

"One doesn't have to operate with great malice to do great harm. The absence of empathy and understanding are sufficient." – Charles M. Blow

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- ✓ Will CA Expand Tier Reduction for 1000s of Registrants?
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- ✓ CO Proposal: Treatment SOs in Community, Not in Confinement.
- & Many more to come!

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Academia and Activists Revolt!

Entities and Professionals Concerned with Sex Crimes & Related Matters Urge Repeal of Sex Offender Civil Commitment (SOCC) & Prompt Sunset of One of the Most Abusive SOCC Systems.

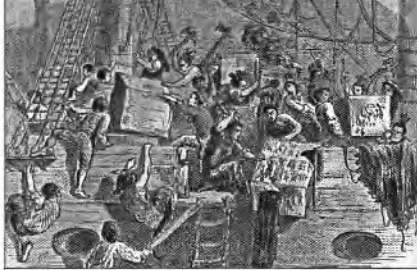
Editor's Introduction: This edition of the *Legal Pad* mostly focuses on a pleasing development in the was against sex offender civil commitment ("SOCC"). For the first time known to this writer, a report extremely critical of one of the 20 state systems of commitment of sex offenders (including its post-commitment confinement and its claimed "treatment") written by one academically respected entity has been ratified by many other entities and professional individuals in related fields expressing agreement with the substance of the report.

The importance of this validation is greatly increased because the wreckage and waste inflicted by the specific commitment system in question (the "Minnesota Sex Offender Program" or "MSOP") has been so long-entrenched and is so extreme that there is no reform that can convert it into an efficient system of treatment producing reasonably prompt release. It has been non-functional by design from its inception 30 years ago and has become even less capable of ever producing any reasonable annual rate of releases since adopting its current claimed "modality" of treatment in 2013 that instead stymies progress by confinees toward qualification for release.

Further, by its annual wasteful consumption of well over \$100 million (some say closer to \$200 million when related expenses beyond those for day-to-day operations are included in the tally), it has deprived the state of funds that could instead be spent on programs of primary prevention of sex crimes that are known to be highly effective in that effort. Thus, ironically, MSOP effectively committed than would occur otherwise.

The materials which follow create a documentary narrative of sorts, commencing with illustration of the need for termination ("sunsetting," as advocated by the report), and then covering its emergence and, ultimately, some of its most critical findings and recommendations.

There is no sex offender commitment system that is operating with acceptable efficiency of delivering treatment producing release. Nonetheless, simply as a study in comparison of a superficially similar commitment system in an adjacent state (Wisconsin), we close on this topic in this edition by examining the commitment system there that produces releases at a rate roughly five times that in MSOP.



This isn't about the price of tea....

concerns with lawmakers. But public testimony is not always enough to keep lawmakers accountable. Unfortunately, there are lawmakers who count on the ignorance of their constituents to pass their bills into law.

Before the bill for the Minnesota Commitment and Treatment Act¹ (MCT Act) was introduced to the public in 1994, Senator Don Betzold quietly told a colleague:

When it comes to the commitment side, nobody understands that and so we can almost do it... and it's not like it's going to be that controversial....²

Betzold was correct. There was virtually no controversy over the MCT Act and the bill was passed unanimously without a hitch.³

Several conversations happen between lawmakers and experts about the bills they write during the drafting process. These conversations reveal the legislative intent of the law, clarifying the purpose of the law and how it should be applied. Drafters of the MCT Act, which establishes the Minnesota Sex Offender state-operated institution.⁴

One such statement comes from Senator Betzold, who said that there are individuals indefinitely detained who:

...have absolutely no prison time hanging over their head because they have never been convicted of anything....⁵

The MCT Act is a hybrid of a 1939 law that locked people up for being in a consensual homosexual relationship.⁶ One expert believed that men who are attracted to underage males – as opposed to underage females – should be targeted for longer incarceration.⁷

Another said that 'transvestic fetishism' is deviant.⁸ These homophobic sentiments may explain why over half of the men and women confined under the MCT Act are of the LGBTQ+ community.

Lawmakers also repeatedly compared the mentally ill to animals.⁹ Former House Representative, David Bishop said, "...These people are animals. ...I don't believe they have the same civil rights anymore...."¹⁰

Detainees were specifically compared to 'foxes' at least three times by lawmakers.¹¹ Today, 'The Fox' is one of the 'perpetrator profile' personality types detainees are expected to identify as being

while detained in the institution.¹² Lawmakers used the MCT Act – which has fewer due process rights – to supplement the criminal justice system. This intention is made clear by Carolyn Peterson from the Hennepin County Attorney's Office who stated:

...[T]he criminal justice system ...we can't really count on that.... Don't we need a second aspect, if you will, to the web....¹³

Representative Bishop affirmed: ...we've had legislative intent for our civil statute as a supplement to the criminal statutes...¹⁴

Lawmakers were inspired by shady detention models. John Kerwin from the Attorney General's Office contended:

The federal government must have encouraged this at one point in time.... Guantanamo Bay, Alaska before it was a state, that kind of thing. There's got to be some history of this somewhere so that's being researched too.¹⁵

In addition to the ominous reference to Guantanamo Bay, Kerwin's mention of, 'Alaska before it was a state' is alarming. In 1956, -- before Alaska was a state -- Congress attempted to establish the *Alaska Mental Health Enabling Act*.¹⁶ Critics of the bill called it the 'Siberia, U.S.A.' bill due to its similarities to Soviet-slave-camps.¹⁷

Seeking the support of experts, Representative Bishop peddled the MCT Act by comparing it to Washington State's commitment statute, a law considered constitutional at the time.¹⁸ But almost 30 years after the MCT Act was passed, we can now see that it more closely resembles the

For instance, the Washington law uses the beyond-a-reasonable-doubt evidentiary standard – the Siberian bill and the MCT Act do not. The Washington law provides the right to a jury trial – the Siberian bill and the MCT Act do not. The Washington law requires a finding of a criminal conviction to commit someone – the Siberian bill and the MCT Act do not.¹⁹

In addition, had the original Siberian bill been passed, it would have established a commitment scheme that incarcerates citizens petitioned by any 'interested' party – just like the MCT Act.²⁰

In light of these comparisons, the MCT Act could be called the *Neo-Siberian Commitment Act*.

MSOP bears an eerie resemblance to the old Stalinist Russia winter resort for political dissidents at the gulag archipelago

Minnesota Attorney General at the time, Hubert Horatio 'Skip' Humphrey III, was arguably the most influential drafter of the MCT Act.²¹ Skip introduced three components that seemed to come straight out of the Siberian bill: 1) the ability

(Continued on page 2)

1. Identifying Some of MSOP's Fatal Problems

Daniel A. Wilson, "Soviet-Style Slave Camps in Minnesota," direct contribution (April 2024).

Text Excerpts: "The Minnesota Legislature welcomes fellow Minnesotans to share their

to detain innocent people; 2) supplementing the beyond a reasonable-doubt standard by the clear-and-convincing standard; and 3) denying citizens the right to a jury trial.²²

Skip's father, former Vice President Hubert Humphrey II, once spent over 8 hours in conversation with the first secretary of the Communist Party of the Soviet Union, Nikita Krushchev. It is possible that Skip learned communist ideas from his father, who was said to be 'impressed' with the U.S.S.R.²³

These similarities between Soviet slave-camps and the MCT Act were not missed by Minnesota Court of Appeals Judge R.A. Randall, who asserted in 2014:

[MSOP] bears an eerie resemblance to the old Stalinist Russia winter resort for political dissidents at the gulag archipelago....²⁴

There are drafters of the MCT Act who Neuville proclaimed:

...I admonish all of us to be very careful because this is a real slippery slope we're doing here. All we have to do is take the word 'sexual' out of this statute and we could be committing people for any kind of harmful conduct... now we're starting to confine people for what they might do in the future... But if we start being careless about these kinds of laws... we could be putting lots of people into this kind of confinement just because we're afraid of them....²⁵

As if incarcerating people indefinitely with no due process is not egregious enough, it is actually not the worst part of the MCT Act.

The MCT Act robs funds and resources from those who need it most. Clinical Psychologist Dr. Nicolas Long warned drafters that:

...much of the dollars would be diverted from treating mentally ill people who have a treatable disorder.²⁶

Pamela Hopes, attorney with the Minnesota Disability Law Center, echoed Dr. Long when she told lawmakers that the MCT Act:

...diverts resources that are desperately needed by the ...mental health system's primary beneficiaries....²⁷

The concerns of Dr. Long and Ms. Hopes have since materialized. The same year that Minnesota cut its funding for sexual violence prevention programs by \$3.6 million, it spent \$26 million of taxpayer money to detain 235 people under the MCT Act.²⁸ In 2022, Elizabeth J. Letourneau, Ph.D., director of the Moore Center for the Prevention of Child Sexual Abuse said:

...there are very limited resources for preventing this abuse from occurring in the first place... If we really want to prevent harm, then it is going to require more government investment.²⁹

Dr. Letourneau is correct. However, before we can fund programs that are effective in preventing harm, Minnesotans must learn how to keep their elected officials accountable."

Notes:

1 Codified at Minnesota Statute Ch. 253D.

2 Joint House/Senate Task Force on

Sexual Predators 8/16/94 (disk 2 of 4) at 00:34:58.

3 Minnesota State House of Representatives floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file); Minnesota State Senate floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file)

4 Joint House/Senate Task Force on Sexual Predators 7/14/94 (disk 1 of 3) at 00:47:24; *id.*, (Disk 2 of 3) at 00:14:35 and 00:25:32; *id.*, 8/11/94 (disk 1 of 5) at 00:18:55; *id.* 8/18/94 at 00:09:25, 00:40:56 and 02:32:00; *id.*, 8/19/94, at 01:38:50; House Joint Meeting, Senate Crime Prevention Committee (disk 1 of 9) at 00:29:43; *id.* (disk 3 of 9) at 00:45:09 and 00:46:47; *id.* (disk 4 of 9) at 00:04:3; *id.* (disk 6 of 9) at 00:37:30; Senate Joint Meeting, Judiciary & 00:39:06; Minnesota State House of Representatives floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file) at 00:43:16 and 00:44:00; Minnesota State Senate floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file) at 00:41:12; 10.20.94 Joint House Senate Task Force on Sexual Predators (audio file) at 01:39:00 and 01:50:50; Joint House Senate Task Force on Sexual Predators 9/04/94 (disk 2 of 3) at 00:55:05.

