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Issue Note: We rejoice that we are finally able to include some illustrations in this issue. However, due to press of future content, we will encounter the space problem again.

Coming Soon:

- ✓ Free Speech in Campus & SOCC
- ✓ Sex Offender Residence and Employment
- ✓ What Does Barring Inter-SO Associations Actually Result in?
- ✓ Estimating # of Unreported Sex Crimes Is Junk Science: Scuirich & John vs. Abbott, Lave et al.
- ✓ Remorse Bias — What's THAT?
- ✓ RNR vs. Good Lives vs. Virtue Ethics vs. Desistance: Which Best Matches Offender Rehabilitation & TJ? Any bets?
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
- ✓ 'All Except for' Blanket Exclusions of SOs from Justice Reforms
- ✓ PPG Validity Refuted
- ✓ Is 'Machine Bias' a Bias Machine?
- ✓ Banishment by 1000 Laws
- ✓ Levenson on Needs-Preferences of Clients of SO Treatment
- ✓ Dynamic Risk Factors and RNR Theory (2-part series) – Pt 1 - DRFs
- ✓ Due Process Requires Courts to Examine Scientific Evidence Undermining Statutes
- ✓ 'New' SORN Laws Are Punitive
- ✓ Panic in the Statehouse: Bad Policy by Panicked Legislation
- ✓ SO Reintegration - Environmental Ingredients Are Known; Officials Just Need to Use the Cookbook.
- ✓ B4QR Disperses the Notion of 'Monsters.'
- ✓ History of SOCC Laws & Rejection of 'Rapism'
- ✓ Will CA Expand Tier Reduction for 1000s of Registrants?
- & Many more to come!

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Feedback? News? Write!

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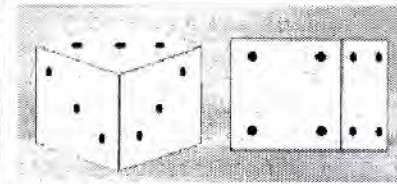
Retired SVP Assessor Reveals Fraud Practiced by All Prosecution-Biased SVP Assessors & Judges Who Knowingly Allow It.

Letter from retired psychologist Kirk Witherspoon, Ph.D. to Confinee at Rushville, IL SOCC Facility (name withheld by request)

"In answer to your questions I retired at the end of 2019 (four years ago) and am no longer licensed to practice psychology. The only independent psychologist competently doing this work ongoingly of whom I am aware is Dr. Luis Rosell, 114 East Monroe Street, #109, Mount Pleasant, IA 52641.

To elaborate, I actually stopped performing SVP & SDP evaluations in 2018 in response to what I perceived as rampant dishonesty on the parts of all those making money in the service of detaining persons for prolonged or indefinite periods without justification.

Said dishonesty included: 1) intentionally creating false means to confine people beyond their times of incarceration on [claims of] reasonable risk to reoffend; 2) housing those detainees in settings that do not include reasonable transitions to outpatient care/housing/employment; 3) proffering fragmented care (administered by differing professionals who did not sufficiently confer or coordinate their efforts); 4) offering



'care' that did not work to reduce risk and ignoring or burying evidence of same; 5) changing commitment laws to make it easier to confine or reconfine detainees; 6) making up false diagnoses and untruthfully employing them as 'generally accepted'; 7) pretending that diagnoses – often mere circular reasoning labels – can be used to reliably predict aberrant behaviors; 8) utilizing false, outdated, redundant and/or otherwise insufficient 'actuarials' to underpin risk estimates; 9) employing courtroom tactics that put respondents at a disadvantage, e.g., using more experts than were offered to defense, withholding or delaying release of information (discovery), raising personal attacks against defense experts, and 10) making conditions of 'conditional release' so unreasonably onerous as to sabotage respondents' success there.

I finally concluded that, too often, I was the only professional telling the truth in [an] SVP hearing, dishonesty occurring among many or most judges as well. Judges are elected; none want[s] to be perceived as 'soft on sex offenders.'

Politics and monetary interests undercut judicial honesty too. Judges even made rulings that allowed prosecutors to cut portions of my reports and testimony in response to pretrial motions that did not similarly apply to their own prosecution hirelings (psychologists). Said 'experts' even committed ethically frowned upon 'dual role violations' by serving as both treaters and 'independent' evaluators for the same persons.

In short, the entire process was dirty and likely remains so. I have no sympathy for the misdeeds that caused confinees there to be forever termed 'sex offenders.' I do sympathize re the extremely awful set of conditions and state orchestrated dishonesty described above.

Sincerely,

Kirk Witherspoon, Ph.D., Clinical & Forensic Psychologist (Ret.), Moline, IL.

MSOP Unions Hold Informational Picket at Democrat's Confab, Protesting Low Staffing but Miss the Writing on the Wall: MSOP Must Go!

William Lien, "Minnesota Association of Professional Employees Picket in Duluth" - (June 2, 2024)

Text Excerpts: "Members of the Minnesota Association of Professional Employees (M.A.P.E.) held an informational picket this morning at the DECC [convention center]. M.A.P.E. is bringing attention to the critically low staffing, retention and safety concerns at the Minnesota Sex Offender Program (MSOP) facility in Moose Lake.

Pete Braith, the Local 1701 president of MAPE says they are talking with the administration of Moose Lake's MSOP facility." [Braith cited "emergency levels of staffing." Braith indicated that such talks would continue weekly at the MSOP facility. Braith added, "We try to provide quality programming. ...[I]n order to do our jobs ...better, we need the bodies and the facility."]

Jason Van Horn, "MSOP Union Workers Picket Outside DECC Sunday," Northern News/Now, June 2, 2024

Text Excerpts: [MAPE Local 1701 held this informational picket to coincide with the DFL convention.] "According to union leaders, the goal was to engage public officials to consider outside support and resources to help with staffing issues. Union reps indicate security staffing [at MSOP-Moose Lake] is down to 65% of desired levels, and therapy staffing is down to 55%-60% of desired levels.

[A MAPE spokesperson] said that each person in treatment costs the public about \$470 per day.

[Actually, according to Mike Creger, "Report: Sex Offender Program Is Broken," Pine Knot News (Cloquet, MN), May 10, 2024, DHS reports the MSOP figure as \$479 per day. Even this does not reflect the true cost of both caring for and treating a sex offender who is participating in treatment, since it reports the average for all MSOP confinees whether or not in treatment. To correct this, it is necessary to consider the percentage of MSOP confinees in treatment, and the difference in per day costs depending on treatment participation, which involves considerable expense not applicable to treatment 'refuseniks.' Elizabeth J. Letourneau et al., "No Check We Won't Write: A Report on the High Cost of Sex Offender Incarceration," 35(1) Sexual Abuse 54-82 (2023), provides national figures comparing the raw cost of imprisonment of sex offenders with the cost of care and treatment for those committed to SOCC facilities, deriving a 1 to 4 ratio.

Let's start by conceding that within SOCC facilities certain overhead and other fixed costs may well be higher than in prison even for those not participating in treatment. Yet it is still fair to apportion treatment-specific costs (including, notably, the high cost of professional staffing to provide such services) solely to treatment participants. It appears reasonable to estimate that the ratio of costs for treatment participant costs to non-treatment-participant costs as approximately 2 to 1. Therefore, the average cost figure of \$479 per day must be mathematically broken out into the two different per-diem cost figures: (1)

for treatment participants; and (2) for others. Because 4/3 is twice as much as 2/3, and both figures are equidistant from 1.0 (i.e., the average cost), the cost for a non-treatment SOCC confinee based on this differential cost estimate is only \$319 per day, whereas the cost per day for an SOCC confinee undergoing treatment is \$637 (ignoring rounding errors). MSOP claims that over 80% of all of its confinees participate in treatment. Hence, short of depriving its confinees of treatment, this real, albeit costly rate per diem is unavoidable and cannot be reduced.

Yet even though professional staffing for the treatment function of MSOP is down by at least 40%, MSOP expenditures have apparently continued at the average \$479 per-diem level. Evidently, in the absence of full costs due to the absence of full professional staffing, the saved costs for treatment have been allocated to unknown other expenses by MSOP, confirming the truth of the concept that reducing the size of a bureaucratic organization does not necessarily yield savings that the state government can then apply elsewhere (in this case, hypothetically, to costs of sex-crime primary prevention programs). Hence, the audit that MSOP appears most in need of right now is a financial audit, over the priority of an operational audit.]

Union reps indicate that in February, MAPE held a legislative listening session requesting an independent operational audit of the MSOP. According to MAPE, ...they are awaiting follow-up regarding the audit request." [Apparently, they are

(Continued on page 2)

not calling for a financial audit.)

Minnesota Association of Professional Employees, "End of 2024 Legislative Session Report," June 4, 2024, <https://mape.org/news/end-2024-legislative-session-report>

[According to the MAPE 2024 end-of-session legislative report.] "Going into session, MAPE's legislative priorities for DHS centered on making progress on safe staffing at our Direct Care and Treatment facilities [including MSOP].... MAPE, AFSCME, MNA and other health care unions hit numerous roadblocks in advancing any legislation regarding safe staffing legislation as the hospital groups lobbied against such changes....

MAPE also supported the repeal of the subminimum wage for persons with disabilities [which nonetheless did not pass. MAPE's claim apparently was that DCT facilities (potentially including MSOP) were misusing a federal authorization limited to covering individuals with such severe physical or mental disabilities that they cannot perform any work that non-disabled people do.]

[MAPE contends that, by exaggerating disabilities of certain confinees, and using confinees in that category to perform work that otherwise would have to be done by staff or work used to produce goods or to perform services in various money-making enterprises conducted in those facilities, DCT is thereby able to reduce the need for civilian workers and to produce more profit from such "enterprises."

