way! Possibly, DPS decided to turn that job over to the registering offices but regardless, **residence information, photos, and all other info listed on the public registry is not generated through the driver’s license process.** Photos and all data come from each county’s police or sheriff department. Updates to those photos and information takes place when registrants appear at their local registering offices either quarterly or yearly (monthly or weekly for homeless). **Yearly, in-person visits to DPS offices are redundant.**

It's possible that the language in the law was written because the legislature assumed that the information on the public registry would come directly from the driver’s

license/ID renewal? If so, that may be my strongest talking point I think.

Later!

Mary Sue, Director of Texas Voices



“True justice is paying only once for a mistake. Injustice is paying more than once for each mistake.”
— Don Miguel Ruiz

Victory in Supreme Court of Virginia Against Out-of-Control Prosecution

By **Just Future Project** | September 20, 2022

On Thursday, the highest court in Virginia ended the Commonwealth’s 13-year campaign to indefinitely detain a prominent advocate on criminal justice matters, Galen Baughman. In a victory for justice the Supreme Court ruled that the petition filed against Baughman in 2017 was illegal.

Baughman has been targeted by the Virginia attorney general’s office under the state’s civil confinement scheme since 2009 when prosecutors filed a petition to send him to Virginia’s shadow prison in Burkeville shortly before his release from a seven-year prison sentence for consensual adolescent sexual conduct. That initial petition went to trial in 2012 and a jury voted unanimously in his favor. Baughman describes that trial in a 2015 TED Talk. In 2017, less than 24 hours before his

release from a 20-month sentence for an alleged first-time technical violation, the attorney general’s office petitioned a *second* time to have Baughman indefinitely detained past his release date. The Supreme Court’s ruling last week dismissed that 2017 petition because it was based on the testimony of an expert who was prohibited from testifying under “the plain language of the statute.”

Virginia legislator Patrick Hope (D–Arlington) described the situation in an op-ed published immediately before Baughman’s *second* trial in 2019: “The [Virginia Department of Behavioral Health and Developmental Services (DBHDS)]-hired psychologist found Baughman did not meet the criteria and recommended his release. The attorney general’s office ignored that finding, went outside the law and hired a *second* expert. This expert did not interview Baughman, but nonetheless claims that Baughman meets the statutory criteria. At trial, Baughman’s defense attorneys may not present the results of the 2012 civil commitment trial or the results of the DBHDS psychological assessment, nor can they present qualified psychological expert testimony. His trial... serves as a prime example of how the SVP laws are unjust and unfair.”

The Baughman case was closely watched by lawyers, activists, and civil and human rights organizations. Amicus briefs were filed by the National Association of Criminal Defense Lawyers (NACDL) joined by Del. Patrick Hope (D–Arlington), law professors and scholars, as well as a coalition of LGBTQ+/HIV rights advocates and organizations. Baughman was represented by a pro bono team from KaiserDillon PLLC, a notable boutique firm in Washington D.C. (Jonathan Jeffress, Emily Voshell, and William Zapf), supported by the Washington Lawyers’ Committee for Civil Rights & Urban Affairs.

Catherine Hanssens, founder and then-executive director of Center for HIV Law & Policy (CHLP) was especially instrumental in bringing this issue to the

forefront by organizing an LGBTQ+ sign-on letter to attorney general Mark Herring (D-Virginia) very early in this case. KaiserDillon also sent successive letters to AG Herring (in 2018 and 2020) asking him to stand down from this obviously illegal action — on the same grounds that the Supreme Court ultimately used to dismiss the petition. CHLP’s amicus brief “describes the deep homophobic bias embedded in an already-Orwellian civil commitment assessment process, and in the drive to confine him as a dangerous predator in the absence of credible evidence.”

The Court also addressed claims by the attorney general’s office that a judge could find probable cause that someone suffers from a “mental abnormality or personality disorder” based on conviction history alone. “As the trial court had no evidence regarding Baughman’s mental state, it could not have found that there was probable cause to believe that he was a sexually violent predator,” the Supreme Court said. “Accordingly, the trial court should have dismissed the Commonwealth’s petition.”

Because the *second* petition was unlawful from its inception, the Court decided “the other matters that Baughman raised in his appeal (i.e., the trial court’s decision to exclude the testimony of his expert witnesses, its denial of his motion for summary judgment and its failure to dismiss the petition based on *res judicata*) are... rendered moot.”