5 Minnesota State Senate floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file) at 00:41:12.

6 Joint House Senate Task Force on Sexual Predators 7/14/94 (disk 1 of 3) at 00:46:22; Minnesota State House of Representatives floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file) at 00:10:39; Minnesota State Senate floor debate at the First Special Session of 1994 on Wednesday, August 31, 1994. (audio file) at 00:12:45.

7 Joint House Senate Task Force on Sexual Predators 8/11/94 (disk 3 of 5) at 00:21:53; House Joint Meeting, Senate Crime Prevention Committee (disk 1 of 9) at 00:14:13.

8 Joint House Senate Task Force on Sexual Predators 7/21/94 (disk 2 of 2) at 00:53:11.

9 www.irl.mn.gov/media/index?body=all&sess=&comm=8178-0-j&d1=&d2=&y=1994&video=y&audio=y File 1 on 7/14/94 at 01:40:30; File 3 on 8/11/94 at 00:13:45.

10 *Id.* at File 2 on 7/14/94 at 00:59:05.

11 Joint House Senate Task Force on Sexual Predators 8/16/94 (disk 3 of 4) at 00:27:44; Joint House Senate Task Force on Sexual Predators 8/04/94 (disk 2 of 3) at 00:51:22.

12 "Styles of Perpetration" from MSOP's *Perpetrator Profile* module, p. 2.

13 Joint House Senate Task Force on Sexual Predators 8/11/94 (disk 3 of 5) at 00:54:16.

14 House Joint Meeting, Senate Crime Prevention Committee (disk 1 of 9) at 00:18:53.

15 Joint House/Senate Task Force on

Sexual Predators 8/04/94 (disk 3 of 3) at 00:15:01.

16 Public Law 84-830, H.R. 6376.

17 Senate Report No. 2053, p. 3640 AND Alaska Mental Health Enabling Act, *Wikipedia*, p. 4.

18 Joint House/Senate Task Force on Sexual Predators 7/21/94 (disk 1 of 2) at 00:10:36.

19 Joint House/Senate Task Force on Sexual Predators 7/14/94 (disk 2 of 3) at 00:14:35.

20 Minn. Stat. § 253B/07, Subd. 2 (a). AND *Wikipedia*, Alaska Mental Health Enabling Act, p.2.

21 House Joint Meeting, Senate Crime Prevention Committee (disk 6 of 9) at 00:37:30.

22 Joint House/Senate Task Force on Sexual Predators 8/04/94 (disk 2 of 3) at 00:55:05; Joint House/Senate Task Force

23 *Foreign Relations*: 8 (December 1958).

24 *Mattson, Court of Appeals of Minnesota* (1995).

25 Senate Joint Meeting, Judiciary & Crime Prevention (Sexual Predators) (disk 4 of 4) at 00:18:04.

26 Joint House/Senate Task Force on Sexual Predators (audio file) 8/18/94 at 01:39:40.

27 Joint House/Senate Task Force on Sexual Predators (audio file) 8/19/94 at 02:22:00.

28 *Tamara Rice Lave, "Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process? An Empirical Inquiry," University of Miami School of Law*, 2013, p. 36.

29 "New Study Estimates Annual Cost of Incarcerating Adults Convicted of Sex Crimes Topped \$5.4 Billion in 2021," *Johns Hopkins Bloomberg School of Public Health* (2022)

All we have to do is take the word 'sexual' out of this statute and we could be committing people for any kind of harmful conduct

2. The Press Release



"FOR IMMEDIATE RELEASE

April 24, 2024

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Center

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NEW REPORT: The Failure Of Minnesota's "Outlier" Sex Offense Civil Commitment Scheme & The \$100 Million Opportunity To Reduce Sexual Violence

"Minnesota's massive investment in so-called "civil commitment" for people convicted of sex offenses needlessly tramples civil and human rights, fails to meaningfully reduce sexual violence, and deprives more effective sexual violence prevention strategies of critical resources, according to a new report from the Sex Offense Litigation & Policy Resource Center SOLPRC at the Mitchell Hamline School of Law.

An accompanying letter signals a broad ment has failed. The letter from more than 50 leading legal scholars and practitioners, mental health providers, policy experts, law enforcement members, criminal justice reform groups, and human rights and civil rights organizations, among others, endorses the report's findings and policy recommendations, and asks state lawmakers to sunset the failed Sex Offense Civil Commitment (SOCC) scheme and reinvest its \$110 million annual budget into more effective, evidence-based programs.

"This report details what we have long known to be true: Minnesota's uniquely aggressive civil commitment program threatens basic constitutional rights while exacerbating the very problem it is intended to solve," said SOLPRC's Director Eric Janus. "Anyone who cares about reducing sexual violence in our communities should demand state lawmakers dismantle our failed SOCC scheme and reallocate its massive budget to programs that will prevent violence, support victims, and hold people accountable in fair and equitable ways."

The report's key findings include:

- At over \$100 million per year, Sex Offense Civil Commitment is by far the state's most expensive sexual violence prevention program — despite researchers finding that SOCC has 'no discernible impact' on reducing sex crimes.
- Conversely, the state's support of primary prevention (interventions designed to prevent sexual harm before it occurs), is less than 2% of SOCC's funding.
- Minnesota is a national outlier: Most states do not use SOCC at all, yet Minnesota commits the most people per capita among those that do.
- SOCC in Minnesota is effectively a life sentence without any finding of guilt or the due process protections of the criminal justice system. As of September 1, 2023, only 21 of the 946 people committed to MSOP over its 30-year history have ever been fully discharged, while at least 94 have died during their

(Continued on page 3)

confinement. One is thus nearly five times more likely to die in the program than to be discharged from it.

• **Minnesota's SOCC scheme has been repeatedly rebuked** by federal and state courts, academic studies, a state government task force, and the Office of the Legislative Auditor, yet policy change has not followed, and the program's failures persist.

'It has been over a decade since the Sex Offender Civil Commitment Advisory Task Force that I chaired found unanimously failures in Minnesota's civil commitment scheme, including that it was dangerously overbroad, capturing too many people for too long in ways inconsistent with both public safety and civil rights,' said Eric Magnuson, former Minnesota Chief Justice, and chair of the 2013 bipartisan Task Force. 'Today, this report shows in painstaking detail how those and other problems have only worsened, and makes the urgent case for sunseting Minnesota's failed experiment with Sex Offense Civil Commitment.'

In a joint statement, the Minnesota Coalition Against Sexual Assault (MNCASA) and Violence Free Minnesota (VFMN) said that 'the funding disparity illustrated in this report is alarming,' and that, 'based on the data in the report, the \$100 million that the State spends on MSOP does not effectively prevent sexual violence nor prioritize the needs of victims/survivors.' They added that MSOP's funding 'stands in stark contrast to the less than \$3 million spent on primary prevention of sexual violence every year. Meanwhile, our member programs cannot afford to stay open, despite record numbers of victims/survivors reaching out for services. The State must adequately invest in primary sexual violence prevention and community-based crime victims' services. We urgently need a robust and long-term investment in crime victims' services across our state.'

'This report's critical findings underscore the necessity of adequately funded rehabilitation and prevention services in the community,' said Ronda Disch, the Executive Director of Alpha Emergence Behavioral Health. 'As community-based treatment providers, we see daily the profound gaps in funding that hinder our ability to support reentry and offer comprehensive services effectively. Reallocating the substantial annual budget from civil commitment to community programs could revolutionize our approach, enabling us to implement innovative, evidence-based treatments and support systems for both survivors and individuals seeking reintegration. This change is needed for the health and safety of our communities.'

About SOLPRC:

The Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law collects and disseminates information about cases on issues of sexual violence policy, and facilitates communication, sharing, and the development of strategies among the lawyers, advocates and academics who seek a more sensible and

effective public policy on sexual violence prevention.

About the \$100 Million Committee:

Key contributions to this report were made by members of the \$100 Million Committee, which seeks to reassess the role played by sex offense civil commitment in Minnesota and improve Minnesota's use of resources to address and reduce sexual violence. The Committee is composed of detainee representatives, survivors of sexual harm, legal and policy professionals, reentry specialists, families of detained persons, and mental health, human rights, restorative, and racial justice advocates."

One is thus nearly five times more likely to die in the program than to be discharged from it.

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3. Press Coverage Begins.

Jessie Van Berkel, "Study: Sex Offender Program Is 'Failed Investment'," *Star Tribune*, Thurs., April 25, 2024

"The state is spending more than \$110 million this year on a sex offender program that locks up about 730 people. A new report calls for an end to the 30-year-old system."

"Minnesota involuntarily commits more people for sex offenses than anywhere else in the nation per capita, but authors of a new report say the more than \$100 million-a-year program fails to meaningfully address sexual violence or recognize the humanity of those it locks up."



-- Minnesota spends millions but doesn't address sexual violence, inmate humanity. --

Twenty states civilly commit sex offenders. Among those, Minnesota is 'notorious' for the number of people it confines, the duration of their commitment and a low rate of community reintegration, according to the report released Wednesday by the Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law.

It recommends lawmakers sunset the program that holds more than 730 people and put the money toward community and victim support, sex violence prevention, resolving sex violence crimes and restorative justice.

'This is a very expensive intervention and doesn't have very much of an impact on sexual violence,' said the center's director, Eric Janus, a longtime critic of the program.

'Even among the 20 states that do this, we are doing it in a way that confines too many people for much too long. That's a civil rights issue, of course. But it's also a resource allocation issue.'

The Minnesota Sex Offender Program (MSOP), which has facilities in Moose Lake and St. Peter, has faced years of backlash, primarily focused on civil rights concerns. Detainees sued in 2011, prompting a protracted legal battle over whether the system is constitutional. A U.S. District Court judge deemed it unconstitutional in 2015, but the decision was later reversed and the U.S. Supreme Court declined to hear a case challenging the system.

The program has continued to face legal challenges. A handful of detainees told the *Star Tribune* they feel longstanding issues still need to be addressed and many people there feel hopeless about their chances of ever leaving.