Of course, this has little, if anything, to do with clinical treatment for whatever underlying disorder any confinee might have. Most confinees regard this as a sheer labor-exploitation practice. Since such work by the disabled is paid not by the hour but by the "value-added" by the work produced, such schemes elsewhere have allowed employers to pay disabled workers the equivalent of as little as a dollar an hour.

Because of the long, indefinite, often lifetime confinement of such individuals, any claims of working to curry favor toward release are seen as no more realistic than the slogan "work makes freedom" used in concentration camps past and present.]

"The governor's supplemental budget bill included a surprise proposal to close the Community Addiction Recovery Enterprise (CARE) facilities in Carlton and St. Peter and convert the St. Peter facility to act as additional forensic bed space [for those deemed mentally ill and dangerous]. MAPE and AFSCME led an effort to prevent the closures, which was successful for the Carlton facility, but maintaining the St. Peter facility failed to get traction as the pressure to act on the priority admissions task force recommendations was more compelling to legislators...."

Editor's Closing Comments: The foregoing simply shows that the union 'stakeholders' in MSOP only have a list of current grievances centered on making money and improving their own work conditions. The safety angle is ludicrous, since MSOP has a high security-staff-to-convince ratio

(historically estimated by the Office of the Legislative Auditor as nearly 1-to-1).

As to the high per diem, the foregoing observations point up that sex offender treatment is always expensive. Reducing the quantum of treatment per week does not solve the problem, it only makes treatment less capable of producing any rehabilitative effect.

The problem is simply that about fourteen years ago, MSOP chose to adopt an unheard-of treatment modality known as the "Matrix" of 32 points, which treatment participants must bear in mind constantly and apply to daily life, mostly in circumstances having nothing to do with potential sexual offending – a treatment modality staggering in its complexity and its consumption of years before treatment administrators ever conclude that any treatment participant has "completed" that treatment regimen successfully.

Indeed, administrators have reached that conclusion in only a small handful of cases in all those years. On the contrary, they have staunchly opposed even just austere intensive-parole release, and even mere promotion to MSOP's release readiness-preparation unit in the case of almost every confinee who has applied for such promotion — even after more than a decade or far more of treatment.

Yet MSOP treatment leaders continue laying on more and repetitive treatment onto their treatment participants without relent in some cases over twenty years, insisting on being able to detect the required "change" whenever they finally declare that they see it (ignoring that in almost all cases, that moment never comes).

In that decades-long period, such unneeded and clearly pointless, antiscientific treatment racks up huge cumulative costs well into the millions per treatment participant. This means that, to date, the aggregate costs of MSOP since its inception have amounted well into the billions – all merely to grant only 24 individuals final discharge from their commitments (out of the roughly 940 individuals committed to MSOP to date).

This – not any complaints about working conditions for staff – is the underlying reason for the size of the MSOP budget and for its overall costs that pile up over decades like a giant landfill of burning cash. This is a problem that will be intractable as long as MSOP is led by those obsessed by the belief that sex offenders will always be likely to reoffend if released, and that only some undefined, magical "change" through treatment (but without any instruction as to how to reach such "change") into a completely different person in a kind of multiple personality disorder manifestation can prevent such sexual re-offense. This is contrary to facts known to all criminologists about natural "arcs" of sexual offending even in the absence of treatment – including natural "desistance" from motivation toward such crimes.

Meanwhile, other treatment programs in use elsewhere have produced treatment completions after as little as 2 to 3 years of fairly intensive treatment regimens, yet at

far less annual cost, culminating in timely releases of previously-recidivating inmates who, even a decade after release, have not reoffended. The hysteric, fiction-driven mania of MSOP must end before costs can be reduced.

MSOP's leaders will never assent to this, because they are deeply enraptured by that mania; indeed, on every opportunity they try to re-sell that same mania to everyone who will listen to them. MSOP must be brought to an end to stop this insanity. People simply need to stop listening to this irrational fear-mongering as emotion-yanking propaganda.

Sex offender recidivism has already dropped to near-extinction levels through the common-sense treatment in place in prisons and due to simple deterrence by long prison terms and modern highly effective detection technologies, not due to anything MSOP does. Given the projected MSOP closure and reallocation of MSOP's budget to primary prevention programs by competent non-governmental organizations staffed by professionals, sex offending will be utterly eradicated in fairly short order. MSOP is simply the cost-bloated obstruction to this easily attainable, bright future. It must be removed.

"Frightening and High": The Unavoidable, Wasteful Cost of MSOP & SOCC Everywhere

Elizabeth J. Letourneau et al., "No Check

We Won't Write: A Report on the High Cost of Sex Offender Incarceration," 35(1) *Sexual Abuse* 54-82 (2023).

Text: [p. 56:] "In the 1990s and 2000s, the United States and several other countries enacted a rash of sex crime laws (Terry, 2015). Among these were laws that permitted the preventive detention of people considered to be high risk to offend sexually, enacted in Australia and the United States (Janus, 2006; Leon, 2011; Terry, 2015). ... [T]he time served in a SOCC facility (which often lasts for life; see for example Woolman & Anderson, 2016) occurs after time served in prison (Stephens & Goldet, 2016; Tolman, 2018).

[p. 62:] **Sex Offender Civil Commitment**

We identified 20 state and 1 federal active U.S. SOCC programs that provide secure confinement and treatment specifically for people designated as 'sexually violent persons' or similar legal designations. The District of Columbia also has a SOCC policy (Hoppe et al. 2020), but does not appear to operate an active program. We then searched for information on the number of SOCC inmates, the cost of confinement, and the duration of commitment to estimate annual and cohort commitment costs. Information is summarized in Table 1....

[Article continues on next page.]

[p. 63:] **Table 1. Sex offender civil commitment inmate counts and costs related to committed inmates with sex crimes against children.**

Table Notes:

Jurisdiction	Annual Per Inmate Cost Adjusted for Inflation to 2021 ^a	Count of SOCC Inmates ^b	Annual Total Cost ^c	Annual Total Cost for CSA Cases ^d
Arizona	\$109,182	91	\$9,935,562	\$7,948,450
California	\$240,606	538	\$129,446,028	\$103,556,822
Florida	\$82,247	432	\$35,530,704	\$28,424,563
Illinois	\$9719	382	\$3,712,658	\$2,970,126
Iowa	\$72,858	138	\$10,054,404	\$8,043,523
Kansas	\$98,459	266	\$26,190,094	\$20,952,075
Massachusetts	\$75,486	145 ^e	\$10,945,470	\$8,756,376
Minnesota	\$141,104	735	\$103,711,440	\$82,969,152
Missouri	\$127,288	259	\$32,967,592	\$26,374,074
Nebraska	\$179,945	117 ^f	\$21,053,565	\$16,842,852
New Hampshire	\$161,227	1	\$161,227	\$161,227
New Jersey	\$79,944	437	\$34,935,528	\$27,948,422
New York	\$235,426	321	\$75,571,746	\$60,457,397
North Dakota	\$179,789	30 ^g	\$5,393,656	\$4,314,925
Pennsylvania	\$312,941	55	\$17,211,755	\$13,769,404
South Carolina	\$43,839	208	\$16,696,992	\$13,357,594
Texas	\$43,839	368	\$16,132,752	\$12,908,202
Virginia	\$27,992	431	\$12,064,552	\$9,651,642
Washington	\$379,313	147	\$55,759,000	\$44,607,200
Wisconsin	\$211,926	236	\$50,014,536	\$40,011,629
Federal	\$79,712	64 ^h	\$5,101,568	\$4,081,254
Sum		5401 (or 4320 [80%] with child victims)	\$672,590,829	\$538,104,909

^a Original costs were adjusted for inflation to January 2021 using the U.S. Bureau of Labor Statistics CPI Inflation Calculator; See Online Supplemental Appendix A for details on count and cost information and for sources.

^b Inmate counts include only committed (and not detained) inmates reported in the 2020 SOCCPN Survey or reported in other sources.

^c Annual total cost obtained by multiplying annual per-inmate cost by number of committed inmates.

^d Annual total cost adjusted for inmates with child sexual abuse (CSA) victims obtained by multiplying the annual per-inmate cost by .80 of the number of committed inmates to reflect our estimate that 80% of SOCC inmates had child victims.

^e Arizona and Massachusetts inmate counts taken from 2019 SOCCPN Survey.

^f Nebraska inmate count information provided by Mr. Erik Fern, an attorney for the Nebraska Department of Health and Human Services (personal communication July 1, 2021).

^g North Dakota inmate count obtained from a report by North Dakota Department of Human Services (n.d.).

