



CURE CIVIL COMMITMENT NEWSLETTER

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A WELCOME FROM THE EDITOR

Welcome to the inaugural issue of the CURE Civil Commitment Newsletter. It is my great privilege to serve as the editor of this new newsletter for those in civil commitment facilities across the United States. I am a resident of Baltimore, Maryland and in addition to being a member of Maryland CURE, I have also been working closely with Charlie and Pauline Sullivan on sex offender issues on the National level. It was in this context that Charlie approached me a few months ago and asked me to take on this new responsibility.

Since we do not have a civil commitment law in Maryland, I come to the topic with somewhat of an outsider's objectivity. At the same time, I have serious reservations about the wisdom and the benefits of these laws. Along with the Federal system and the District of Columbia, there are currently 19 states that have civil commitment laws that allow those deemed as "violent sexual predators" to be indefinitely committed to a secure facility for "treatment". The states with civil commitment laws for sex offenders are:

Arizona	Minnesota	North Dakota
California	Missouri	Pennsylvania
Florida	Nebraska	South Carolina
Illinois	New Hampshire	Virginia
Iowa	New Jersey	Washington
Kansas	New York	Wisconsin
Massachusetts		

The State of Texas has a form of civil commitment in which the person lives in the community with electronic monitoring and intense supervision and treatment as opposed to being locked into a secure facility.

Washington State has the oldest civil commitment law for sex offenders, dating to 1990. Another state that has had civil commitment for a long time – Minnesota – has recently come under fire both due to allegations of mismanagement and malfeasance in the facility as well as the fact that Minnesota has NEVER released anyone from civil commitment since the program began in 1994. Civil commitment is in fact a legal process in which, in a CIVIL and not criminal matter, the plaintiff (state) asks a court to civilly commit a person to a mental health facility and the standard is far lower than the "beyond a reasonable doubt" standard that was used in the state's criminal case against the person. Once committed, the burden shifts to the committed person to prove that he is "cured" enough for release.

The focus of this newsletter will be to serve the interests and needs of those in civil commitment around the country. Our hope is both to educate and advocate. This is YOUR newsletter and I invite input from our readers. Thank you for your interest and support!

Thomas Chleboski
Editor

STATE AUDITOR HIGHLIGHTS PROBLEMS IN CALIFORNIA CIVIL COMMITMENT PROCESS

In a recent report the California Bureau of State Audits recommended that problems in the civil commitment be addressed by the Legislature. Their report is as follows:

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sex offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. State law designates these offenders as sexually violent predators. The Sexually Violent Predator Act (Act) lists crimes that qualify as sexually violent offenses and defines predatory to mean acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purposes of victimization.

The Act also requires that SVPs have diagnosed mental disorders that make them likely to engage in future sexually violent behavior if they do not receive appropriate treatment and custody. Determining whether offenders are SVPs and committing them for treatment is a civil rather than criminal process. Thus, crimes that offenders committed before passage of the Act can contribute to offenders' commitment as SVPs. State law requires Mental Health's evaluators to determine whether the offender meets the criteria for the SVP designation (criteria). If the first two evaluators agree that the offender meets the criteria, Mental Health must request a petition for civil commitment. If the first two evaluators disagree, the law requires that Mental Health arrange for two additional evaluators to perform evaluations. If the third evaluator believes the offender is not an SVP, state law generally would not allow Mental Health to recommend the offender for commitment even if the fourth evaluator concludes that the offender meets the necessary criteria. According to Mental Health's own analysis, the average cost of an evaluation completed by a contractor for fiscal year 2009–10 was \$3,300; therefore, cost savings could be achieved if the department avoids the unnecessary fourth evaluation.