'MSOP follows the most current standards and best practices and is a recognized leader in sex-offense specific treatment. Public safety is at the heart of everything we do,' the Department of Human Services, which operates the program, said in a statement. The program is dedicated to providing the therapeutic guidance and tools clients need to break engrained patterns of behavior, make meaningful change, and reduce their risk of re-offense.'

The new report highlights problems raised in past lawsuits, including concerns about treatment, duration of confinement and delays. But unlike past legal challenges, it largely focuses on the program's cost and whether it's the best approach to address sexual violence.

Seeking consensus on closure

The program costs \$479 a day per client, according to DHS. The state budgeted more than \$110 million for MSOP in 2024.

Meanwhile, Minnesota spends about \$2 million a year on other sex violence prevention efforts, such as grants to nonprofits doing sexual assault prevention services, the report found. It contends that Minnesota has fixated on 'a tiny sliver' of the sexual violence problem – preventing repeat offenses – instead of spending state dollars on more comprehensive and effective efforts.

While the new study calls for an end to the state's civil commitment of sex offenders, advocates aren't pushing for changes in this year's legislative session, which concludes next month.

'We're interested in sunseting this program. But we understand that would need to be done in a very careful, systematic, thoughtful way,' Janus said, noting that broad consensus is essential to pave the way for legislative change.

Proposals to change MSOP have been 'weaponized' in the past, he said. He noted there seemed to be bipartisan support for a task force's recommended changes more than a decade ago, but 'the minute that it looked like it was going to be a political issue, it got dropped like a hot potato.'

There is no consensus among members of the Minnesota Coalition Against Sexual Assault (MNCASA) about whether the state

should sunset MSOP and reinvest the dollars, said Kate Hannaher, the organization's director of law and policy. However, she said advocates for victims of sexual violence were at the center of the creation of this report, which is not always the case.

'Whatever happens with the sex offender program, we need the money yesterday,' Hannaher said, noting programs for sex violence survivors are struggling to stay open despite high demand.

MNCASA and Violence Free Minnesota, which works to combat relationship abuse, put out a joint statement on the Mitchell Hamline report, calling the disparity between state spending on MSOP and sexual violence prevention 'alarming.'

What is the future of MSOP?

The state created MSOP in the 1990s. Most people in the facilities have completed a prison sentence, then are civilly committed if a judge determines they have a 'sexual psychopathic personality,' are a 'sexually dangerous person,' or both.

The program fully discharged only one person in its first two decades of operation. That number has increased in recent years. As of March 28, the program had fully discharged 24 people. Others are on provisional discharge or are in a less restrictive facility.

'Only a court has the authority to commit someone to MSOP or to discharge them,' DHS noted in its response to the report. *'Demonstrated participation and progress in treatment is the clear path to discharge. It is the most persuasive argument that clients can make for a reduction in custody.'*

People are about five times more likely to die in MSOP facilities than be released, according to the Mitchell Hamline report. It blames the courts and MSOP's clinical leadership for one of the country's lowest discharge rates, noting that clinical staff influence transfer and discharge decisions.

'The harsh reality is that instead of making us safer, the state's attempts to predict future crime have created a new form of incarceration' that disproportionately confines people of color and targets LGBTQ community members, the report states. It highlights a 2013 Brooklyn Law Review study that concluded such civil commitment laws have 'no discernible impact on the prevalence of sexual abuse.'

About 95% of people convicted of criminal sexual conduct offenses in Minnesota did not have a prior offense, according to the most recent Minnesota Sentencing Guidelines Commission report.

'There's a scientific right way and an evidence-driven right way to deal with sexual violence and that's not what we're doing in Minnesota,' said Daniel Wilson, who is civilly committed at the MSOP facility in Moose Lake after serving time for criminal sexual conduct against a child. He helped organize hunger strikes at MSOP in 2021, during which detainees demanded the state offer a clear pathway for people to understand how they can be released.

Wilson is one of a handful of people locked up at Moose Lake who recently called the *Star Tribune*. Each shared simi-

(Continued on page 4)



lar concerns about limited access to treatment, a lack of quality and timely health care, seemingly subjective decisions about their futures and a widespread feeling of 'hopelessness' that people will ever get out.

"It's worse than what people can imagine, because they live in America," Wilson said. "We don't live in America in MSOP."

*: Community Preparation Services (CPS) is a non-secure residential facility on the St. Peter campus that prepares people to be reintegrated into the community. (Source: MN Dept. of Human Services), Mark Boswell • Star Tribune

95% of people convicted of criminal sexual conduct offenses in Minnesota did not have a prior offense.

4. Even the Conservative Professional

Laura Brown, "Report faults sex offender program," *Minnesota Lawyer* (April 26, 2024), <https://minnlawyer.com/2024/04/26/report-faults-sex-offender-program/>.

Text: "Minnesota spends over \$100 million per year to prevent sexual violence through its Sex Offense Civil Commitment program (SOCC).

In tandem with a new report issued by the Sex Offense Litigation & Policy Resource Center at the Mitchell Hamline School of Law, which casts doubt on the efficacy of the program, legal scholars, criminal justice reform groups, and others are asking Minnesota to sunset the civil commitment program and allocate its annual budget toward evidence-based programs that they claim will be more effective in reducing sexual violence.

It's time."

Janus now serves as the director of the Sex Offense Litigation & Policy Resource Center. The center gathers and shares data on sexual violence policy cases, fostering collaboration among lawyers, advocates, and scholars to develop effective strategies and promote sensible public policies for preventing sexual violence.

On April 24, the center announced a new report, in progress for almost two years, that came out of an organization called the \$100 Million Committee, an informal group of people who have expressed concerns about the civil commitment program, also known as the Minnesota Sex Offender Program (MSOP). They have been discussing how the money that goes toward the program could be reinvested to other crime prevention.

The report makes several key findings, the major one being that SOCC has "no discernible impact" on the reduction of sex crimes. It also states that Minnesota's focus on primary prevention—in other words, stopping sexual harm before it occurs—accounts for less than 2% of SOCC's funding.

The report finds that Minnesota is distinct in its SOCC program, in that most states do not use SOCC at all. Among those that do, Minnesota commits the most people per capita.

As of Sept. 1, 2023, out of the 946 individuals at least 94 have died during their confinement. Thus, the report concludes, one is nearly five times more likely to die in the program than to be released from it.

The report asserts that in Minnesota, the SOCC operates essentially as a "life sentence" without needing to find the person guilty or provide them the due process protections of the criminal justice system.

"A real civil commitment program is that you put people in a treatment program, you provide some effective treatment, and then a good proportion of them are released. And that hasn't happened, of course, in Minnesota," Janus said.

Some argue that the report confirms what they have previously known of the program. Former Minnesota Chief Justice Eric Magnuson, who chaired the Sex Offender Civil Commitment Advisory Commission, more accurately described the program as "dangerously overbroad" and captured "too many people for too long" in violation of public safety and civil rights.

"Today, this report shows in painstaking detail how those and other problems have only worsened, and makes the urgent case for sunseting Minnesota's failed experiment with Sex Offense Civil Commitment," Magnuson said.

Daniel Repka, attorney at Repka Law LLC, who handles civil commitment cases, says that the results of the report do not surprise him.

"Many of my clients feel a sense of hopelessness at MSOP due to the lack of institutional progress available to them. The treatment staff at MSOP turnover regularly, which means clients very rarely benefit from continuity of care. This usually results in stagnation of care and treatment," said Repka added. "The government has very little difficulty in convincing a court to commit a person based on the low burden of proof and the relaxed rules of evidence. The numbers prove that, once you're committed, it's unlikely you will ever be fully discharged."

Additionally, two organizations representing survivors of violence support the findings of the report. Minnesota Coalition Against Sexual Assault and Violence Free Minnesota issued a joint statement, in which they asserted that "the \$100 million that the State spends on MSOP does not effectively prevent sexual violence nor prioritize the needs of victims/survivors" and that the funding is in "stark contrast to the less than \$3 million spent on primary prevention of sexual violence every year."

In response, Minnesota Department of Human Services, which oversees the program, says that it is "always open to discussion about ways to enhance treatment at the Minnesota Sex Offender Program (MSOP)." It pushes back on the findings, alleging that "little in the report focuses on treatment at MSOP."

"MSOP follows the most current standards and best practices and is a recognized do. The program is dedicated to providing the therapeutic guidance and tools clients need to break engrained patterns of behavior, make meaningful change, and reduce their risk of re-offense," Minnesota DHS added.

"Minnesota's uniquely aggressive civil commitment program threatens basic constitutional rights while exacerbating the very problem it is intended to solve," said Janus.

"The only real solution is a careful and orderly wind-down of the program," Janus vowed.

5. Key Findings and an Executive Summary Clarify the Plaints and its Aim.

Eric S. Janus, Director, Sex Offense Litigation and Policy Resource Center (SOLPRC), [Sex Offense Civil Commitment Minnesota's Failed Investment and the \\$100 Million Opportunity to Stop Sexual](#)

Violence, Mitchell Hamline School of Law (April, 2024).

Text Excerpt:

[p. 1:] "KEY FINDINGS

- **Minnesota spends over \$100 million each year on Sex Offense Civil Commitment (SOCC)**, administered by the Department of Human Services (DHS). SOCC is by far the most expensive intervention in the sexual violence pre-small fraction of recidivist offenses, **neither addresses nor repairs the vast majority of sexual harm in Minnesota.**
- Researchers have found that **SOCC has "no discernible impact" on the incidence of sexual violence.**
- Based on available data, in recent years the State's support of primary prevention (interventions designed to prevent sexual harm in the community before it occurs) is less than 2% of the resources given to SOCC.
- Most states do not have SOCC schemes. Among the minority of states that have these laws, Minnesota is an outlier. Minnesota's SOCC program, called the Minnesota Sex Offender Program (MSOP), has the highest number of civilly committed individuals per capita of any state in the country with one of the lowest rates of discharge.
- As of September 1, 2023, only 21 of the 946 people committed to MSOP have been fully discharged from the program (~2%), while at least 94 have died during their commitment (~10%).
- As of September 19, 2023, 74% (557) of the approximately 747 people detained for over 75 years, 18% (138) have been detained for over two decades, and 8% (62) have been committed to MSOP for over 26 years.
- Unlike most states with SOCC, Minnesota does not regularly review detainee risk levels to assess the feasibility of safe reentry into the community. This increases the risk that detainees who could be moved to a less restrictive and less expensive setting remain in confinement longer than necessary, and thus longer than constitutionally permissible.
- MSOP detainees wait an average of 625 days for a final decision to be made on their petitions for transfer to a less restrictive environment or discharge. This also increases the risk that the most expensive and restrictive prevention to a less restrictive environment, in recent years detainees have waited years for transfer.
- Although courts make the final decisions about detainee petitions, MSOP policies and recommendations by MSOP's clinical leadership significantly influence

(Continued on page 5)

decisions about transfer and discharge. Both the courts and MSOP thus bear responsibility for the unnecessarily low rates of transfer and discharge.