^h Federal SOCC inmate count obtained from a report by the U.S. Department of Justice Federal Prison System

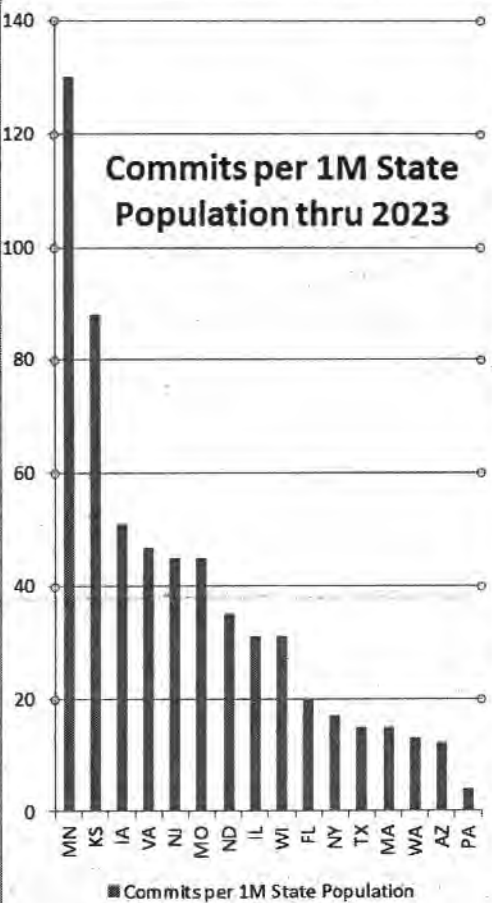
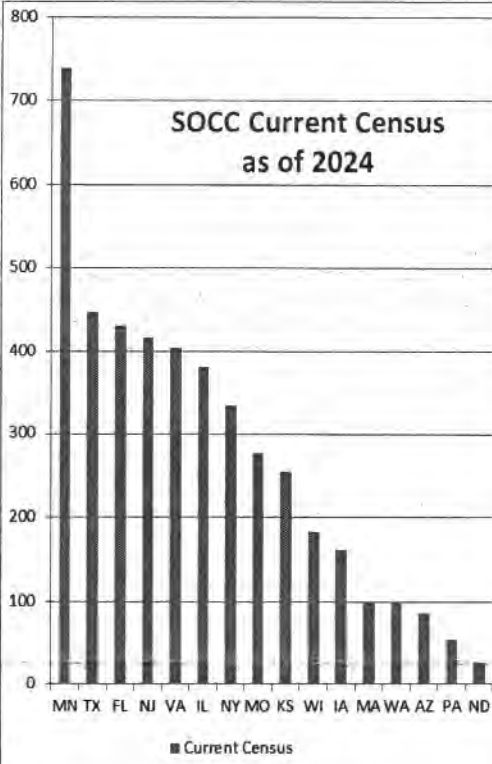
[p. 64:] Sex Offender Civil Commitment Inmate Counts. We did not find a government resource that provided SOCC inmate count information across programs. However, the Sex Offender Civil Commitment Programs Network (SOCCPN) does do so. ...SOCCPN has conducted surveys of SOCC programs since 2014 (Sandler & Freeman, 2017). Survey results are reported at the organization's annual conference (Hoppe *et al.*, 2020; Sandler & Freeman, 2017). SOCCPN survey data are requested from all SOCC programs and provided voluntarily by administrators associated with individual programs. ...Survey questions do not address SOCC costs. Results from the three most recent surveys (Schneider *et al.*, 2018, 2019, 2020) were provided for our use by SOCCPN member Dr. Naomi Freeman.

We utilize the 2020 SOCCPN counts of committed (but not detained) inmates in our estimates. Detained inmates are typically awaiting final commitment decisions, are unlikely to be associated with the same costs as committed inmates, and may stay for relatively shorter periods of time in commitment facilities. In the 2020 SOCCPN survey, count data were missing for five SOCC programs, including Arizona, Massachusetts, Nebraska, North Dakota, and the federal program. [Notes e through h to Table 1, *supra*, explain the alternate sources used for those states.] About 5401 people were committed to SOCC facilities in 2020 (Table 1), of whom we estimate 4321 (80%) had child victims. ...An additional 844 detainees are held at the 16 SOCC facilities that responded to the 2020 SOCCPN survey (again, detainees are not reflected in our count, cost, or cohort calculations).

[ILP Editor's note: This brings the total

confined to about 6245 confinees. Other estimates by researchers have questioned whether the total in recent years may be closer to 7,000 confinees. Also note that SOCCPN figures are not without controversy. Numerous sources have reported that individual facilities' reports to SOCCPN have minimized the number of confinees, including both those committed and those "detained." Because SOCCPN does not gather cost information in its surveys, the reasonability of confinee counts as furnished by the various individual SOCC programs cannot be closely analyzed vis-à-vis per capita cost. The same holds true as to why costs are lower or higher than average in certain SOCC programs and whether the actual average cost figures may represent inadequate programming and/or inadequate confinee care or conversely, may represent excessive spending or diversion of funding to questionable purposes by such SOCC systems. The rising presence of private contractor operation of some SOCC systems decreases the transparency of costs and use of funds by those particular systems. Finally, this article engages in estimates of cost from figures in some cases as old as two decades or more. Those old figures were from periods when SOCC systems did not yet reach present levels of confinement. The extrapolation the authors use here accounts for inflation, but does not attempt to account for those increased confinee census figures as they impact per capita costs. Moreover, elsewhere this article concedes that simply reducing numbers confined by any SOCC system (as opposed to closure of that system) does not appear to reduce costs congruently – or even at all. In sum, true costs may not be reflected by the estimates declared in this article. Nonetheless, it does appear clear that any inaccuracy is very likely to result here in significant underestimate of costs. This actually underscores the implication of this article that as long as there remains SOCC in any given jurisdiction, its costs will remain high and inflexible.]

[p. 65:] Sex Offender Civil Commitment Inmate Commitment Duration. Most of the



sources we found regarding SOCC inmate counts and costs failed to mention specific durations of commitment. The 2006 Washington State Institute of Public Policy survey (Gookin, 2007) reported that about 11% of SOCC inmates across all programs had ever been fully discharged or released. The three most common reasons for discharge/release were court decision without pro-

gram staff recommendation (51%), program staff recommendation (38%), and inmate death (17%). No information was provided on the duration of commitment prior to discharge, release, or death. [pp. 65-6:] The SOCCPN surveys included some information about discharge and release. Per the 2020 survey, about 20% of people ever committed to any of the 16 reporting facilities had ever been discharged or released, since the inception of those programs. As with the Washington State Institute reports, there was no information in those surveys regarding the duration of commitment prior to discharge or release. The 2018 and 2019 surveys did include information on inmates conditionally released to less secure settings. Among the 13 SOCC programs that offered conditional release, only about 20% of inmates attained conditional release, after a median pre-release commitment duration of 9 years (range of 2-16 years).

Given that only 20% of inmates appear to achieve full or conditional release and that as of 2021 SOCC programs had been in operation for 12 (New Hampshire) to 30 (Washington) years, it appears that most inmates remain committed for one or more decades. Indeed, several SOCC programs, including in Minnesota, Missouri, and North Dakota, were the subjects of class action lawsuits in part because few or no inmates had ever been discharged from these facilities based upon program staff recommendation. For example, in its first 22 years of operation, about 730 people were committed to the Minnesota SOCC program, of whom none (0%) were fully discharged and just 5 (0.7%) were conditionally discharged (Woolman & Anderson, 2016). Likewise, in its first 15 years of operation, about 260 people were committed to the Missouri SOCC program, none of whom (0%) were discharged upon staff recommendation (Bogan, 2015); United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:09-cv-00971-AGF, 2015). A lawsuit against the North Dakota SOCC program indicated that one-quarter of all inmates had been confined for more than a decade and more than half had been confined for eight or more years (In the United States District Court for the District of North Dakota, Case No. 3:13-cv-3, 2018). Media reports reveal similarly low release rates for some other programs. For example, since launching its secure confinement facility in 2015, the Texas SOCC program discharged or released just 10 (2%) of 552 inmates; during the same time period another 10 inmates died while committed (Dexheimer, 2021). Likewise, since launching in 1999, the New Jersey SOCC facility released just 15% of 579 inmates (Steptoe & Goldet, 2016).

[p. 67:] ...[W]e spend more than \$538 million each year to incarcerate 4321 people with sex crimes against children in secure SOCC facilities at an average annual per inmate cost of \$139,489. The average per inmate cost for SOCC is so much higher than for state or federal prisons in part because SOCC facilities must provide

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In the end, it's always all about the money.

specialized sex offender treatment, typically delivered by professionals with master's, doctoral, or medical degrees, per recent SOCCPN surveys (Schneider *et al.*, 2018, 2019, 2020). Assuming the average duration of SOCC incarceration continues as proposed between 9 and 25 years, the estimated cost of incarcerating the current cohort of SOCC inmates with sex crimes against children will exceed \$10.7 billion.

In summary, the United States annually spends an estimated \$5,397,846,489 to incarcerate about 144,453 people for sex crimes against children across three types of secure facilities: state and federal prisons and SOCC facilities. If the current cohorts of prison and SOCC inmates remain incarcerated for the estimated average durations, the United States will spend an estimated \$48,997,026,498 for their keep.

[Editor's note: The author's figures imply that one dollar out of every ten is spent just to supplementally incarcerate the 4321 people in SOCC facilities with crimes against children, as compared to the 144,453 people with such charges (total) in prison and SOCC facilities. The ratio of these two numbers conveys that less than 1 out of every 33 people confined in any way (criminal or civil) for sexual offenses with children are specifically confined in SOCC facilities. Although most prison systems are not obligated to provide sex offender treatment, in fact most do so. The difference in costs of treatment in prisons versus SOCC facilities is that the prisons provide such treatment with great expeditiousness and via a concentrated schedule of treatment sessions and assignments. In most cases, the prison version of sex offender treatment is completed by participating inmates within two to three years. As it happens, when released, those treated former inmates have a very low recidivism rate, as do former committed SOCC confinees after their release (the numbers and percentages are almost exactly equal in states using both types of confinement. Using the author's figures (with some rounding), in prisons it apparently costs about \$4.860 billion annually to care for sex offenders with child victims. Divided by the apparent 140,000 prisoners of that kind, the cost per prisoner annually (including treatment) is roughly \$34,714.