Regrettably, the justices declined to address these other important issues that might have made a significant difference in the lives of other individuals targeted by Virginia’s pre-crime preventative detention program — those questions remain unsettled by the court.

The Baughman case is a stunning win that beats back a disturbing attempt by the Virginia attorney general and an activist judge to dramatically expand the scope of involuntary civil confinement. If the state had gotten its way, prosecutors would be able to shop for experts until they find

they wanted and judges would be encouraged to proceed with a putatively “mental health” commitment case absent any psychological evidence.

Virginia is one of 20 states (and the federal government) with laws allowing for the indefinite ‘civil’ confinement of persons after the completion of a prison sentence for a sex-related crime. At least 7,000 people in the U.S. are presently held in prison-like facilities under the guise of involuntary psychiatric confinement based on a past sex-related conviction. While many facilities have begun to release people to an Orwellian form of “conditional release” as states begin hitting the practical ceiling that comes from a system designed to lock up more people every year without ever letting anyone out; for many, “civil commitment” for the purposes of “treatment” remains a life sentence.

Systems of pre-crime preventative detention have been under fire since their inception in 1990. The American Psychiatric Association formally opposes so-called “sexually violent predator” laws and has described these legislative schemes as a “misuse of psychiatry” designed to “preventively detain a class of people for whom confinement rather than treatment was the real goal.” In 2015, legal scholar David Post quipped for the Washington Post, “If you’re looking for a sustained and systematic constitutional violation to get outraged about, may I suggest this one?”

This decision from the Virginia Supreme Court makes plain that the attorney general’s office flagrantly violated the “plain language of the statute.” Even with top-notch lawyers, it took Baughman 5 years to reverse this unlawful action — resulting in 40 months of unnecessary incarceration past his release date in a punitive carceral setting at the Arlington County Detention Facility (ACDF), and another year and a half of draconian conditions including being restricted from leaving Arlington County and house arrest for up to 18 hours per day.

Baughman is a leading advocate bringing to light the flawed rationale and human rights implications of efforts to lock up people prospectively for what they might do in the future. Baughman's case should be a warning to any defenders of due process and freedom that so-called "sexually violent predator" laws lend themselves to wild misuse by unscrupulous government officials. The fact that Virginia was able to very nearly get away with committing someone who clearly does not suffer from any volitional impairment-causing psychological conditions — but had no trouble finding and using an expert willing to cavalierly misrepresent the psychological literature for pay — should be terrifying to us all.

In 2021, Virginia became the first state in the U.S. to consider abolishing its system of post-sentence 'civil' confinement. Baughman v. Commonwealth clearly illustrates the need to abandon laws and policies designed to incarcerate people for imaginary future crimes based on deeply dubious predictions by "experts."

"The Commonwealth of Virginia's case against Galen was morally and legally indefensible," said Jonathan Jeffress of KaiserDillon. "It appealed only to the worst in people and their prejudices. I know I speak for everyone at KaiserDillon in saying that, although we are proud to have brought Galen's case to a successful end, there is still much work to do, including reforming — or better yet, abolishing — Virginia's broken, corrupt, and unconstitutional system of civil confinement."

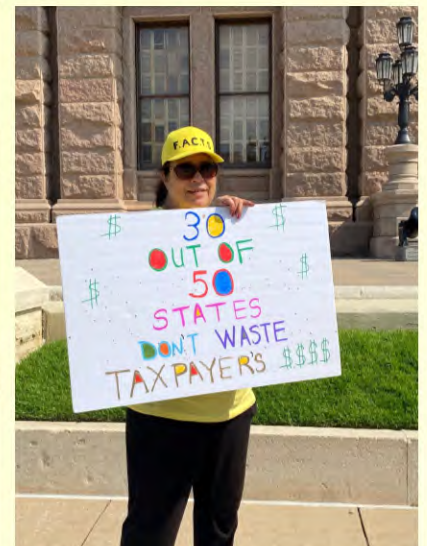


Public Awareness Event, Part II

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Statement of TCCO's August Board Meeting

By **Texas Tea Newsletter** | August 31, 2022

The statement below is a breakdown of the Texas Civil Commitment Office Board meeting that took place on Friday, August 26th at 10:00 AM, presented by Mandi Brady and Sydney Artrip.