Many investigators get a more accurate picture.

SOCC, enacted in its current form in the 1990s, is indefinite detention for individuals labeled with a "mental disorder or dysfunction" and assessed as having a "high probability" of committing future sexual harm. A central feature of Minnesota's SOCC law is that it confines people after they have completed their criminal sentences. The "dangerousness" determinations are based on risk assessment algorithms that use an individual's prior history and personal characteristics. But these tools are prone to bias and are based on generalizations from research about group risk, and therefore yield high error rates.⁸

The harsh reality is that instead of making us safer, the state's attempts to predict future crime have created a new form of incarceration, disproportionately confining people of color based on group-based assessments of what they might do at some point in the future. These laws have targeted LGBTQ+ community members in the past, and there is evidence that this community is disproportionately targeted even now.⁹ Custody in SOCC has no end date, and the people who are committed to these facilities are about five times more likely to die there than to be released.¹⁰

Thirty states have chosen to address sexual violence without enacting any form of SOCC.¹¹ Among the twenty states that have an SOCC program, Minnesota is an outlier, notorious for the number of people committed, the extended length of confinement, and the low rate of reintegration into the community.

In Minnesota, SOCC is typically applied to those who have been convicted of a sex crime and already completed their criminal sentence.¹² Commitment proceedings often occur around the time that someone is set to be released from prison. Once someone is committed by a court, they are housed in secure prison-like¹³ facilities run by MSOP, which is administered by Minnesota's Department of Human Services ("DHS"). MSOP's stated purpose is to provide treatment services to individuals who are at risk of reoffending.¹⁴ In early court cases, the state defended the constitutionality of its SOCC scheme by emphasizing the program's anticipated duration of less than three years for "model patients."¹⁵

Contrary to the state's representations in court, for most people commitment to MSOP constitutes an unofficial, but very real, life sentence. This "life sentence" takes place after someone has already served the time deemed appropriate by the criminal courts.

This report explores three central problems with Minnesota's SOCC legislation¹⁶ and its implementation in MSOP:

- Civil commitment's reduction of sexual violence is vanishingly small compared to \$100 million per year to sexual violence prevention is salutary, but other approaches would leverage those resources far more effectively than MSOP.
- SOCC—the statute, the judicial system, and the program it embodies—has failed to serve the purported purpose of treating individuals to facilitate safe community re-entry. The state commits too many, and keeps them too long, compounding SOCC's ineffectiveness with civil and human rights violations.
- SOCC embodies a dangerous principle: that impassioned majorities may indefinitely detain a reviled and degraded "other" in the name of preventing some future harm. SOCC thus extends and valorizes a deplorable history of laws targeting racial and sexual minorities, and persons with disabilities.

This report makes recommendations for policy changes and long-term goals that require legislative action. Ultimately, this report concludes that incremental changes to Minnesota's SOCC program will not fix its problems. Instead, to *enact real change, Minnesota's Legislature should repeal the state's SOCC law, implement procedures to safely sunset the incarceration of the 747 people in MSOP's secure facilities, and reinvest MSOP's \$100 million annual budget into community and victim support, sexual violence primary prevention efforts, and effective efforts to resolve sexual violence crimes and hold those who harm others accountable through restorative practices.*"

74% of the approximately 747 people detained in MSOP have been there for over a decade.

Endnotes:

2. See Sexual Violence Prevention Data, Minn. Dep't of Health (Mar. 23, 2022, 2:26 PM), <https://www.health.state.mn.us/communities/svp/data/index.html>.
3. Ted R. Miller, et al., Costs of Sexual Violence in Minnesota, Minn. Dep't of Health, 4 (July 2007), <https://www.health.state.mn.us/communities/svp/documents/svcosts.pdf>.
4. LaPlant, M., et al., Sexual Violence Data Brief: Hospital-Treated Sexual Violence in Minnesota 2010 to 2014, Minn. Dep't of Health, 1 (2016), <https://www.health.state.mn.us/communities/svp/documents/10.28.2016SexualViolenceDataBrief.pdf>.
5. Wiens T., Et Al., Students Reporting Sexual Violence Victimization on the Minnesota Student Survey, 1992–2016, Minn. Dep't of Health, 1 (September 2019) https://www.health.state.mn.us/communities/svp/documents/MSS_sexualviolencedata-brief2016.pdf.

www.health.state.mn.us/communities/svp/documents/MSS_sexualviolencedata-brief2016.pdf.

6. 2022 Minnesota Student Survey Statewide Tables, Minn. Student Surv. Minn. Dep't of Human Services, *Ministry of Pub. Safety* (December 2022), available at <https://public.education.mn.gov/MDEAnalytics/DataTopic.jsp?TOPICID=11>.

7. Sex Offense Civil Commitment, referred to herein as SOCC, has often been referred to as "sexually violent predator" laws or "SVP laws." We choose to use the term SOCC in lieu of SVP to avoid the inaccurate implication that a past offense is a permanent behavioral and character trait.

8. See R.K. Hanson, K.M. Babchishin, L.M. Helmus, & D. Thornton, Communicating the Results of Criterion Referenced Prediction Measures: Risk Categories for the Static-99R and Static-2002R Sexual Offender Risk Assessment Tools, 29 Psych. Assessment, 582–97 (2017).

9. See Neil Miller, Sex-Crime Panic: A Journey to the Paranoid Heart of the 1950s (2009); Marie-Amelie George, The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States, 24 J. Hist. Sex., <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SVP-Civil-Commitments-Oct-2020.pdf>.

10. Minnesota Sex Offender Program Statistics, Minn. Dep't of Hum. Servs. (Sept. 1, 2023), <https://mn.gov/dhs/people-we-serve/adults/services/sex-offender-treatment/statistics.jsp> (noting that 21 individuals have been fully discharged from MSOP); Joe Barrett, Some Question Laws That Allow Sex Offenders to Be Locked Up After Time Served, WALL ST. J., Sept. 9, 2023 (stating that 94 individuals have died while committed to MSOP).

11. See SOCCPN, Civil Commitment of Sexual Offenders: Introduction and Overview (2015), https://soccpn.org/wp-content/uploads/2016/05/CC_Overview_SOCCPN_2.pdf (listing states that have enacted some form of SOCC statute, discussed further infra at note 131).

12. A prior conviction of a crime is not a statutory requirement for commitment. In fact, a number of detainees at MSOP have never been convicted of a crime.

13. Facilities run by the Minnesota Sex Offender Program in Moose Lake and St. Peter, Minnesota, are highly secured campuses surrounded by razor-wire fences. See, e.g., Larry Oakes, Locked in Limbo, Star Trib. (Minneapolis), June 8, 2008, at A1 ("In most ways the MSOP is indistinguishable from prison, with cell blocks and lockdowns for searches."). Those committed to MSOP facilities are not allowed beyond the secured perimeter. Exceptions apply to those in Community Preparation Services, who are permitted occasional supervised outings beyond St. Peter's campus. See also Monica Davey & Abby Goodnough, Doubts Rise as States Hold

(Continued on page 6)

SOCC has "no discernible impact" on the incidence of sexual violence.

EXECUTIVE SUMMARY

Sexual violence is a pervasive problem that causes devastating harm. Despite limited data collection and substantial underreporting, Minnesota has gathered data on sexual and intimate partner violence throughout the state that show an entrenched social and systemic problem.² In 2005, a study estimated that in a single year more than 61,000 Minnesota residents were sexually assaulted.³ Data from 2010 through 2014 show "steady numbers" of hospital-treated sexual violence cases across the state.⁴ In 2016, another study found that 5.6% of youth surveyed, including 2.6% of males and 8.6% of females, reported experiencing sexual abuse.⁵ Most recently, a 2022 student survey found that by eighth grade, at least 8% of Minnesota youth have already experienced sexual violence victimization.⁶ By eleventh grade that figure grows to 16%.

Government response to sexual violence is critical for the prevention of future violence and the healing and wellbeing of survivors. While the problem of sexual harm is recognized by Minnesota's agencies and political representatives, their response has been largely reactive and ineffective. Instead of preventing sexual violence before it occurs through evidence-based community interventions, education, and support, Minnesota has devoted a large portion of its prevention resources to indefinitely incapacitating almost 1000 individuals based on predictions about their likelihood to cause sexual harm in the future.

Instead of asking "How can we best prevent incidences of future harm?" the state has asked "How can we lock up the people we fear the most?" Empirical research tells us that those are not the same question, and the state's approach has led us down an expensive path that fails to address sexual violence broadly and effectively. This report challenges Minnesota's allocation of prevention resources, with a particular focus on the harms and missed opportunities caused by the extraordinarily disproportionate allocation of resources to Sex Offense Civil Commitment ("SOCC") and the Minnesota Sex Offender Program ("MSOP").⁷



Accord, old style, with all formalities

Sex Offenders After Prison, N.Y. Times, Mar. 4, 2007, at 1.1 ("Most of the centers [in the country] tend to look and feel like prisons, with clanking double doors, guard stations, fluorescent lighting, cinder-block walls, overcrowded conditions and tall fences with razor wire around the perimeters. Bedroom doors are often locked at night, and mail is searched by the staff for pornography or retail catalogs with pictures of women or children. Most states put their centers in isolated areas.")

14. Sex Offender Treatment: Frequently Asked Questions, Minn. Dep't of Hum. Servs., <https://mn.gov/dhs/people-we-serve/adults/services/sex-offender-treatment/faqs.jsp>. [hereinafter Frequently Asked Questions].

15. See In re Linehan (Linehan III), 557 N.W.2d 171, 188 (Minn. 1996), cert. granted, judgment vacated sub nom., Linehan v. Minnesota, 522 U.S. 1011 (1997).