Mental Health has not submitted required reports about its efforts to hire qualified state employees to conduct evaluations of potential SVPs and about the impact of Jessica's Law on the program. State law requires Mental Health to report semiannually to the Legislature on its progress in hiring qualified state employees to complete evaluations. Although the first of these reports was due by July 10, 2009, Mental Health has yet to submit any reports. In addition, state law required Mental Health to provide a report to the Legislature by January 2, 2010, on the effect of Jessica's Law on the program's costs and on the number of offenders evaluated and committed for treatment. However, Mental Health also failed to submit this report. In May 2011 Mental Health's external audit coordinator stated that the reports were under development or review. Mental Health did not explain why the reports were late or specify a time frame for the reports' completion. Without the reports, the Legislature may not have the information necessary for it to provide oversight and make informed decisions.

SURVEY RESULTS

In order to get a sense of the kinds of topics that readers of this newsletter would like to read about, we conducted a survey which was sent to individuals in civil commitment facilities as well as those who have an interest in this important issue. The survey was sent to as many people in civil commitment that we could identify from CURE mailing lists. We were very interested in learning what was on people's minds and the priorities they saw in creating a newsletter for the civil commitment population in the United States. We received over 180 responses and there was a lot of interest from respondents in the results of the survey. We are reproducing the survey in this initial edition along with the results.

Please rate the following on a scale of 1 – 5 in which 1 means “strongly disagree”, 2 means “disagree”, 3 means “neutral”, 4 means “agree” and 5 means “strongly agree”:

I would like a newsletter that focuses on the personal stories and daily struggles of people in civil commitment facilities around the United States.

1	2	3	4	5
2%	1%	14%	18%	65%

I would like to read articles that describe the programs in the states that have civil commitment laws as well as the criteria for commitment and for release.

1	2	3	4	5
2%	0%	5%	18%	73%

I would like to read articles about government officials, on both the federal and state level, so that I can better understand their rationale for their position on civil commitment laws.

1	2	3	4	5
2%	2%	8%	22%	66%

I would like to read articles about court cases which effect civil commitment on both the federal and state level.

1	2	3	4	5
1%	1%	2%	19%	77%

I would like to read stories written by loved ones of those in civil commitment and what effect it has on their lives.

1	2	3	4	5
1%	1%	16%	17%	65%

I would like to see interviews with mental health professionals to learn their opinions on civil commitment policies as they exist in some states and in the federal system.

1	2	3	4	5
3%	1%	10%	19%	67%

I would like to see letters to the editor in response to articles in prior issues to better learn how others in civil commitment feel about the content of that article.

1	2	3	4	5
2%	1%	11%	26%	60%

I would find it helpful to read articles presenting comparative information on civil commitment facilities such as population, programming, releases, risk or other assessment instruments being used, visiting policies, proximity to population centers to facilitate visiting, and other policies that facilitate communication with the outside world such as phones, email, and mail.

1	2	3	4	5
1%	1%	3%	14%	81%

**JLARC STUDIES VIRGINIA CIVIL COMMITMENT POLICIES
BY: DOUG HOWARD**

Virginia's Joint Legislative Audit and Review Commission (JLARC) completed a thorough review of the civil commitment process in Virginia and found flaws in the assessment of Sexually Violent Predators (SVP's) prior to release from prison.

The audit was ordered by the General Assembly as a result of Governor Robert McDonnell requesting additional funds for the refurbishing of a moth-balled prison to expand the number of beds Virginia needs to house more and more SVP's. The Governor's request for \$43.5 million was denied and the JLARC study was ordered to learn why there was such a need for additional bed space. SVP's are held at the Virginia Center for Behavioral Rehabilitation (VCBR).

The report revealed, among other things, flaws in the risk assessment instrument, Static-99, which is used as a screening device to determine whether or not a resident, who is nearing the completion of his judicial sentence, will be referred to the Attorney General for the initiation of civil commitment proceedings. In Virginia a score of four or higher is the threshold for referral to the AG, but as the report noted, the developers of the Static-99 ten-question test recommended a 5 or 6 as the threshold score for eligibility for civil commitment.