Upon arrival at the office of Texas Civil Commitment Office in Austin, Texas, there was a small table set up outside the door with red biohazard bags, all of which were scattered in a disorganized fashion. I informed the woman present by the haphazard setup that we were here for the TCCO Board Meeting that was to start soon, to which she stated that those who wished to attend would have to be COVID tested. She then stuck a swab in my nose and then moved on to the next person, not asking our names or information to identify the specimen. During this invasive nostril violation, a woman with short blonde hair looked at me as she put a code in the door, entering the building. This woman is TCCO Chairperson, Christy Jack. And she went right in, no test, no mask, nothing. The unofficial COVID tester then instructed us to sit in our car for 15 minutes while the tests completed, all the while we were anxious that this sudden requirement would make us miss the meeting. But nonetheless, we made it in right on time.

After entering the building, we were told to sign in to yet another small table. Two piles of paper were labeled, "Request to be Present" and "Request to Speak"; we signed both. A DPS armed officer stood by making small talk about everyone passing their COVID test. Yes, what an amazing feat that the few that were ordered to take a COVID test were negative. As soon as the forms were signed, we were told that

the Board is ready to start. In we went into a cramped room with less than 10 audience seats, as if the Board were not expecting a crowd after a few days' notice. At last, we met a large table, adorned with a fancy black skirt, at which the TCCO Board Members sat. In front of each Board Member was a golden name plaque identifying themselves, and behind them, a framed Texas flag that almost dwarfed the room we were all smushed into. On the wall behind the audience seating was a projector screen connected to a Zoom meeting with Patrick Flaherty and Wayne Schmoker present, even though multiple family members and support systems were told that being present to a meeting virtually was not an option.

Within a few seconds of taking our seats, the attendance was announced and the meeting was called to order by Chairperson Jack. She started by explaining by that in February of 2022, TDCJ Board Members asked to tour the TCCC facility, to which she obliged.

A while later, the more ignorant Board Members seemed to be impressed by Resident Ronald Mitchell, who is now a Tier 5 and has since been released into society. Mitchell was asked to be in an informational a video to be presented to men in TDCJ that were to be sent to the TCCC facility. It seems as though the video was made in a way to dispel the negative rumors about the Civil Commitment Program by having Mitchell play the role of a compliant Resident who won the lottery to exit the facility, a lottery of astronomically low odds. Let it be a fact that Mitchell expresses his distaste for the Civil Commitment Program throughout the video, possibly deviating from his script. Being about 20 minutes long, it was said that this video will soon be available to watch on the TCCO website and on YouTube at a later date.

After the video viewing, TCCO Executive Director Marsha McLane states that she is wanting the men who are currently in Tier 5 to return to the facility and act as

mentors to those still in treatment, possibly to advise the Residents within on how to comply, stay quiet, and follow every single order given.

Executive Director McLane then brings up the topic of Family Support Meetings but fails to mention that TCCO had cancelled the one planned for August 2022, speaking of previous meetings instead. McLane states that she was asked to be present in front of a committee at the Capitol to provide information about TCCO, as in previous months, she had simply submitted the information online, which just happened to be the same exact day that the August 2022 Family Support Meeting was to be held. The lie that was told to those that had an RSVP to the meeting was that an individual of TCCO had COVID exposure, when in fact it was simply a case of scheduling conflicts.

During this time, Executive Director McLane states, “We take ownership of the men as soon as they arrive at the facility.” Wouldn’t that mean that McLane, or at the very least, those at TCCO, are responsible for the needs of the Residents? As I wrote this down in my notebook, I shook my head. McLane then goes on to say that the current headcount at the Littlefield facility is 418 men. At the end of 2023, she expects to have 490 Residents, explaining that in just one week’s time, 4 men had been civilly committed.

Now onto the issue of COVID at the Texas Civil Commitment Center. There are currently there are 78 positive cases at TCCC. Of those men, 67 of them ARE NOT quarantined, potentially exposing others to the virus. But Executive Director McLane says that nobody is “really sick”. Yes, a near fatal virus that has taken the lives of approximately 6,450,000 people, but the ones who are positive for COVID within TCCC are NOT “really sick”. Hearing this, I was reminded that TCCO refuses to acknowledge the deaths of 12 Residents who tested positive for COVID. A potential safeguard to protecting the Residents within the facility would be to vaccinate the MTC Staff that are employed,

of which 50% are. But McLane is not willing to put forward this requirement, stating that it is up to the MTC Staff to decide whether they would like to receive the vaccine.