16. Minn. Stat. Ann. § 253D.01–36 (West 2013).

SOCC embodies a dangerous principle: that impassioned majorities may indefinitely detain a reviled and degraded "other" in the name of preventing some future harm.

6. Over 50 (So Far) Stakeholders, Concerned Entities & Key Professionals, & Core-Issue Activists Endorse this Report.

"To Governor Walz and the Minnesota State Legislature

We write with grave concern about Minnesota's enormous and misguided investment in so-called 'civil commitment' for people convicted of sex offenses, and to urge a path forward that better prevents sexual violence, protects survivors, holds perpetrators accountable, and respects civil and human rights.

This is not a partisan issue. We are a diverse group of more than 50 legal scholars and practitioners, mental health providers, policy experts, law enforcement members, human rights and civil rights advocates, criminal justice reform groups, and others committed to reducing sexual violence

in our communities. In light of a new report from Mitchell Hamline School of Law's *Sex Offense Litigation & Policy Resource Center*, the failures of Minnesota's Sex Offense Civil Commitment (MSOCC) regime cannot be ignored. We share the report's conclusions that MSOCC is exorbitantly expensive, ineffective, and dangerous, as it needlessly tramples the rights of a small minority while leaving real preventive solutions underfunded. The report's findings are damning. Among them, Minnesota spends over \$110 million per year to indefinitely confine many hundreds of people who have already served their criminal sentences. The program's massive scale makes it a national outlier. While most states have no sex offender civil commitment at all, Minnesota commits the most people per capita of those that do. And it does this despite comprehensive evidence showing that such programs have 'no discernible impact on the incidence of sex crimes.' Minnesota's lopsided investment thus wastes scarce resources while starving far more effective programs, including those that directly serve victims.

Further, civil commitment under the MSOCC to the Minnesota Sex Offender Program (MSOP) – ostensibly designed to compel short-term 'treatment' – is effectively a life sentence imposed without any finding of guilt or the due process protections of the criminal justice system. Only 21 of the 946 people committed under MSOCC over its 30-year history have ever been fully discharged, while at least 94 have died during their confinement. One is thus nearly five times more likely to die in the program than to be discharged from it. Without meaningful opportunity for release, nearly 75% of those currently detained have been there for more than 10 years. By contrast, New York, Washington, and Wisconsin, which all have much smaller commitment programs to begin with, have been successfully releasing people from their programs. We should learn from their success.

The report's evidence against MSOCC is overwhelming, and it echoes previous findings from academic studies, federal court opinions, a Minnesota government task force, and the Office of the Legislative Auditor. Yet policy change has not followed. The inescapable lesson is that incremental reform is futile. Instead, we must sunset the failed 'treatment' program known as MSOP and reinvest the funds into proven and promising approaches to significantly reducing sexual violence.

Specifically, we call for the state to:

- End sex offense civil commitment in Minnesota.
- Develop re-entry plans for all persons currently in MSOP that provide access to basic living needs; medical, mental health and dental care; job training and assistance finding employment; community-based treatment if needed; and identification documents.
- Release all persons currently confined in MSOP over a maximum five-year period (excepting only those who do not wish to be released or who can be held under

existing mentally ill and dangerous statute at the security hospital).

- Notify victims regarding these changes, including the offer of supportive services, safety planning, restorative practices, and relocation options.
- Reinvest savings into a new grant-making program at the Minnesota Department of Health to prevent sexual violence and support and empower survivors, families, and communities, while providing a just transition for facility staff and localities.

We urge the Governor and legislative leaders to forge a bipartisan plan to meet these objectives. We understand that toxic politics have derailed even modest reforms in the past. Yet we reflect a broad and growing consensus that MSOCC serves a broken system whose massive investment should be reallocated to a comprehensive campaign to reduce sexual violence. There are robust problem solving resources available for seemingly intractable social problems like this one, and we stand ready to collaborate with you and others on fixing this widely-recognized problem through a process that will not be mired in partisan politics.

MSOCC has failed. This is not to impugn the individual employees of MSOP who are working in good faith, but is instead recognition that the MSOCC enterprise as a whole is unsound and ineffective policy that must be shut down. It is time to sunset the program and reinvest. Doing so will address a longstanding blot on our state's reputation and significantly reduce sexual violence in Minnesota.

We look forward to working with you.

- American Civil Liberties Union of Minnesota
- End Mass Incarceration (MN)
- Jewish Community Action
- Law Enforcement Action Partnership (LEAP)
- National Association of Criminal Defense Lawyers (NACDL)
- Rainbow Health
- The Center for HIV Law and Policy
- Wrongfully Incarcerated & Over-sentenced Families Council – MN
- Black & Pink Minneapolis
- EndMSOP Coalition
- Justice Impacted Individuals Voting Effectively (J.I.I.V.E.)
- Mental Health America
- National Lawyers Guild – Minnesota Chapter
- Re-entry Assistance to the Incarcerated (RAIN) of North America
- The Center for Victims of Torture

- \$100 Million Committee
- Center for Constitutional Rights
- Human Rights Defense Center
- Juvenile Law Center
- Minneapolis NAACP
- Sex Workers Outreach Project (SWOP) Minneapolis
- The Advocates for Human Rights
- Twin Cities Incarcerated Workers Organizing Committee
- Individuals
- Jill Avery, *Civil commitment defense attorney*
- Jon Brandt, MSW, LICSW, *Executive Director (Ret.), Mapletree (residential program)*
- William Dobbs, *Attorney, publisher of The Dobbs Wire – Criminal Justice News*
- Emily Baxter, *Executive Director, We Are All Criminals*
- Michael F. Caldwell, M.S., Psy.D., *Senior Lecturer in Psychology, University of Wisconsin, Madison*
- Ira Ellman, *Distinguished Prof. Emeritus of Law and Psychology, Arizona State University; Distinguished Affiliated Scholar, University of California, Berkeley; co-author, "Frightening and High" the Supreme Court's Crucial Mistake About Sex Crime Statistics*
- Don Betzold, *former Minnesota State Senator (1994-2010); charter member, Hennepin County commitment defense panel*
- Heather Cucolo, *Distinguished Adjunct Professor of Law, New York Law School; co-author of "Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation"*
- Leo Feeney, *partner, Robins Kaplan LLP*
- Toshira Garraway, *Founder, Families Supporting Families*
- Michael J. Iacopino, *Co-Chair, National Assoc. Of Criminal Defense Lawyers Sex Offender Policy Committee*
- Elizabeth LeTourneau, *Director, Moore Center for the Prevention of Child Sexual Abuse, Johns Hopkins School of Public Health*
- Eric Magnuson, *former Chief Justice, Minnesota Supreme Court*

(Continued on page 7)

- **John Henderson**, *Founder & President, Re-entry Assistance to the Incarcerated (RAIN) of North America*
- **Tucker L. Isaacson**, *Attorney, Bradshaw & Bryant, PLLC*
- **Wayne Logan**, *Prof., College of Law, Florida State University; elected member, American Law Institute; past chair, Criminal Justice Section of the Assoc. of American Law Schools*
- **Joseh Margulies**, *Attorney, lead counsel in landmark Guantanamo Bay litigation, Rasul v. Bush*
- **Steven K. Hoge, M.D.**, *Director, Columbia-Cornell Forensic Psychiatry Fellowship Program*
- **Valerie Jonas**, *civil rights attorney, lead counsel in successful challenges to registration and residency restrictions*
- **William Lubov**, *attorney & charter member, Hennepin County Commitment Defense Project, Scholar of Public Policy, The Williams Institute, UCLA School of Law*
- **Michael H. Miner, Ph.D., LP, Prof. Emeritus**, *Eli Coleman Institute for Sexual & Gender Health, Department of Family Medicine & Community Health, University of Minnesota*
- **Michael L. Perlin, Prof. Emeritus**, *New York Law School & Co-Founder, Mental Disability Law and Policy Associates; co-author of "Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation"*
- **Kelly M. Socia, Ph.D., Prof.**, *School of Criminology & Justice Studies, University of Massachusetts Lowell*
- **JaneAnne Murray**, *Director, Clemency Project, University of Minnesota Law School*
- **Stephen Sandell**, *Former Member, Minnesota House of Representatives (2019-2022)*
- **Brian Southwell**, *civil commitment defense attorney*
- **Jessa Nicholson Goetz**, *Attorney; Vice President, Wisconsin Association of Criminal Defense Lawyers*
- **raj sethuraju, Ph.D.**, *Assoc. Prof., School of Criminology & Criminal Justice, Metro State University, survivor of sexual abuse with over 20 years of community-based activism as a researcher and educator*
- **Christy L. Thorson**, *attorney, Bradshaw & Bryant, PLLC*
- **Bill Tilton**, *attorney, Tilton & Dunn*

PLLP

- **Maurice L. Ward**, *founder & CEO, JIIVE: Justice Impacted Individuals Voting Effectively*
- **Daniel Wexler**, *attorney & member of the Hennepin County Commitment Defense Panel*

7. *A Tale of Four States: A cursory Contrast with the Failed, Brutal Experiment Called SOCC, Nationwide & in Washington, New Hampshire, and Next-Door North Dakota & Wisconsin Shows How Abysmally, DeMSOP Is.*