In contrast, SOCC confinees with the same kind of victims cost roughly \$139,500 – more than an extra \$100,000 per year – per confinee per year to contain and to provide what the author identifies as "specialized sex offender treatment." The ratio between these two numbers is such that it is more than 4 times as expensive per

year to confine and treat those in SOCC facilities. In the case of Minnesota, when tallying the various sub-cohorts of confinees in MSOP and adjusting for those who died in that confinement and for those released, the total regular costs of care come to just under \$2 billion in the time MSOP has been in operation. However, this does not include non-annual or one-time costs, such as costs of commitment proceedings, release proceedings, legal defense costs, medical and economic assistance payments, & construction, renovation, upkeep, & bonding costs). (Spreadsheet calculation available from this editor upon request.)

Despite this article's assertion about advanced degrees of treatment providers in SOCC facilities, in most such facilities, the actual weekly treatment "core groups" are typically led by "facilitators" with only baccalaureate degrees or persons with master's degrees in social science fields other than psychology. In MSOP in Minnesota, for example, only one of the two facilities of the program has a psychiatrist (who is shared with other types of mental health treatment elsewhere in the multi-program campus in St. Peter MN). The other facility, in Moose Lake, MN, has no psychiatrist at all.

Further, the latter facility's few psychologists at the doctorate level are primarily tasked with assessment duties. Many are freshly degreed, working on a statutorily mandated year-long internship before receiving state full licensure. Only approximately a half-dozen are assigned to treatment duties, typically reserved for intervention in personal mental crises of confinees – often involving anxiety or outburst symptoms, both erupting from the confinee's reaction to contemplating having to remain confined for further periods perhaps as long as multiple decades, or perhaps for natural-life. Most confinees in the Moose Lake facility only interact with a doctorate-level psychologist if/when being interviewed for an assessment. Other than an annual "mental health assessment" (simply to determine whether symptoms such as the foregoing reactions to the program may be reaching a toxic level), a typical Moose Lake confinee will interact with such an advanced-degree psychologist only when being assessed in connection with possible advancement in treatment status or to the release-preparatory "CPS" (Community Preparation Services) program or for release to "Provisional Discharge."

[p. 68:] Discussion

Collectively, we estimated that American taxpayers spend nearly \$5.4 billion each year to incarcerate people for sex crimes against children in state and federal prisons and civil commitment facilities. This is an enormous amount of money, larger than the gross domestic products of 43 countries (GDP per country, n.d.). By comparison, the federal budget recently added just \$1.5 billion dedicated to child sexual abuse prevention research for fiscal year 2021. This is a tiny amount of money, less than we spend annually to investigate diethylstilbestrol, a synthetic hormone now used primarily to treat urinary incontinence in female dogs (Cunha, 2021; NIH-CDC Fund-

ing Summary, 2021).

Based on our estimates, the amount we stand to spend on current prison and SOCC inmate cohorts with sex crimes against children is nearly \$49 billion, including approximately \$33 billion for state prisoners, \$5.2 billion for federal prisoners, and \$10.7 billion for SOCC inmates. The money we spend to incarcerate SOCC inmates is, of course, spent after we've spent money to incarcerate them in prison. More to the point, *all of this money is spent after children have already been sexually abused*.

Allocating enormous resources to reactive strategies is a choice. Likewise, failing to allocate resources to preventive strategies is a choice. These choices are routine in the United States and, we believe, in most other countries. In efforts to increase U.S. funding for abuse prevention we have yet to meet a single lawmaker who disagreed with the importance of preventing child sexual abuse. At the same time, we have met many lawmakers who argued that there simply was not enough money in the federal budget to support new child sexual abuse prevention efforts. We appear to be comfortable spending millions at the federal level and billions at the state level every year to incarcerate people after they've already sexually abused children, while spending almost no money on prevention.

When it comes to punishing sex offenders there is clearly no check we will not write. This is despite the fact that prison fails to deter recidivism (and thus fails to prevent child sexual abuse and other crimes), a finding so common it was labeled a 'criminological fact' in a recent meta-analysis (Petrich *et al.*, 2021, unpaginated). The United States leads the world in relying on this 'intervention' with 655 prisoners per 100,000 citizens; yet dozens of other (mostly low and middle income) countries also have high rates, with 300 or more prisoners per 100,000 citizens (see <https://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/other>).

[pp. 68-9:] Why, when we invest so much in a failed institution like prison, are we so miserly when it comes to funding efforts to prevent abuse from occurring in the first place? We suspect the answer lies in part with the fact that the United States and most other countries have a long history of relying on incarceration to address sexual and non-sexual violent offenses, and in part with the fact that people simply do not think that people who are at risk of sexually abusing children or who have already done so can be deterred from initial or subsequent offending (Fix *et al.*, 2021). However, findings from studies with empirically rigorous research designs support the clinical and cost effectiveness of interventions for people who have already sexually offended (e.g., Duwe, 2018; Elliott & Beech, 2012; Manson *et al.*, 2009; Marshall & Marshall, 2021; Wilson *et al.*, 2009). Likewise, there is mounting evidence that prevention of first-time sex crimes is also achievable (Assini-Meytin *et al.*, 2020).

[p. 69:] ...[T]he fixed costs of prisons (and we presume, SOCC facilities) are relatively

impervious to fluctuations in inmate counts; instead, cost savings are more likely to be realized after facilities are completely shut down (Mai & Subramanian, 2017). Reducing the number of people incarcerated and/or the number of years confined is unlikely to unlock funding for child sexual abuse prevention efforts or anything else in the short term. Again, holding adults accountable for harming children is a necessary component of any reasonable approach to child sexual abuse – but we find it incomplete and even potentially harmful to children if not also accompanied by robust prevention efforts.

[p. 71:] Study Strengths and Limitations

For several reasons, we believe the eye-popping numbers estimated in this study are conservative. First, we conservatively estimated that 80% of persons incarcerated of sex crimes had child victims; the resources that provided such estimates actually ranged from more than 79% up to 84% (Cochran *et al.*, 2021; Huenke *et al.*, 2007; Jumper *et al.* 2012; Schneider *et al.*, 2018; Weidlein-Crist & O'Connell, 2008). Second, our inmate counts are also conservative because we (or the sources upon which we relied) excluded people who were detained but not yet convicted or committed, people serving prison sentences of less than 1 year, and children serving time in youth prisons. Third, our costs are conservative because we limited our estimates to incarceration and did not attempt to calculate any costs associated with actions that necessarily precede incarceration (e.g., related to detection and litigation).... To the extent that our estimates are off, we believe we underestimated rather than overestimated costs.

[p. 72:] ...[W]e believe this paper provides a reasonable stating point against which to compare future incarceration cost estimates (which we expect will rise with increased scrutiny, at least in the United States) and to weigh future investment in prevention and treatment.

Child sexual abuse is a preventable – not inevitable – public health problem. But we cannot prevent it with a pittance. With billions currently allocated to a regime that has continued to fail to adequately protect children, a more serious and thoughtful investment of resources is needed to ensure that we prevent child sexual abuse in the first place."

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Cloquet, MN Newspaper (20 mi. from MSOP-ML) Supports SOLPRC 2024 Report Against MSOP.

Mike Creger, "Report: Sex Offender Program Is Broken," *Pine Knot News* (Cloquet, MN), May 10, 2024.

Text: "A study released last month on Minnesota's 'civil commitment' policies regarding people convicted of sex offenses says the state has failed in proving the worth of programs run in Moose Lake and St. Peter, under the umbrella of Minnesota Sex Offender Program, or MSOP.

'Minnesota's uniquely aggressive civil commitment program, threatens basic constitutional right as while exacerbating the very problem it is intended to solve,' said Eric Janus, director of Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law, the creators of the study.

The report says the state 'needlessly

tramples civil and human rights, fails to meaningfully reduce sexual violence, and deprives more-effective sexual violence prevention strategies of critical resources.'

Here are some key findings:

- Costing more than \$100 million per year, civil commitment is by far the state's most expensive sexual violence prevention program – despite researchers' finding that civil commitment has 'no discernible impact' on reducing sex crimes.

- The state's support of primary prevention, to prevent sexual harm before it occurs, is less than 2 percent of civil commitment funding.

- Minnesota is a national outlier: Most states do not use civil commitment at all, yet Minnesota commits the most people per capita among those that do.

- Civil commitment in Minnesota is effectively a life sentence without due process protections. As of September 2023, just 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 confinement.

- A person is nearly five times more likely to die in the program than to be discharged from it.



Deceased confinees who die in MSOP and are not promptly claimed by next-of-kin are cremated unceremoniously without clergy, reminiscent of the historical procedure in the photo above.

- Minnesota's civil commitment policy has been 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.

A number of high-profile legal scholars chimed in on the report, including former Minnesota Supreme Court Chief Justice Eric Magnuson.

"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," Magnuson wrote. '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.'

The Sex Offense Litigation and Policy Resource Center, according to its own description, 'collects and disseminates information about cases on issues of sexual violence policy, and facilitates communication, sharing, and the development of strate-

gies among the lawyers, advocates and academics who seek a more sensible and effective public policy on sexual violence prevention.'

Treatment focus

The Minnesota Department of Human Services runs the MSOP facilities and said it is focused on the treatment of clients at MSOP facilities. In a response to the report, the DHS said it 'raises concerns primarily about the state's civil commitment laws for sex offenders, the number of individuals who have been civilly committed under the laws, and the length of time individuals spend at MSOP before they are discharged. Very little in the report focuses on treatment at MSOP.'

As of March 28 [2024], MSOP had 734 clients in its two treatment facilities, the most per capita of any similar program in the country. The Moose Lake houses 430 people.

The DHS spends \$479 a day on each client, or \$174,835 per client each year.