Executive Director McLane promptly changes the subject, saying that because of constant understaffing of “real” licensed therapists, TCCO is now organizing self-led groups, consisting of only Residents. She claims it is a success. A few Board Members expressed distain when hearing that the Residents within TCCC had an estimated 97 hours of free time a week, according to McLane. She says that this time is often spent in the rec yard, or to her disgust, “playing video games or listening to their MP3 Player”. McLane discusses that instead of allowing the residents to escape the harsh reality of civil commitment and impending doom, she would rather them be focused on unprofessional group therapy sessions that lack a main component: a therapist. This concludes McLane’s report.

A TCCO Financial Officer is then called forward to present data to the Board. He starts by stating that there is a \$64,000 budget increase due to medical offset costs, followed by a remaining \$1,000,000 in savings. The possible reasoning of this medical offset could be the increase of hospitalizations due to COVID exposures, but McLane interrupts to say that the mean age of the Residents is 55, so medical expenses are to be expected. So, there is large amount in the TCCO savings accounts, but they have yet to pay out the medical bills of the residents. What is the hold up? Why can’t TCCO take responsibility for the men and their medical needs, as McLane stated before that she takes “ownership of them”? The Financial Officer goes on to say that there is a budget issue, due to these very medical cost increases.

Perhaps due to worry that medical expenses could rise further, the Board moves to approve the budget for the year of 2023, totaling at around \$19,000,000.

The TCCO Financial Officer then states that this year's budget is up \$5.2 million from \$3.7 million the year before. Chairwoman Christy Jack states she had spoken to the President of MTC about this very problem, but it remains unsolved. Executive Director Marsha McLane pipes up that there is a total of two part-time doctors that are on staff. Although she would've liked them to be at the facility 24 hours a day, McLane states that MTC is in control of the hours that the medical staff is available; currently for 16 hours a day.

Amid the worries for medical budget costs, the TCCO Financial Officer requested for a 3% increase in pay for the case managers at TCCC, along with four new positions in low-cost cities to assist the Tier 5 Residents. Finally, he discussed establishing a death budget for cremations and burials for those who unfortunately die in the facility. In closing, TCCO is requesting \$49,000,000 for a new two-year budget for 2024-2025 to be presented to the legislators.

At this time, we passed notes about the Board Members being on their phones, whispering, and laughing to each other, whereas no-one in the audience did so. It appears this Board Meeting was more of a grueling task to the members than an important matter that involves the futures of 418 men.

Board Member "Chief" Dominguez speaks, asking various questions about the ongoings of TCCC. He is followed up by an audit review presented by Patrick Flaherty, via Zoom. Shortly thereafter, Deputy Director Jessica Marsh gives a report on a Customer Service Survey, of which a mere 35 responses were gathered. Marsh presents the data as a 60% satisfaction rate with TCCC and the Civil Commitment Program as a whole. Marsh then goes on to claim that a 60% satisfaction rate is a "majority" and that overall, the view of TCCC is positive and not in need of change. Executive Director McLane interrupts yet again to say that she had no idea this survey was to be conducted until the Texas Governor's

Office contacted TCCO and stated it was a requirement.

Lastly, the Littlefield Facility Administrator (MTC) Wayne Schmoker speaks about expansion plans. He states that 8 portable classrooms are fully operational, however, they are not being used to the COVID quarantine regulations. TCCO is currently waiting on groundbreaking for 12 permanent classrooms and offices, of which Collier Construction will oversee. Set to begin light construction on the week of the 29th of August, Schmoker seemed enthusiastic to house more men within this torture chamber of a facility.

To conclude the meeting, the Board Members move to approve the revised minutes for the April Board Meeting, almost 4 months of after the fact. They then reluctantly discuss tentative meetings in November, whining that the next meeting would interfere with their vacations or pre-existing plans. It was ultimately decided that the next Board Meeting would take place on Wednesday, November 16th amid joking and laughter. Lastly, those that requested to speak are as follows, Mandi Brady and Sydney Artrip. Brady spoke for F.A.C.T.S. (Families Against Committing Texans Standup) and Artrip spoke for Texas Tea Newsletter.