A. Nationwide

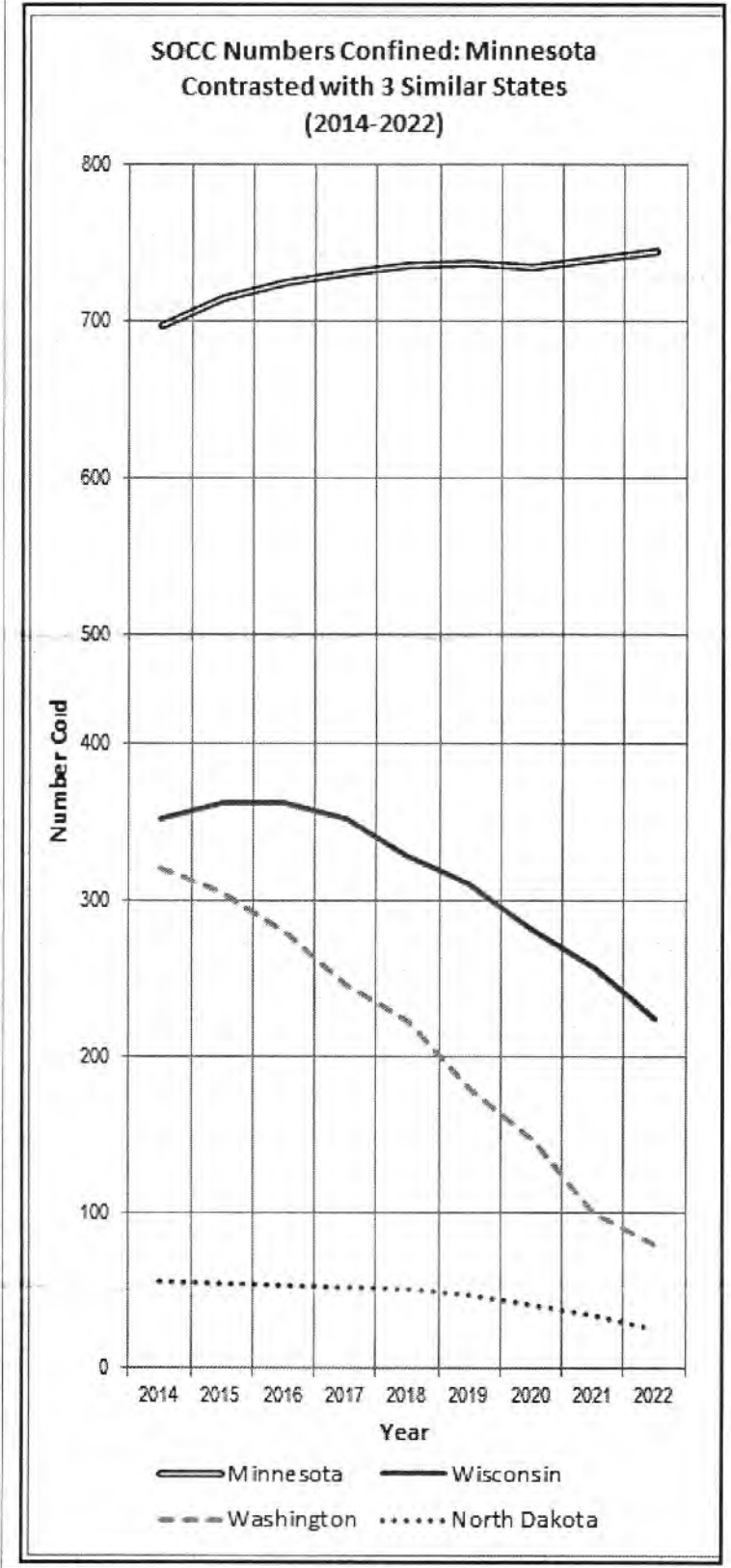
Of the 20 states that are typically identified as having SOCC systems, one (New Hampshire) currently has no confinees and hence is better deemed not an actual SOCC system (see specific discussion below).

Another, Pennsylvania, is statutorily designated only for SOCC commitment of former juvenile sex offenders who aged out of their juvenile sentences. This uniquely particular limit excludes all adult offenders, who obviously also present some sex re-offense risk and who, in the case of those who last offended as young adults, present just as much statistical risk as any 'aged-out' juvenile offender.

Thus, this singling-out of former juvenile offenders is obviously at odds with known science. Hence, Pennsylvania's SOCC statute is transparently just a specifically retributive product of purely political selection — probably at the behest of some influential families who felt that a teenager who raped or sexually abused a family member deserved far more incarceration than could be inflicted via a juvenile sentence.

In a sense, however, this kind of hate-based misapplication of civil commitment bears motivations of this kind in common with the origin-stories behind most, if not all SOCC laws.

Minnesota's SOCC legislation, for example, was prompted by a judicial decision that the rapist and killer of a teenaged daughter of a politically well-connected family could not be held under a 1930s-era commitment law for "psychopathic" offenders, since he had the ability to decide whether or not to commit those crimes. Under the 1994 law under which that defendant was re-committed, Minnesota now



proclaims that anyone who commits a sex crime is inherently unable to control a presumed impulse to commit such a crime.

Such wordplays merely manipulate an appearance of constitutionality where there clearly is no constitutional basis for commitment under the *Hendricks-Crane* standard specified by the U.S. Supreme Court. By nothing more than such manipulation of words, life-without-significant-chance-of-release decisions are made weekly on

average in states having such laws. This is the anti-civil liberties horror a la *Minority Report* that SOCC represents and which invites expansion of to other topics as well.

B. Washington

Significantly, the State of Washington was the first state to enact an SOCC law in the modern era. As was later the case with at

(Continued on page 8)

least Pennsylvania and Minnesota, the most immediate urge for enactment was commission of crimes of a sexual nature/motivation, where the proposed law was needed to prevent the offender from being set free at the end of his criminal imprisonment. The repellent and violent nature of the specific crimes in those cases created a frenzy of loathing and a fear of possible repetition of such crimes.

Washington immediately began a campaign of such commitments following passage of that act. Within several years, hundreds were under commitment in that state. At its height, SOCC there held approximately 500 confinees. Very few releases from that SOCC system occurred until 2010 and beyond.

In a sense, that system suffered from its deliberate isolation — on a small, uninhabited island in Puget Sound. There was no sanitary source of water on that island, forcing the State to ship fresh water in to the facility as often as weekly — a significant expense. Other problems with sanitation began to compound upon each other.

Before long, it began to emerge that the only way to continue operation of that facility was to transfer some confinees to halfway houses elsewhere in the state. Such conditional releases began in earnest.

Over time, it became clear that those released to that status presented little or no risk of sexual re-offense. Because of this, many who had by then demonstrated their lack of danger of such re-offense started petitioning for termination of their commitments — and met with increasing chances of success as the years marched on.

Eventually, this embarrassed and emboldened the State to found a formal program of release through satisfaction of a number of reasonably clear criteria. In a short number of additional years, this brought releases to a new high, far eclipsing new commitments.

The latter had fallen into disfavor after sentences for new sex crimes had been greatly increased. In a nutshell, few sex-crime repeaters were reaching release dates anymore, drastically limiting occasions for commitment.

At the same time, it began to dawn on state lawmakers that sex crimes — even recidivist ones — did not equal probable future re-offense for any given past sex offender. At that point, tired of the exorbitant expense of continuing that isolated facility, legislators passed further laws rendering it easier to gain release and even termination of commitment.

The end result is that there are now slightly less than 100 individuals confined in that facility, and the downward trend continues at a rate that suggests it may reach complete closure within the next decade.

C. New Hampshire

New Hampshire never had in mind commitment of substantial numbers of sex offenders. Instead, it merely created such a system as a catchment means for any rare offender deemed very likely to reoffend upon release.

However, not long after that SOCC system's first commitment, it hired the director

of an SOCC system in another state to operate the New Hampshire system. However, very soon that new director, who believed in and advocated a principle which came to be known as "containment," let it be known that she advocated containment.

That principle contended that the only adequate means of prevention of recidivistic sex crimes was permanent confinement of each such repeat offender.

It became clear that the new director expected and wanted to grow New Hampshire's system to hold a hundred or more confinees. In such a small and uncrowded state, such numbers were very unrealistic.

Realizing that no meeting of minds was forthcoming, that director resigned and moved on to take the helm of an SOCC system in a different state. Eventually, that sole committed sex offender in New Hampshire was released. At present, the empty SOCC system in that state is treated as ended and not expected to be resurrected.

A Note of Broader Significance

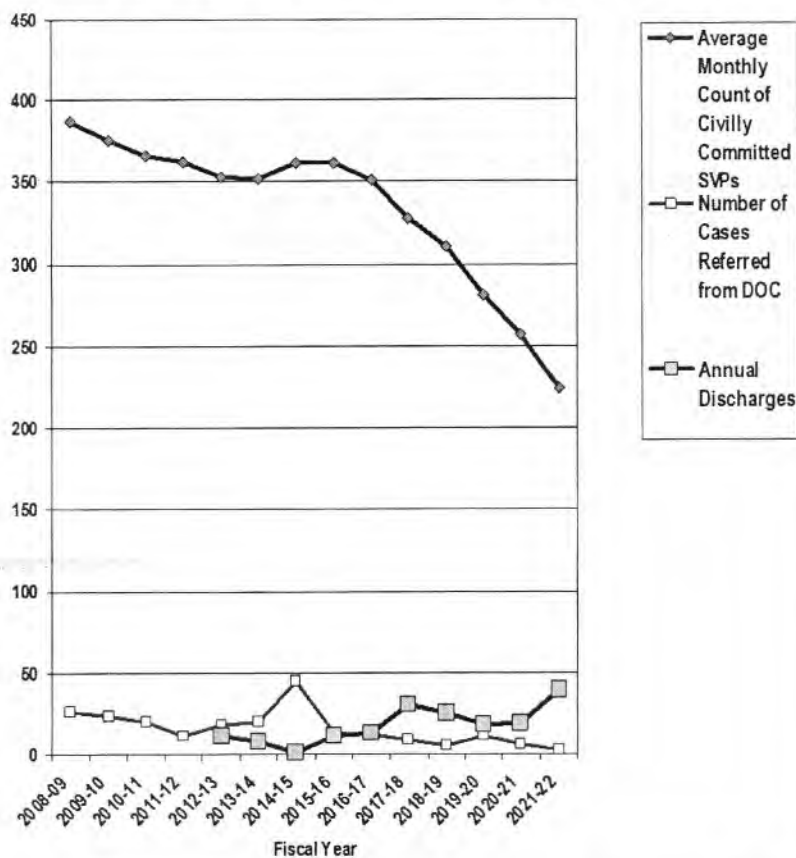
Nonetheless, the New Hampshire episode unearthed the hitherto secretive operating principle of "containment." (See: *Judith Levine & Erica R. Meiners*, "Uncivil Commitment", n+1, Issue 37, 59-67 (online only, Spring 2020), <https://nplusonemag.com>.)

In time this has come to include now-frank advocacy by at least some among leadership of the "SOCCPN" (Sex Offender Civil Commitment Programs Network) and more recently, also ATSA (Association for the Treatment of Sexual Abusers) of containment of sex offenders (that is, denial by law to them of rights enjoyed by everyone else, typically through means of incarceration or forced near-incarceration, a la locked treatment residences or halfway houses).