In Minnesota, civil commitment is typically applied to those who have been convicted of a sex crime and already completed their [prison term]. 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-like facilities run by MSOP and administered by DHS 'to provide treatment services to individuals who are at risk of reoffending.'

The recent study said the MSOP model is not reducing sexual violence.

'Minnesota's policymakers invest over \$100 million per year on civil commitment while leaving other critical sexual violence services and interventions, including primary prevention, wanting', the study said. 'Prevention strategies are designed to prevent sexual violence' before it occurs. Such interventions are essential to any comprehensive sexual violence reduction program because they can be widely implemented at the community level, where even a small reduction in perpetration behavior may have a broad impact on sexual violence reduction. Yet primary prevention efforts have not received financial support even remotely approximating that given to MSOP.'

The DHS stands by its role.

'Only a court has the authority to commit someone to MSOP or to discharge them,' the DHS wrote in a statement to the *Pine Knot News*. 'Demonstrated participation and progress in treatment is the clear path to discharge. It is the most persuasive argument that clients can make when petitioning the court for a reduction in custody. To date, the court has granted a number of reductions in custody, including transfers to Community Preparation Services, provisional discharges and full discharges.'

Hopelessness

But clients at the facilities find little recourse on ever getting out. The study quoted one person housed by MSOP: 'The level of hopelessness ...around here has reached ...almost crippling levels to the

(Continued on page 6)

point where people don't even try, people don't attempt anything, and people don't have any motivation. People are willing to do nothing, to try nothing, to get out of here because nothing we do works.'

Assaults in Moose Lake last year highlighted those emotions. A client who spoke to the *Pine Knot News* then said one way to get out is to strike back with violence, usually at staff at the facility. It's a way to be sentenced and returned to a state prison, Daniel Wilson said.

The hopelessness is coupled with less trust in staff, with fewer people at facilities taking care of the clients, Wilson told the *Pine Knot*.

Wilson helped organize hunger strikes at the Moose Lake facility in 2021, to bring [light] to many of the issues brought up in the report.

Turnover is also a problem, as highlighted in the report:

'Recent conversations with detainees reveal that progression often feels unpredictable and can depend on external conditions like staffing turnover. Due to poor staff retention at MSOP, detainees often find that their treatment progress is interrupted when they are placed with a new provider. As one detainee, Joshua Brooks, stated, "It doesn't matter how much treatment you do, it starts over. There's therapists changing out. I, myself, have had 22 different therapists in 11 years."

Employee concerns

In February, workers at the MSOP and correctional facility [next door to MSOP] in Moose Lake talked to legislators before the current session about staffing, security and workplace environments. [An MSOP-staffed treatment program was operated in that prison until closed four years ago. It had long been criticized as more of a commitment evidence-gathering function than a real program to save inmates from commitment. Most agree that its closure was also the first casualty of MSOP's inability to recruit sufficient therapists.]

David Clanaugh, volunteer services coordinator at MSOP, and the Region 17 director and Local 1703 member of the Minnesota Association of Public Employees, said there has been 'alarming turnover and recruitment rates' at the two facilities.

A report on the meeting from MAPE offered some startling examples for employees. Peter Braith, a recreation therapist at MSOP, said his department now has four employees, down from nine a few years ago, yet therapists are expected to keep programming at levels when they had more staff.

Ryan Patrick, a substance abuse therapist at [the] Moose Lake [facility], told legislators that the library, gymnasium and yard at the [facility] are often closed due to lack of security staffing....

Little movement

Tough scrutiny of the MSOP goes back more than a decade. Attorney Dan Gustafson spent more than six years suing Minnesota's sex offender program for locking up hundreds of offenders with no chance for them to ever be released. In

2015, federal judge Donovan Frank declared the program to be unconstitutional, ruling that clients were being permanently housed with no recourse to get out. He ordered the state to immediately make changes.

The state appealed the ruling and [in 2017] a three-judge panel on the 8th Circuit Court of Appeals struck down Frank's decision.

Nevertheless, MSOP had its first release of a client in 2016. Others have followed. But the political will to change how people are placed into and then confined at MSOP has waned....

A CALL FOR CHANGE

The Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law, in its study of Minnesota's civil commitment policy for sex offenders, has several recommendations for change, outlined in their words below:

'Moratorium and Reinvestment

The Legislature should halt all new admissions to the Minnesota Sex Offender Program and apply a reinvestment formula such that savings for population reductions are reinvested into a comprehensive, evidence-based system of primary, secondary, and tertiary (level three) forms of sexual violence prevention.

Sunset

The Legislature should develop an orderly process, designed with input from the governor's office, state agencies, local communities, victim advocates and violence prevention agencies, detainee representatives, and legal and treatment experts, to safely re-integrate existing detainees into the community within a reasonable, but short, timeframe.

- This process should include discharge planning for all detainees; the identification and creation of appropriate community-based treatment resources; identification and creation of appropriate residential resources, including halfway houses, transitional housing, apartments, etc.; and employment, training, and educational opportunities. Sunsetting requires determination of appropriate support for those released to enable successful re-integration and community safety.
- This process will be complicated, and we recognize that a small percentage of those who have been detained at MSOP for decades may need substantial and sophisticated support to safely re-enter a community setting. We are clear that involuntary preventive detention is not the solution, and cannot be a long-term component of any sunset process.
- **Collaborative problem-solving process.** As this report confirms, change has been impeded repeatedly by the toxic politics and fear-driven rhetoric surrounding these issues. For this reason, we suggest that a collaborative problem-solving process be considered to bring together key stakeholders and articulate what we believe to be the silent consensus that SOCC is a broken system whose massive investment should

be reallocated to a comprehensive, evidence-based campaign of prevention.

The foundational goal of sunsetting MSOP can be supported by several interim harm reduction steps identified below. By removing constitutionally suspect roadblocks in the current discharge process and reducing MSOP's population, these interim recommendations support the fundamental goal of sunsetting the use of civil commitment in the shared goal of sexual violence prevention.

Interim Harm Reduction

MSOP leadership can reduce ongoing harm inside MSOP and bring the functioning of MSOP more closely in compliance with constitutional, statutory, and contemporary treatment standards by:

- Routinely informing all detainees of their right to petition for transfer to a less restrictive environment or discharge and providing information about the process for filing a petition.
- Notifying detainees when their petition for transfer and/ or discharge has been received and providing as much information as possible about the timing of all hearings.
- Providing annual review of each detainee's risk level (using the most current and best available empirical-actuarial risk assessment instruments) and need for continued commitment based on current risk. Developing and implementing a policy of supporting the release of low-risk individuals (e.g. elderly, disabled, juvenile only, and those with low risk assessment scores, etc.) without requiring treatment progression. The Executive Director should proactively petition for, and support, the provisional discharge of these individuals.
- Amending MSOP's policies restricting clients' rights to peaceful demonstration, speech, and advocacy regarding legislative and policy changes to MSOP. Further, MSOP should work to open avenues for clients to make their concerns known and communicate with the Legislature.
- The Minnesota Legislature can reduce harm within MSOP and move toward the goal of sunsetting MSOP by taking the following interim steps:
 - reviewing the discharge and step-down petition process and considering how to streamline the process and expedite the consideration of detainee petitions. This should include a review of the utility of the SRB and DHS's control of funding for independent examiners.
 - allocating adequate funds to expand Community Preparation Services (CPS) to allow for timely transfer of those detainees approved for such transfer.
 - amending the state's statute to require annual review of each detainee's risk level and need for continued commitment.
 - amending the state's discharge criteria to require discharge when a detainee no longer meets initial commitment criteria."



Stakeholders?
(from *Waiting for the Barbarians*)

Reason Supports SOLPRC report

Jacob Sullum, "Minnesota's Indefinite Detention of Sex Offenders Is Ineffective as Well as Unjust: A new report argues that the notorious program squanders taxpayer money while keeping people imprisoned without justification or recourse," Reason.com, May 5, 2024, <https://reason.com/2024/05/06/minnesotas-indefinite-detention-of-sex-offenders-is-ineffective-as-well-as-unjust>.

Text: "Twenty states authorize civil commitment of sex offenders who have completed their criminal sentences but are deemed too dangerous for release. Minnesota, which deploys that option against a larger share of its population than any other state, spends \$100 million a year to detain about 750 individuals who are deemed 'likely' to commit sex offenses. Although those detainees are notionally eligible for release when they no longer pose a threat, that rarely happens. As of last September, just 21 of 946 people committed to the Minnesota Sex Offender Program (MSOP) had been fully discharged, while 94 – more than four times as many – had died in custody.

In effect, the MSOP, which is overseen by the Minnesota Department of Human Services (DHS), imposes life sentences on its 'clients,' not as punishment for crimes they have committed, but in anticipation of crimes they might commit in the future. That system, researchers at Mitchell Hamline School of Law in St. Paul argue in a new report, is not only unjust but also highly inefficient, squandering public resources on a preventive detention scheme that delivers little, if any, public safety benefit. The program is so riddled with conceptual and practical problems, they conclude, that it should be abolished.

'Civil commitment's reduction of sexual violence is vanishingly small compared to its expense,' says the report from Mitchell Hamline's Sex Offense Litigation and Policy Resource Center, which notes that it costs about \$175,000 a year to keep each detainee in the program. Because civil commitment 'focuses on preventing a small fraction of recidivist offenses,' law professor Eric Janus and his co-authors argue, it 'neither addresses nor repairs the vast majority of

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sexual harm in Minnesota.'

Civil commitment 'has failed to serve the purported purpose of treating individuals to facilitate safe community reentry,' Janus *et al.* writes. 'The state commits too many, and keeps them too long, compounding [the program's] ineffectiveness with civil and human rights violations.' At bottom, they say, civil commitment of sex offenders 'embodies a dangerous principle: that impassioned majorities may indefinitely detain a reviled and degraded 'other' in the name of preventing some future harm.'