The report found that "*most recent versions of Static suggest that the original Static-99 still used in Virginia may overestimate the risk of future re-offenses*" and the report recommends that a current and more accurate "*scientifically-validated actuarial risk assessment*" be submitted to the General Assembly for consideration.

Another result of the use of the flawed actuarial test is the fact that VCBR has reached its maximum bed capacity of 300 much earlier than it was first estimated when the facility was built in 2008, which has caused the General Assembly to double-bunk half of the 300 resident rooms which resemble prison cells. VCBR Staff are concerned about double-bunking SVP's and note that this may increase incidents between SVP's and staff, that it may require added security, that more incidents and stress will disrupt treatment and that this may slow SVP's progress and effectively reduce capacity. The Supreme Court held that civil commitment is legal so long as appropriate treatment is afforded to the residents/patients toward the goal of the eventual release of the offender. Double-bunking may interfere with that process, thus raising constitutional issues regarding double-bunking SVP's.

The Virginia General Assembly will meet for 60 days starting January 11, 2012, where it is likely the JLARC recommendations will be considered and adopted during the session. The full JLARC report can be obtained at: <http://jlarc.virginia.gov/meetings/november11/SVPbrf.pdf>

RSOL of Virginia Executive Director Mary Devoy submitted a report to JLARC in relation civil commitment. Here are some of the highlights of her written testimony:

- The Static 99 is 10 questions that are static not dynamic so no matter how long a citizen has been in treatment, has attempted to make amends for their crime or has paid their court ordered debt to society their score will never change. 10 questions..... If you are between the ages of 18 and 24 years/11 months, if you are a homosexual man and if you have never lived with a "lover" for MORE than 2 years **YOU** will already score a "3" on the Static 99. If you have one non-sexual conviction in your past that's another point against you so you are at a "4" and so far your sexual crime **hasn't even** been considered.

- Originally Civil Commitment of SVP's in Virginia was limited to 4 crimes, today it's 28. The RSOL of Virginia has looked since 2009 for a complete list of the 28 qualifying crimes without any success from the VSCC or the JLARC.

- Virginia's evaluation for commitment is supposed to begin 10 months prior to release from prison. I have heard from more than 15 citizens who had learned that they were being considered for commitment 6 weeks and less before their scheduled release dates. Many citizens have been held by our state **more** than 24 months past their release date while the Attorney General's office takes their time to evaluate them and to hold a hearing in front of a judge. The Attorney General's office should be **required** to begin the SVP assessment 18 months **PRIOR** to a release date and if within 24 months (that's 2 years) the AG's office cannot prove the ex-offender is an SVP, they need to be released in accordance with their original sentence.

- Three VCBR employees have in the last year reached out to me on their own to share what they've seen and experienced at the facility because they don't agree with who is being committed, the current programs, therapy sessions, the constant penalizing of residents and the favoritism between staff and certain residents.

- Civil commitment in Virginia needs to be returned to the original 4 crimes. A failure to register, a larceny charge or any new non-violent crime should NOT result in SVP commitment. The Static 99 needs to be replaced, it is not a psychological test and it does target the homosexual community. Every resident at the VCBR must be allowed their yearly review and if the state is so concerned about these citizens' mental abilities and desires then evaluate them **BEFORE** their criminal trial. If they are in fact unstable, insane or suffer from a mental abnormality they should be receiving treatment for their condition from the very beginning instead of sending them to prison for 5-25 years and then claiming they need treatment. Yes, that's the cheaper way to go but it's the wrong way to go. After all civil commitment is not supposed to be a punishment nor an extension of a prison sentence. It's supposed to be treatment.

For the complete article as well as more information about this organization please visit their website at www.rsolvirginia.org.