This has shown that at least several of the SOCC systems in the country are being operated with the aim of never voluntarily releasing any of their confinees and with the further aim of continually compiling records on each confinee that cast such adverse appearances (even if untrue) of probable re-offense post-release so as to discourage decision makers from granting such release to any who petition for it.

("In sex offender commitment, this 'containment model' is most often regarded as simply a justification for presumptive lifetime confinement, putting the burden on

Wisconsin Nearly Halves Committed Sex Offenders!



the confined person to 'prove a negative,' i.e., that if released, he would be absolutely certain never to reoffend. Given the acknowledged, inherent uncertainty in predictions of probability of sexual re-offense and the fact that no actuarial instrument has any category with a zero percent likelihood of re-offense, this is an impossibility to prove, and hence just an irrefutable excuse for lifetime detention on baseless fear alone." — *the Legal Pad*, Vol. 5, No. 11, p. 3 (Nov. 2021).

By all statements of MSOP's leaders and actions of its clinical staff, it now seems quite clear that this includes MSOP.

Informal adoption by the SOCCPN of this operating principle is not just a matter of personal hatred of and bias against confinees by SOCCPN representatives, it is also consistent with the heavy representation within SOCCPN of the various private contractors who in the aggregate operate at least six of those systems currently or at least one or some of their individual facilities or their treatment programs. Such contractors are paid based on the number of confinees in the facilities they operate.

Accordingly, since their profit is maximized when numbers remain at peak capacity, they do not favor releasing any confinees and they actively thwart the efficient delivery of treatment toward prompt release. The Illinois SOCC facility at Rushville is a classic illustration of such privateer actions to frustrate releases. Similar accusations have been leveled against SOCC systems operated by privateers in Texas, South Carolina, and Florida. (Two other systems operated

by privateers, Virginia and New Jersey, under political pressure, have recently released substantial numbers to a civil form of intensive parole.) However, consistent with containment, few are ever released from that austere form of supervision, while many are returned to the 'shadow prison' for trivial rule violations or inability to comply fully with impossible requirements.

No actuarial instrument has any category with a zero percent likelihood of re-offense

In turn, this confinement principle is also embraced by legislators who also are animated by hatred of and bias against sex offenders, especially past recidivists. In Minnesota, the hiring of head MSOP administrators with obvious animus against sex offenders and a strong desire not to release any in their custody was a successful means of currying legislative favor for MSOP when such endless confinement was deemed politically popular among constituents.

Now, the recent act establishing Direct Care and Treatment as a separate department of Minnesota government includes (for the first time) the right of the new Commissioner to enter contracts turning over complete or partial operation of any of the divisions of DCT (including MSOP) to one or more private contractors).

It should not escape note that this provision absolves the State of Minnesota for

(Continued on page 9)

any liability for the misdeeds and omissions of any such contractor(s). It also appears that such contractor(s) can be immune from lawsuits by confinees.

It is tempting to believe that MSOP is now being, or will be held out as a tempting plum for bids by these privateers. Recent or perhaps ongoing assessment of MSOP as an ongoing operation by a contractor, Baldridge Health Care, may well be an attempt to favorably depict MSOP to increase that projected bidding.

D. North Dakota

Currently, North Dakota only has about 26 SOCC confinees — or less. This represents a precipitous drop from its 2014 projected status as having 78 confinees per million state residents — second only in this per capita statistic to Minnesota.

In 2019, faced with a federal court judgment highly critical of the North Dakota SOCC system, state officials began a campaign of rapid selection of confinees thought comparatively safe to release, followed by those releases. Since that population reduction apparently remains ongoing, it is not currently known by this writer how many confinees might remain in that SOCC facility at the time of this writing. One former confinee released from that facility has recently speculated that this SOCC program may no longer be operational at this point.

E. Wisconsin

Carl Plant, Civil Commitment of Sexually Violent Persons (Informational Paper #57), Legislative Fiscal Bureau, State of Wisconsin (January 2023).

Text Excerpts: [p. 1:] "As of September 2022, 214 people were committed as SVPs [Sexually Violent Persons] in the Sand Ridge Secure Treatment Center (SRSTC) in the City of Mauston, and 29 others were detained there while waiting a commitment determination. An additional 58 individuals were on supervised release at various locations across the state.

Population ...The commitments shown in [the chart at right] include both civilly committed SVPs and individuals detained on 'pre-commitment' status — individuals whose SVP commitment cases were pending. This chart includes SVPs [formerly] held at SRSTC and at the Wisconsin Resource Center (WRC). Since 2012-13, all SVPs have been housed at SRSTC...

Until 2009-10, the average monthly institutionalized SVP population had increased every year since the program's inception in 1994. In the mid-2000s, the SVP population grew rapidly as the number of referrals from DOC increased, in part due to the broadening of the definition of an SVP to apply to persons whose mental disorder makes them 'more likely than not' to engage in an act of sexual violence. Prior to this change, Chapter 980 defined an SVP as a person whose mental disorder made them 'substantially probable' to engage in acts of sexual violence. The institutionalized SVP population held relatively steady over the following decade, and has declined over the last four years.

[pp. 1-2:] In 2009, DHS revised the risk assessment tool used to determine an individual's risk of re-offending, which has contributed to the recent plateau and then decline in the state's committed SVP population. This change was primarily due to new research findings. Recent studies have found that an individual's juvenile behavior does not accurately predict their likelihood of re-offending as an adult, and that individuals are less likely to re-offend as they grow older. As a result, the tool currently assigns some offenders a lower risk of re-offending than they would have received under the previous risk assessment tool, particularly to juvenile-only offenders and adult offenders over age 60.

[p. 2:] Supervised Release and Discharge. Following treatment and after meeting certain progress criteria, an SVP may be placed on supervised release in the community, or may be discharged if he no longer meets the criteria for commitment. ...Over the past two years 18% of [full] discharges have been directly from institutional care.

As of September 2022, there are 29 people with court orders for supervised release who remain at SRSTC while waiting for an approved home in the community.

Chapter 980 allows DHS to revoke an SVP's supervised release in certain circumstances. Since the beginning of the program in 1994 through June 2022, 115 SVPs have had their supervised release revoked. In the same period, 99 SVPs have been discharged from their commitment while on supervised release, and 174 SVPs have been discharged directly from inpatient commitment."

Editor's Curious Comparisons to MSOP:

In following editions, *tLp* will mention numerous points that the SOLPRC report was not able to address due to space considerations, but that strongly reinforce the reasons offered by that report for MSOP closure and repeal of Minnesota's SOCC law.

For the moment, the following comparisons to the foregoing observations about SOCC systems in the states just discussed should suffice to convince the reader that, between all of those systems and Minnesota's SOCC system, including MSOP, it is MSOP that has, in the face of all applicable science, including discoveries from the upsurge of modern scientific research, resistantly pursued the course of containment-unto-death of all its confinees except a token set of annual releases.

The tool currently assigns some offenders a lower risk of re-offending than they would have received under the previous risk assessment tool, particularly to juvenile-only offenders and adult offenders over age 60.

In so doing, MSOP has refused to acknowledge, much less apply the research and the devising right next door by Wisconsin's own SOCC program (as noted

above) of a risk assessment instrument that now finally takes account of the lack of recidivism likelihood posed by former juvenile offenders and by those age 60 and beyond.

Washington — the very first state to enact a modern sex offender commitment law (1990) — became the very first to realize that its brutal misuse of commitment as a supplemental punitive incarceration device was completely unjustifiable, given the nonstop emergence of science showing that the "frightening and high" panicked guesstimate of sex-crime recidivism was nothing more than a modern-day myth — a Chicken Little hoodoo to frighten voters into electing/ re-electing those who chose to shout it loudest from the rooftops.

Washington, at least, was not so long swept away emotionally that it could not see the real forest instead of the few exceptional monstrous trees (rare sex-killers and mutilators) dragged to the fore by those seeking to manipulate public visceral reaction. It began to take remedial action toward 'amortizing' the committed population of those victimized by vast over-prediction, based on nothing more than personal impression and bad statistics deliberately ginned-up from unrepresentative samples selected for their falsely ominous appearances. Some have made careers out of this deliberate creation of bias by such careful cherry-picking.

Some states, like New Hampshire — which recognized right away that by enacting an SOCC system it had gotten on the wrong train, immediately backed off before the train left the station. Others, like North Dakota, rode on for quite awhile, but when called to account, at least took immediate steps to start to draw that program to an eventual close.

But others, including those of the 'containment cabal', including MSOP, are still riding that panicked horse, and are taking no action to rein it in. Some, like untrained riders, simply are frozen in fear of the horse's unbridled power, but others deliberately let it run, malevolently hoping that its ultimate destination will be the dark, totalitarian place they hope to take all of American society to — a place where 'rights' no longer exist except for the politically favored sliver-minority.

Getting to that place has already started with the hard-hearted and spiteful course chosen by MSOP since its inception. It has never been a system of commitment for well-targeted treatment used by prisons everywhere to reduce recidivism likelihood, resulting in reasonably prompt graduation and release.

The modalities previously employed by MSOP were dropped not because they failed in that mission, but because they accomplished it with the same effect and dispatch that similar programs achieved elsewhere.

They were not a good fit for MSOP, which correctly read its mission as to find excuses to keep those committed to it incarcerated for as long as possible, preferably until death, as a purely supplemental imprisonment solely as additional retribution beyond

the limits of the already-long sentences those prison-releases had just suffered.

Such pre-existing retribution was not enough, would never be enough to satisfy those who have run MSOP nor their true 'stakeholders,' — those self-appointed representatives of the raped and sexually abused, bent on inflicting unending vengeance upon perpetrators of crimes decades in the past.

No one means to defend such callous crimes. Let the criminal justice system call to account those few who may still commit them despite penalties now including natural-life imprisonment. There is no need to suggest that that the system of criminal justice is not capable of doing its job adequately; the forces of professional law enforcement have never been more fully arrayed, more fully equipped and more aptly trained than now to deal with sexual crime.

Meanwhile, if only receiving apt funding, the supplemental forces of those who block sexual crimes by fully educating those who someday might find themselves confronted by someone with undaunted bad sexual intent now know how to prevent sexual crimes by imparting such education.