Officially, the MSOP's locked facilities in Moose Lake and St. Peter, both of which 'have secure perimeters fenced in by razor wire,' are treatment centers, not prisons. Although it defies reality, that distinction is legally crucial. The U.S. Supreme Court has approved indefinite detention of sex offenders 'who suffer from a volitional impairment rendering them dangerous beyond their control,' which it deems remedial rather than punitive. In that situation, the safeguards that are constitutionally required for criminal cases, such as trial by jury, proof beyond a reasonable doubt, and the bans on double jeopardy and *ex post facto* punishment, do not apply.

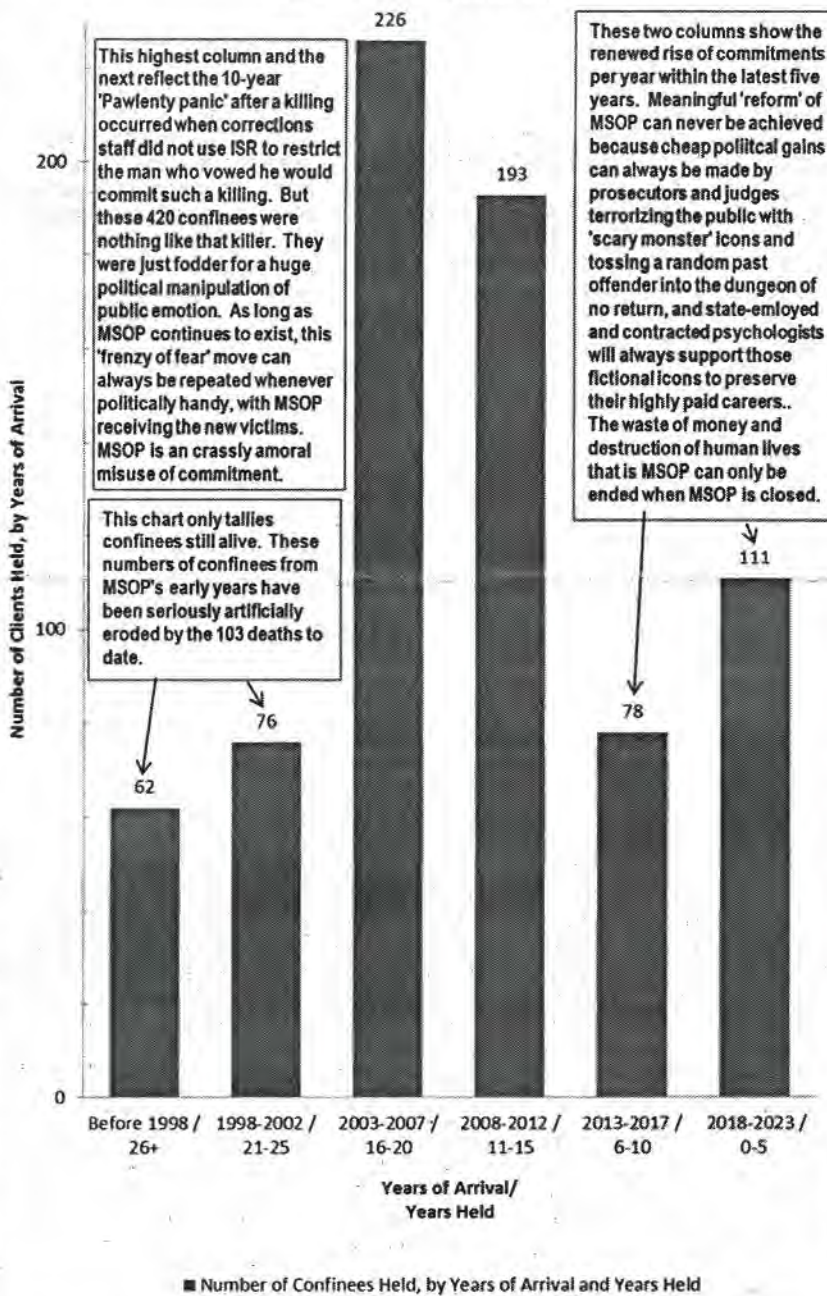
As Janus *et al.* note, civil commitment nevertheless is subject to several constitutional requirements. To be committed, an individual must have a 'mental disorder' that makes him dangerous to himself or others. In the case of sex offenders, that 'mental disorder' must distinguish people subject to commitment from others convicted of similar crimes. The program must provide treatment when it is feasible, and 'the nature and duration of commitment must bear a reasonable relationship to the purpose of the commitment.' The MSOP falls short on all counts.

Minnesota's Sexually Dangerous Persons Act, enacted in 1994, authorizes civil commitment of anyone who 'has engaged in a course of harmful sexual conduct,' 'has manifested a sexual, personality, or other mental disorder or dysfunction'; and 'as a result, is likely to engage in acts of harmful sexual conduct.' Anyone convicted of a sex offense meets the first criterion, while many, if not most, convicted criminals would meet the second. According to a study that Janus *et al.* cite, for example, 'estimates suggest that between 40% and 80% of all imprisoned males would meet the criteria for Antisocial Personality Disorder.' Finally, assessments of how 'likely' someone is to 'engage in acts of harmful sexual conduct' are highly contentious and prone to error.

'The Minnesota Supreme Court held that a trial court must find that future sexual crime is "highly likely," but neither the legislature nor the courts have further defined the term,' Janus *et al.* explain. The result is an amorphous and highly subjective standard.' They cite examples of sex offenders who were committed even though they were deemed to pose a 'moderate risk,' along with evidence that commitment decisions are driven by political factors, such as public outrage at specific crimes and the 'philosophies of local prosecutors.'

Despite the notional requirement that

Years Confinees Have Been Held at MSOP, Total: 746 (as of 9/19/2023)



commitment end when it no longer serves its ostensible purpose, Janus *et al.* note, 'Minnesota does not regularly review detainee risk levels to assess the feasibility of safe reentry into the community.' And while the MSOP's executive director can independently recommend a detainee's transfer or release at any time, 'this prerogative is rarely, if ever, exercised.'

That abdication of responsibility jibes with the attitude of Minnesota's political leaders. Even while defending the MSOP in 2015, then-Gov. Mark Dayton conceded that civil commitment decisions are no better than guesswork, because 'it's really impossible to predict whether or not [sex offenders] are at risk to reoffend.' As Dayton saw it, the solution was to err on the side of keeping everyone locked up. That was consistent with the position that Dayton's predecessor, Tim Pawlenty, took in 2003, when he is-

sued an executive order barring the release of MSOP detainees 'unless required by law or ordered by a court.' Pawlenty's chief of staff explained that 'the governor doesn't want these guys to get out, and he's made that clear ever since he was running for office.'

In practice, each detainee has the burden of petitioning for transfer or release, and that process is plagued by bottlenecks, redundant reviews, and backlogs. 'MSOP detainees wait an average of 625 days - nearly two years - for a final decision to be made on their petitions for transfer to a less restrictive environment or discharge,' Janus *et al.* note.

Until 2015, when a federal judge deemed the MSOP unconstitutional, no detainee had ever been fully discharged, even though the program at that point had been operating for two decades. 'Since that time, Janus *et al.*

and people don't have any motivation. People are willing to do nothing, to try nothing, to get out of here because nothing we do works.'

The MSOP originally was presented as a stopgap measure aimed at compensating for insufficiently long prison sentences. That rationale was inherently problematic, since it implicitly admitted that legislators were retroactively increasing the punishment imposed on people who had already served the sentences prescribed by law. In any event, that explanation was contradicted by subsequent trends.

'Running parallel to civil commitment's expansion over the last three decades, Minnesota has also increased criminal sentences and post-confinement supervision for those convicted of sex offense,' Janus *et al.* note. For example, 'the aver-

note, 'a slow trickle has begun, but releases are still outpaced by deaths in custody.' As of September [2023], nearly three-quarters of MSOP 'clients' had been detained for more than a decade, nearly half for more than 15 years, and about a fifth for more than two decades.

Even when a petition is approved by the Commitment Appeal Panel (CAP), that does not necessarily mean transfer is imminent. 'In December, 2021, the CAP held the DHS Commissioner in contempt for failing to transfer an MSOP detainee to Community Preparation Services [CPS] after CAP had granted his petition for transfer,' Janus *et al.* note. 'In CAP's findings of contempt, the Court noted that '55+' MSOP detainees have had their progression similarly delayed by a failure to transfer for nearly two years or more.'

The opacity, unpredictability, and painfully slow pace of this process have fostered an 'overall culture of hopelessness and frustration' that deters detainees from even filing petitions, Janus *et al.* report. That frustration has provoked hunger strikes by detainees who complain that the standards for measuring treatment progress and eligibility for transfer or release are utterly mysterious. 'The level of hopelessness ... around here has reached ... almost crippling levels,' one detainee said in an email that Janus *et al.* quote, 'to the point where people don't even try, people don't attempt anything,

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SOCC treatment?

age prison sentence for First Degree Criminal Sexual Conduct increased from 75 months in 1988 to 190 months in 2017,' and in 2005 the legislature authorized a life sentence for 'a single "heinous" sex crime.' But 'despite the material lengthening of criminal penalties, Minnesota's program of civil commitment continues to grow, contradicting the solemn promise of legislators that this form of extraordinary confinement would soon disappear, restoring the criminal justice system to its primary role in holding harm-doers accountable.'

Politicians and their constituents, of course, are unlikely to care much about the civil liberties of convicted sex offenders, even when they ...have paid their debt to society. They nevertheless should care about the waste of taxpayer money that the MSOP entails.