SEX OFFENDER CIVIL COMMITMENT PROGRAM IN NEW YORK: PROBLEMATIC AND EXPENSIVE

In 2007, with the support of then-Governor Eliot Spitzer, New York enacted into law Article 10 of the Mental Hygiene Act which set up a civil commitment regime in the State of New York. Ironically, Spitzer would be forced to resign when it was revealed that he was Client 9 in a federal prostitution case. According to a recent article in Prison Legal News, New York's program costs \$175,000 per committed person per year. In 2010 the total tab for New York taxpayers was over \$40 million to confine the 230 people currently in civil commitment.

New York has a bifurcated process that allows courts to place sex offenders either in a secure facility or on a program of intense supervision and treatment while in the community. Under current law New York cannot civilly commit someone who is not either incarcerated or on parole for a sex offense. Unfortunately, too many judges order confinement. Approximately 70 people per year are being committed to a confined facility in New York. Currently those in civil commitment who are confined are housed either at the Central New York Psychiatric Center in Marcy or in the St. Lawrence Psychiatric center in Ogdensburg. Both are at capacity and the state is faced with the challenge of where to house new offenders who are ordered to be committed.

Last year portions of New York's law were declared unconstitutional by the US District Court for the Southern District of New York. In a published opinion, the court ruled in *Mental Hygiene Legal Service v. Cuomo*, 785 F. Supp. 2d 205; 2011 U.S. Dist. LEXIS 40434 (2011) that the "automatic detention of all individuals subject to Article 10, without a judicial proceeding to determine dangerousness...is therefore unconstitutional on its face" and that "the determination that an individual is a sex offender must be made beyond a reasonable doubt" and that the lower clear and convincing evidence standard in the law was also unconstitutional.

Like many states with a civil commitment regime, New York and its leaders need to decide if the cost of civil commitment of over \$175,000 per person per year is a good use of taxpayer's dollars. Even more, the states

need to re-examine the wisdom of keeping people institutionalized beyond the end of a prison sentence all in the interest of preventing a crime that they might commit in the future.

GETTING VOTED OFF THE ISLAND: WASHINGTON STATE

Washington State has the oldest civil commitment law in the nation. Since 1990 citizens who have served their sentences for sexual offenses have been subject to possible commitment in the state. Currently, most detainees are housed at the Special Commitment Facility on McNeil Island in western Puget Sound. Until earlier this year, this facility shared the island with the McNeil Island Corrections Center, which was originally built in 1875.

Washington also can boast the first newsletter focused on the civil commitment community. Richard Roy Scott has been publishing the *Liberty Puzzle* since late 2004. He reports that "SCC has the best conditions of any SOTP joint" and that among other things SCC residents enjoy the following

- Residents may possess a personal computer/laptop, clothes, bedding, office equipment, printers and may buy food weekly from a local grocery chain
- Each resident has a tag that opens nearly every door in the facility.
- The facility has large carpeted dayrooms with couches and large screen TVs as well as a music room, hobby shop, metal/wood shop and exercise room..
- Access to legal research computers and law books.
- Excellent opportunities for religious activities, good food and nice visiting facilities.
- Work opportunities – workers were making minimum wage but are now at \$2.50 - \$3.50 per hour.

Recently a number of detainees have been released from the center, partly due to litigation and partly due to budgetary issues. Washington State seems to be voting some detainees off the island.

We welcome your feedback on the newsletter as well as any articles, artwork or photographs that you may wish to submit. Indicate whether you would like your name to be published with your submission if it is selected for publication in an edition of the newsletter. Please understand that any submissions will remain in the CURE Civil Commitment Newsletter files and that the editorial staff reserves the right to edit any submission as needed. Thank you!

The CURE Civil Commitment Newsletter is published quarterly (January, April, July, and October) and is available, free of charge, to anyone wishing to receive it. The newsletter boasts an all-volunteer staff but there are costs to produce the newsletter including printing and postage. If you would like to donate to offset the costs of this project, please make out a check or money order to "CURE" and mail it to CURE Civil Commitment Newsletter, PO Box 2310, Washington, DC 20013. If you would like to receive the newsletter please send us your contact information at the same address:

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