The 'bang-for-buck' achievable by such "primary prevention" programs has been proven to be huge, in terms of deterring contemplated sexual crime and interdicting attempts to actually commit such crime, and in terms of have such dramatic prevention effects for comparatively little cost.

Especially given this fact, it is within the range of possible outcome from such fully funded programs to actually bring sexual offending to a permanent full stop throughout society.

Given this attainable future, it would be insane as a policy choice to continue to pour all the money required for that outcome down the same drain it has disappeared in — focused only on the same aged-out and otherwise remotely-unlikely to reoffend group of unfortunates currently still subjected to supplemental incarceration two-, three-, or even more decades after their past sex crime.

MSOP did not outlive usefulness; it never had any usefulness. It should be shuttered now, as such other SOCC systems are now going that way, and such laws, including Minnesota's, should be repealed, as the blight upon, and danger toward ending legal and human rights for everyone.

Liberty for all cannot exist in a country where liberty can be taken from anyone by simply claiming that any person or described type of people are too 'dangerous' to have their freedom.

Recidivism Prediction Is Junk Science. (Part 6)

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

(Continued on page 10)

[Part 6]

Text Excerpts:

Ch. 10: "Science and Forensic Practice -- Recommendations

Issues in Risk Communication

p. 259: ...The natural tendency to eschew probabilistic thinking is referred to as 'probability neglect.' Seasoned defense attorneys (and their seasoned defense experts), for example, will always use a probability format: 'Individuals like Mr. Smith are estimated to have a 20% probability of reoffending during the next three years.' The statement is bland, mundane, humdrum. The statement is unlikely to engage (or even interest) the jury. By contrast, seasoned prosecutors (and their seasoned experts) will likely rely on a frequency format: 'Of every 100 individuals similar to Mr. Smith, 20 are estimated to commit another sexual offense.' That statement is far more impactful. The '20' is now etched in the minds of jurors as real victims, not an obscure probability.

This is precisely what Monahan, Heilbrun, Silver, Nabors, Bone, and Slovic (2002) found. Monahan et al. (2002) surveyed 226 clinical psychologists with an expressed interest in forensic work. Both formats (probability vs. frequency) and vividness (pallid vs. vivid) were manipulated in a brief scenario, and participants were randomly assigned to one of four conditions. Among those psychologists who reported working full or part time in a forensic facility, 73.9% of those receiving the frequency format ('of every 100 patients similar to Mr. Jones, 20 were estimated to commit an act of violence') and 53.6% of those receiving the probability format ('patients similar to Mr. Jones are estimated to have a 20% probability of committing an act of violence') would not discharge the patient in the scenario. The proportional difference was significant (p = .03). This effect was only found among those who worked in forensic facilities. Moreover, when the depiction was vivid, 80% of those receiving the frequency format compared with 60.7% of those receiving the probability format said they would not discharge the patient. The lowest proportion of respondents (46.4%) recommending no discharge were those in the pallid depiction/probability format condition. In sum, the most conservative decisions were from those in the frequency/vivid condition. Once again, these findings were specific to those psychologists that reported working in forensic facilities.

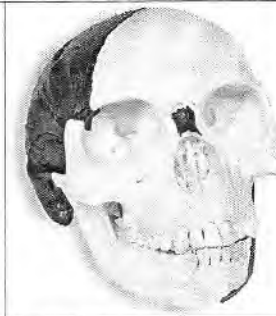
p. 260: In an interesting test of our aforementioned experiential observation of how seasoned experts opine, Scurich and John (2011) examined the role of framing risk estimates in 'commitment decisions' by mock judges (college students). In this test, Scurich and John manipulated the percent probability of those estimated to reoffend versus the probability of those estimated to not reoffend. As expected, 'risk framed as 26% probability of violence generally led decision-makers to authorize commitment, whereas the same risk framed in the complement, a 74% probability of no violence, generally led decision-makers to release' (p. 83). Although the Scurich and John study

was certainly more subtle than our comparison of two different communication formats, they still found that the negative frame – attaching the 26% to real violence – was more impactful in swaying decisions toward commitment than the positive frame of no violence among 74%. As Scurich and John (2011) pointed out, 'By emphasizing different aspects of the same risk estimates, the balance can be inappropriately skewed (p. 88).

A further clear implication for risk communication comes from the study by Scurich, Monahan, and John (2012) on 'unpacking' risk factors (i.e., rather than simply reporting a risk estimate derived from a scale, the investigators unpacked the estimate by delineating the risk factors that went into the estimate). They compared no unpacking (just the risk estimate) with three risk factors and six risk factors. The degree of unpacking increased the likelihood that 380 jury-eligible citizens recommended the commitment of higher-risk respondents and decreased the likelihood that citizens would recommend commitment of lower-risk respondents. As Scurich et al. (2012) pointed out, unpacking 'increased the perceived relevance of the group-level risk estimate to the individual case.' (p. 551). The investigators further found that by disaggregating the sample based on self-reported numeracy (facility with numbers), numeracy moderated the effect of 'unpacking' risk factors (i.e., the unpacking effect remained for the innumerate subjects but not for the numerate subjects).

pp. 260-61: Scurich et al. (2012) used a median split on the distribution of scores from their numeracy scale, resulting in two more or less equivalently sized subgroups (only slightly more than innumerate subjects). Although it is not known how this proportional distribution of numerates and innumerates generalizes to the population at large, the takeaway message from these findings was clear: Prosecutors (and their experts) should unpack high – but not low – risk estimates. Defense attorneys (and their experts) should unpack low – but not high – risk estimates. Scurich et al. (2012) were quick to clarify that they were not advocating unpacking as a strategy for manipulating the system. Unpacking (although it had not occurred to us to use that word) is not only something that we strongly recommend for all sexually violent predator (SVP) evaluations (not just when it benefits the petitioner or the respondent); it is fundamental to risk-need-responsivity (RNR) and fundamental for honesty and transparency. By requiring the expert to 'unpack; his/her opinion, we are making the preeminently reasonable assumption that that the court should fully understand the reasoning behind, and evidence for, the expert's opinion. Parenthetically, in illustrating how prosecution and defense attorneys (and their experts) might 'unpack' as a trial strategy, we are not endorsing or recommending this. Unpacking should facilitate transparency, not winning.

p. 269: ...Hart, Michie, and Cooke (2007), argu[ed] that the margins of error in individual risk assessments of violence are so



Junk Science: For example, the fake "Pitdown man"

wide that the resulting predictions are 'virtually meaningless' (p. 263).

p. 271: In the context of an SVP hearing, using the Static-99 as an example, if the defendant/respondent falls into [low or moderate-risk categories], no probabilistic estimate should be necessary, since civil commitment is, at least in theory, intended only for the 'most dangerous.' For [high or very high-risk categories], a probabilistic estimate would be included.

p. 279: According to the risk principle, the greatest reductions in recidivism will result when individuals who present with the most risk factors associated with reoffending receive the most intensive and relevant interventions. Providing intensive interventions to those with relatively few risks may not only deplete scarce resources but also do more harm than good, particularly when individuals with few risk factors are mixed with those that have substantial risk factors and intervention needs and may model antisocial behaviors or exploit or abuse others.

pp. 280-81: Sifting Through Ideographic and Nomothetic Data to Arrive at Final Options

The Hypothesis-Testing Model

We find ourselves facing something of a paradox. After numerous scholarly papers warning that pure clinical judgment of dangerousness was markedly suboptimal, the wave of scholarly opinion swept professional forensic practice to the empirical end of the continuum. By and large, evidence-based forensic practice now prescribes the use of empirically derived risk assessment scales when rendering judgments about dangerousness. The seeming paradox is that having achieved the goal of moving forensic practitioners into the empirical end zone, the net achievement, at least in the adjudication of civil commitment petitions against sex offenders, is naught. That is, the quality of testimonial evidence does not appear to have benefited substantially from this newfound infusion of empiricism. Rather than science informing and guiding judgment, it provides a patina of legitimacy.

A common approach to evaluating an attorney's client is to begin with the premise that the client is whatever the attorney wants their client to be – guilty or innocent, dangerous or not dangerous, high risk or low risk, etc. We begin not with an open mind to all possibilities, but with an a priori belief in only one possibility. The resulting evaluation becomes an exercise in marshaling evidence to support the a priori belief.

This is a close-minded system that denies the court objectivity, as well as the expert's presumed expertise. We hasten to add that forensic practice is not as infelicitous as we make it sound. Many practitioners will occasionally reach findings contrary to the wishes of the retaining attorney. We offer a simple strategy, however, for insulating the practitioner and making 'occasionally' a less than awkward moment. p. 281: ...[T]he evidence that forensic examiners rely upon in their opinions is never conclusive or irrefutable. In fact, the pool of evidence is often mixed, with facts pointing in both directions, frequently with different probative value. There is a tendency for examiners to overweight facts that support their a priori position and underweight, or worse ignore, facts that don't. p. 282: ...[W]e strongly endorse the recommendation of Phil Witt and his colleagues (Witt, Dattilio & Bradford, 2011) that evaluators follow a hypothesis-testing model. The null hypothesis at the outset is that there is no difference in dangerousness or risk between the client and population from which the client was drawn. We recommend that all forensic evaluations begin with the null hypothesis, whether they are for the prosecution or the defense. ... The task going forward in the evaluation is to test a series of alternate hypotheses that are germane to the case with all available data (discovery). These alternate hypotheses might 'test' whether the client's:

- a. Prior history of delinquency and anti-social behavior contributes to a rejection of the null hypothesis (H0);
- b. History of prior sexual conduct contributes to the rejection of H0;
- c. Governing sexual offense (nature of) contributes to the rejection of H0;
- d. Other evidence of sexual preoccupation or sexual deviance contributes to a rejection of H0.

On a case-by-case basis, these alternate hypotheses are likely to be much more detailed and case-specific. The distinct advantage of a hypothesis-testing approach is that it compels full consideration of all available evidence, and it results in a strong, evidence-linked defense of the expert's findings and opinions. In one word, it will improve transparency."

Editor's Note: Part 7 of these excerpts will appear in the next tLP edition.

Liberty for all cannot exist in a country where liberty can be taken from anyone by simply claiming that any person or described type of people are too 'dangerous' to have their freedom.

the Legal Pad

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