The hope that civil commitment would have a significant impact on public safety stemmed partly from widespread misconceptions about recidivism. 'Contrary to the often quoted and erroneous claim that sex offense recidivism rates are "frightening and high" – an assessment endorsed by the Supreme Court – 'those convicted of sex offenses have one of the lowest same-crime recidivism rates across all offender categories,' Janus *et al.* note. A 2019 Department of Justice study, for example, found that less than 8 percent of people who were released after serving sentences for rape or sexual assault were arrested for a new sex offense within nine years of release, and 'other studies have found similarly low rates for both "low risk" and "high risk" offenders.'

A 2013 study of 105 people committed to the MSOP estimated that the upshot was a small reduction in the four-year sex offense recidivism rate (as measured by new convictions), from 3.2 percent to 2.8 percent. A study published the same year, based on interstate comparisons, found that civil commitment programs 'have had no discernible impact on the incidence of sex crimes.' Either 'there are no preventive benefits associated with these laws,' the authors concluded, or 'the benefits are too small to measure with these methods.'

These results are not surprising, Janus *et al.* say, since civil commitment programs address 'only a sliver of a sliver of sex offense convictions,' and people arrested for sex crimes typically do not have prior convictions for that sort of offense. From 2001 through 2015, according to data from the Minnesota Sentencing Guidelines Commission, '93% of criminal sexual conduct convictions in Minnesota involved defend-

ants with no such prior convictions.

Given that reality, Janus *et al.* argue, the money that Minnesota devotes to civil commitment of sex offenders would be better spent on community programs that aim to 'prevent sexual violence before it occurs.' Minnesota's current budget, they note, devotes about \$2.3 million a year to such programs, while spending 50 times as much on the MSOP

The MSOP has been subject to much criticism over the years, including a 2011 report from the Office of the Legislative Auditor, 2012 and 2013 reports from the Sex Offender Civil Commitment Advisory Task Force, and the aforementioned 2015 decision in which U.S. District Judge Donovan Frank concluded that the program was unconstitutional (a decision that was later overturned by the U.S. Court of Appeals for the 8th Circuit).

'It is undisputed that there are civilly committed individuals at the MSOP who could be safely placed in the community or less restrictive facilities,' Frank wrote. He noted that adjudication of detainees' petitions 'can take years' and described the MSOP as a 'treatment system with "chutes-and-ladders"-type mechanisms for impeding progression, without periodic review of progress, which has the effect of confinement to the MSOP for life.'

Janus *et al.* recommend specific procedural reforms, several of which could be implemented without new legislation. But judging from the history of proposed changes that went nowhere, they say, 'future efforts to progressively reform MSOP will be unsuccessful, not because they are unneeded, but because legislators are unwilling to engage with what is perceived to be a political third rail.'

Instead of a piecemeal approach, the report says, legislators should scrap the entire system and 'reinvest MSOP's \$100 million annual budget into community and victim support, 'holding harm-doers' accountable through retroactive practices, and sexual violence primary prevention efforts.' Even if the MSOP's manifest defects could be ameliorated through less ambitious changes, it says, the program would still entail 'a misallocation of prevention resources and a dangerous endorsement of unequal justice.'

Recidivism Prediction Is Junk Science. (Part 7)

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

[Part 7]

Text Excerpts: pp. 283-84: A Final Plea for Probabilistic

Thinking

...[W]e offer three simple points about Bayes, in narrative only for our more innumerate readers, extracted from Silver (2012):

'Bayes's theorem requires us to state – explicitly – how likely we believe an event is to occur *before* we begin to weigh the evidence. It calls this estimate a prior belief' (p. 451). This calls from an estimated base rate, which typically comes from an actuarial or structured professional judgment risk scale.

'Bayes's theorem says we should update our forecast any time we are presented with new information' (p. 452). Although all 'new' information usually comes in roughly the same time frame while conducting the evaluation (all discovery, interview, testing, third-party contacts), additional (new) information may be forthcoming *after* the evaluation is completed, sometimes months afterwards. The new information may be of sufficient importance to change our 'forecast.'

'Bayes's theorem encourages us to be disciplined about how much we weigh new information' (p. 452). New information must be scrutinized critically. Much new information is 'noisy' (biased) or illusory (uncorrelated with the criterion). We may be inclined to place undue weight on biased information or to attribute risk-relevance to what is illusory. The opposite bias is perhaps even more serious: being overly invested in an outcome (SVP/not SVP) and failing to recognize or acknowledge that one's opinion must change. Although it can take courage to change one's mind mid-stream, it is a vital indicator of scientific and professional integrity. As Silver put it, 'failure to change our forecast because we risk embarrassment by doing so – that reveals a lack of courage.' (p. 66). The principle was cleverly and pithily expressed by the brilliant British economist, Lord J.M. Keynes, who has been variously (and often) quoted as saying: 'When the facts change, I change my mind. What do you do, sir?'

p. 284: Posner (2010) discussed the trouble people sometimes have changing their minds until the evidence is overwhelming – at which point it may be too late to take action' (p. 111). Commonly referred to as change blindness, it 'happens when we filter out the implications of new information rather than assigning them even partial weight in our thinking' (Posner, 2010, p. 120). When the gravitational pull to support the retaining attorney is strong – as it typically is – we don't 'filter out' as much as we 'reframe' new unresponsive evidence, thereby diminishing its importance (i.e., its weight). The same phenomenon has also been referred to as the boiling frog syndrome – if you place a frog in a pot of boiling water, it will leap out; if you place a frog in a pot of room temperature water and put the pot on the stove, the frog will remain in the water until it ultimately dies, because new information' (gradually increasing temperature of the water) is filtered out or ignored.

Posner (2010) texted out that a phenomenon far better known to psychologists –

cognitive dissonance – may manifest itself as change blindness. Change blindness is a metaphor for how humans respond to threats. We have evolved to detect acute changes that pose an imminent threat ... but not slow, gradual changes. The incremental addition of new information is likely to be ignored in the same way that other gradual changes are ignored. As Posner said, we have trouble changing our minds until the evidence is overwhelming... – at which point it may be too late to take action (change our opinion). ...In the interim, additional evidence may trickle in that supports or undermines our opinion. Unsupportive evidence, especially when it arrives in increments, is likely to be ignored. p. 288: ...As Lussier *et al.* (2010) rightly point out,

'Current actuarial tools aggregate the information characterizing the criminal history of sex offenders. By aggregating the information found in the criminal history of these men, much information is lost about the dynamic aspect of it. This is based on the false assumption that the criminal history is a static, historical risk factor that explains the risk of recidivism. Clearly, past criminal behavior indicates the risk of future criminal involvement; however, so do dynamic aspects of offending, a point raised by developmentalists and life-course criminologists.' (p. 163) It seems ironic that criminologists should have something to tell psychologists about paying attention to the course of human development.

pp. 292-94: **Recommendations for the Next Generation of Risk Assessment Scales**

...The next generation of sex offender risk assessment scales should:...

6. address the dysfunctional 'quadfurcation' of the science of risk assessment based on the developmental epoch of the target population (children, juveniles, emerging adults (e.g., college students), or adults.... Most strikingly, for two completely overlapping populations, emerging adults and adults, the risk factors are almost entirely dissimilar. It would certainly appear that a coherent theoretical model that takes a developmental life-span perspective is urgently needed;

7. address the obvious, marked clinical, etiological and risk-related differences between child molesters and rapists. Historically, risk assessment scales have all been 'dual-purpose.' Every risk scale includes 'a few for each.' The items targeting rapists have little or no predictive power for child molesters and conversely the items targeting child molesters have little or no predictive power for rapists. These 'hybrid' scales that seek to accommodate the risk-relevant demands of both groups are suboptimal and enhance neither the clarity nor the accuracy of either group. In open systems, a diversity of pathways may lead to the same outcome (i.e., equifinality); in the case of sex offenders, that outcome is only the same when loosely conceived (i.e., a legally defined sexual offense). Not only are the pathways for rapists and child mo- (Continued on page 9)

lesters markedly dissimilar, but the 'outcomes' are dissimilar (beyond, as stated, the legal definition of a crime). Rapists share many risk characteristics in common with nonsexual offenders. From that vantage, rapists could easily be viewed as a subset of nonsexual criminals. Child molesters, by contrast, are typically viewed as having a focal sexual deviance, an age-inappropriate preference often classified as a paraphilia. In closed systems, as may be more likely with child molesters, outcome is linked inextricably to the initial conditions. Combining the two groups in the same risk scale accomplishes little more than obfuscation."

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Why Extending the Lock-Up of Sex Offenders Forever Doesn't Create Safety

Aviva Stahl, "Why Sex Criminals Get Locked Up Forever," *Vice* (April 13, 2016), <https://www.vice.com/en/article/zngaqe/why-young-sex-criminals-get-locked-up-forever>
Text Excerpts: "Gilbert Greenfield is locked up in New Jersey for sex offenses he committed as a young man. At 14 he raped a woman by knife-point, and at 20 he reoffended with a perhaps even more brutal [rape] crime with violence....
 During years of treatment, Greenfield has been taught various strategies for reconditioning his sexual fantasies. When he was a child, the neighbors who lived next door had a house fire...and he has never forgotten the stench of burned flesh. "You could

smell it in the air," he told me over the phone, the memory still sufficient to make him gag. Now whenever a violent fantasy pops into his head, Gilbert wills himself to return to the fire.
 Though the 51-year-old finished serving a 30-year prison sentence in 2004, he remains in confinement under the state's civil commitment statute. New Jersey isn't the only place with such laws: In 20 states across the country, as well as at the federal level, sex offenders labeled high risk can be detained indefinitely upon completion of their criminal sentences. [Now nearly 7,000] sex offenders are civilly committed across the country.



Administrative Segregation

Civil commitment raises a host of legal and ethical issues. Lawyers contest its constitutionality. [...Rather than advancing a more holistic approach to rehabilitation,] treatments [in sex offender commitment] tend to focus on how detainees should manage or change their 'deviant' tendencies, an approach some experts say is ineffective and inhumane. But for men like Greenfield, the question is how to make sense of the logic that runs their lives. Despite his progress and good behavior, Greenfield has been told he will likely die in detention - not because of what he's done in the past, but because of what [others fear] he might do in the future.
 'I always analogize this to the movie *Minority Report* with Tom Cruise,' said Heather Ellis Cucolo, a former director of the online Mental Disability Law Program at New York Law School and an attorney who once served as a public defender for those facing civil commitment, including Greenfield. 'It's the idea of projecting what future events are going to happen. We don't have a crystal ball.'
 In the 1980s and 1990s, Americans were gripped by high-profile media coverage of brutal sex crimes against children and young women, sometimes by men who had been previously charged with sex offenses. New Jersey was not insulated from the rising panic about the sexual threats that might be lurking next door. The 1994 rape and murder of Megan Kanka in New Jersey spurred the [passage of 'Megan's Law,' a series of bills mandating public sex offender registries nationwide. New Jersey's civil commitment legislation followed soon after, taking effect in 1999. Today, about 480 offenders are housed in the Special Treatment Unit (STU) in Avenel, New Jersey, an inconspicuous suburban town located about 50 minutes north of Trenton and just west of Staten Island.
 (New Jersey's Division of Mental Health, which oversees the STU in Avenel, did not
 (Continued on page 10)

respond to repeated requests for comment for this story.)

Civil commitment permits the indefinite detention of people who are found by a court to be 'Sexually Violent Predators' (SVPs). That typically requires prosecutors to demonstrate to either a judge or jury that the individual has a [mental abnormality] or personality disorder that impairs their ability to control themselves, and that they would therefore be likely to engage in violent acts if released.

In 1997, the Supreme Court ruled in favor of such laws. In a five-to-four decision written by Clarence Thomas, the court decided that SVP hearings in Kansas were distinct from criminal trials, and therefore did not violate constitutional protections against double jeopardy....

All that doesn't mean much to Gilbert Greenfield. New Jersey, like several other states across the country, actually houses civil commitment programs in former prisons. Avenel's STU is located next door to two state prisons, and its main building was originally used as an administrative segregation facility, meaning the cells were designed to hold people in long-term solitary confinement.

Visitors to the STU are greeted and patted down by Department of Corrections (DOC) prison guards, then led through a series of locked doors and past a 15-foot-high chain-link fence that borders the outdoor recreation area. (Although the Department of Human Services provides treatment for the offenders, the DOC runs the facility)....

Residents are locked into their cells for various periods of the day, including from about 10 PM to 6:30 AM. 'When we step in our rooms, the metal doors slam closed,' Greenfield had previously told me over the phone. His narrow window lets in only a sliver of daylight.

The STU is supposed to make rehabilitation happen. But in New Jersey, like states across the country, questions linger about just how much treatment is enough.

When I asked Greenfield about one treatment module offered at the STU called arousal reconditioning, he responded, 'Do you know what Pavlov's theory is? It's kinda like that.'

During arousal reconditioning, detainees at Avenel re first asked to write a 'deviant' scene – a fantasy or scenario that is especially arousing. Then each participant is asked to identify an 'aversive' scene – a memory, or image, that is a particular turn-off. Greenfield's aversive scene is the fire.

Gilbert believes arousal reconditioning has been effective for him, but the treatment is relatively controversial; it's reminiscent of gay 'conversion' therapy, a practice most medical professionals now consider unethical and inhumane.

There is no credible evidence that arousal reconditioning is an effective long-term treatment for sex offenders of any sort,' Dr. Fred Berlin, a leading expert and consultant on the treatment of sexual disorders, wrote in an email.

There are other approaches to preventing harm, like Virtuous Pedophile, an online pedophile support group. Users say the site

improves their self-esteem while reducing their sense of isolation. It provides a space for people to open up about their attractions, without reducing them to that one facet of their lives. But the site also nurtures and enforces strict standards of accountability for behavior in the real world.



"Yes, I know we already did this, but that was yesterday."

If the nature of the treatment at Avenel is controversial, so are the ways in which treatment 'progress' is measured – like the polygraph about sexual fantasies, which Greenfield said he most recently took in 2008. In Greenfield's latest annual review, his treatment providers state he has never taken a polygraph while at the STU, but documents provided by the resident and authenticated by the polygraph examiner say otherwise.)

The February 2016 guide to the STU instructs residents that 'the polygraph is used as part of treatment to gauge how you are dealing with especially uncomfortable issues such as your current sexual arousal pattern.'

Polygraphs are highly controversial tools for measuring truth, especially in the civil commitment context....

While polygraphs are generally considered too unreliable to be admissible in court, they are still used in civil commitment programs across the US. According to the 2014 annual survey of sex offender civil commitment program, nine out of 15 [responding] states reported utilizing polygraphs to evaluate disclosure of sexual fantasies.

Other states show residents sexual images or describe 'deviant' scenarios, then use a device called a penile plethysmograph to track blood flow into the penis and measure arousal. (Although a handful of states civilly commit women, the vast majority of people detained under SVP statutes are men.)

The practices of certain states have come under court scrutiny in recent years. [In June, 2015], a court found Minnesota's program to be unconstitutional. At issue in the ruling was not civil commitment in and of itself, but the fact that Minnesota had never fully discharged anyone placed in its detention facilities.

'The overwhelming evidence at trial established that Minnesota's civil commitment scheme is a punitive system that segregates and indefinitely detains a class of potentially dangerous individuals without the safeguards of the criminal justice system,' wrote [presiding] Judge Donovan Frank.

Other states' programs face similar legal

challenges, including Missouri....

Although it was far from perfect, Greenfield told me that the decade of sex offender treatment he received during his criminal sentence helped him assemble a narrative of why he committed his crimes.

Over the phone, he explained that it all began when he was five, when his dad passed away, leaving his mom as his primary caretaker. He faced repeated sexual and physical abuse from her until, at age seven, he asked child protective services to remove him from the home. He bounced in and out of foster homes, institutions, and juvenile detention centers throughout his teenage years.

Charles Whittud, 47, is also a repeat offender and has been civilly committed at Avenel since November 2013. Both of his crimes were against girls under the age of eight. Whittud told me that he was raped as a child and that his own unresolved pain and trauma were the root cause of his crimes. 'The biggest thing [in my treatment] is just understanding my past,' he said.

Likewise, Greenfield believes his experience of sexual trauma, and lack of family life, left him completely unable to interact with women – to communicate interest or nurture a relationship 'I wasn't able to do that,' he said. 'I wasn't socially capable, and so I did what happened to me – I just took it. I wanted it, I took it.'

...When it comes to sexual violence, cases like Greenfield's and Whittud's are exceptions: The overwhelming majority of acts of rape and child abuse are not committed by a stranger lurking in the shadows or next door, but by a friend, acquaintance, or family member.

Perhaps more important, as a group, sex offenders have one of the lowest rates of recidivism of all crime categories....

At Avenel, what residents say in process groups or modules is subsequently used by treatment providers to argue for continued detention – or treatment progress. Which means detainees may be more inclined to approach therapy strategically instead of honestly. The trust and confidentiality that normally shapes therapeutic relationships is undermined.

Yet sometimes, even a deep commitment to treatment and rehabilitation is not enough to earn freedom from the STU. 'Mr. Greenfield continues to be very active and productive in treatment,' his treatment team noted in his most recent six-month review. 'He actively engaged in his process group, was generous with feedback to others, and was able to accept feedback as well'

But the treatment team added that due to several factors, Greenfield is largely unable to change – like high scores on risk-assessment instruments, diagnosed 'psychopathy and sexual sadism' and 'a markedly high victim impact of his crimes' – he will likely never get out of the STU.

Greenfield is worried about the prospect of never getting out, and not just for himself. In 1995, a fellow prisoner introduced Greenfield to his sister, Jamie. Greenfield was immediately struck by her honesty, and the fact that they could talk openly about his crimes. The two were married in 2008, and

speaks on the phone every day....

He believes the message he's receiving from his treatment team is crystal clear. 'What you did, the schooling, the education, the cleaning yourself up, making yourself a better person, getting married – all that stuff was a waste of your time and a waste of everybody else's time,' is how he described it....

Do people think that criminals like Greenfield are unsalvageable?

'I think they do,' Whittud said when asked that question. 'I think it's a very visceral reaction, when you hear someone doing something with a child. I think it just shuts people down from wanting to hear anything else.'

...Canada and the UK have embraced a different approach for managing high-risk sex offenders, a model called Circles of Support and Accountability (COSA). Under COSA, when the offender is released, a team of professionally supervised volunteers is assigned to meet with him or her to provide sustained support. Initial research suggests that COSAs are both effective and cheap. The programs have been implemented in a small number of US jurisdictions.

Instead of indefinitely locking up men like Greenfield and Whittud, advocates like Heather Ellis Cucolo believe states should use their money to provide assistance for victims and develop prevention and outreach programs in schools and communities. 'The steps that we take to restrain these person's liberties in the community, and to constantly make them pay for a crime that they committed in the past – that won't keep us safe,' she said.'



"The worst of the worst? Not to worry. We've got them all locked up."

the Legal Pad

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