CURE CIVIL COMMITMENT NEWSLETTER

VOLUME II, ISSUE 4 PO BOX 2310 WASHINGTON, DC 20013 OCTOBER, 2013

E-MAIL: CCN@CURENATIONAL.ORG

FROM THE EDITOR

It is hard to believe that we are completing the second year of publication of this newsletter. In the past two years we in the National CURE office have learned so much about civil commitment and the people impacted by it. In this issue is an article by the mother of a man in civil commitment. It is not only the people in the facilities but also their families and loved ones who deal with the frustration and hopelessness of this regime.

As we move into the holidays and look forward to 2014 and our third year of publication, I want to thank all those who have made this newsletter possible. The National office is committed to this project and has contributed valuable resources to make this newsletter a reality four times a year. As we move into 2014, I am asking all of our readers to consider two requests to help offset the costs of publication. My first request would be that for anyone who is able to receive the newsletter electronically, please write or e-mail us and ask us to put you on the electronic distribution list and take you off the "snail mail" list. That would help reduce some of our costs. Of course, if you are in a facility and can only receive U.S. Mail, we will keep you on our mailing list. My second request is to ask anyone who can to send a donation to the National CURE office to help keep the newsletter funded. Please make any check or money order payable to CURE and indicate that this is for the newsletter.

I know that the next couple of months are the most difficult months for those who are in facilities as well as their families. All of us at the CURE Civil Commitment Newsletter and CURE National hope that this project will continue to raise awareness and bring much-needed change to the current system in the United States.

Thomas Chleboski
Editor

MOOSE LAKE NEWS

On August 1, 2013, a change in Minnesota state law took effect allowing same sex-couples to marry in the State of Minnesota. When three pairs of men in the Moose Lake facility attempted to obtain marriage licenses, facility officials initially balked at the idea, then announced that DHS will allow residents at Moose Lake to marry one another while in treatment. Deputy Commissioner Anne Barry was quoted as saying "we don't intend to interfere with their right to marry one another" but added that just because a couple gets married while in the program they would not necessarily be allowed to live together. Currently there are no provisions for married people in the program to have conjugal visits. Another sticking point is the fact that under Minnesota law at least one of the parties must apply for a marriage license in person at the courthouse. Current DHS policies do not allow a person in civil commitment to be transported outside the facility except for medical appointments and court appearances. Deputy Commissioner Barry said that the program is reviewing their policies to find a way to accommodate same-sex couples in civil commitment who wish to marry. Like many states that have adopted same-sex marriage laws, the officials in Minnesota are still trying to work out the ramifications of this new law.

On a very sad note, there was a successful suicide by a resident in the Moose Lake facility. Ray Messer, age 45, was reported to have died of self-strangulation. *According to emergency room records, there have been two previous suicide attempts in the program in 2013, and one attempt last year. In addition, there have been six self-inflicted injuries that required medical attention this year, compared with nine in 2012*. Messer was civilly committed to the state's treatment program after two criminal sexual conduct convictions: fifth-degree criminal sexual conduct in 1991 and second-degree criminal sexual conduct in 2007.

So far this year, Barry said, there have been six cases where patients' self-inflicted injuries required medical attention. According to the department, emergency room staff classified two as attempted suicides. But offenders held at Moose Lake say those numbers don't match their perceptions. They say they see a handful of attempts every week. Many residents have stated that they have tried to hurt themselves with razors and drugs. It is sad to learn that so many people forced to reside in this facility have become so depressed that *they feel the only way out is by suicide*. It causes one to ask, where is all the mental health care that the Governor and the Legislature have promised the courts they are providing!

The Minnesota Sex Offender Program currently has 683 residents, who each cost the state $326 a day. In 2011, the state's legislative auditor documented a chronic problem with clinical understaffing. Some offenders inside say they're trying to kill themselves because they don't receive psychiatric help. Federal lawsuits are pending against the facility. Deputy Commissioner Barry also said DHS officials try hard to show offenders in the program they should have hope of an eventual release after they complete the required treatment.

Confinement and Abuse in New York

Malachi Abdullah Muhammad

The mechanism for the confinement of convicted sex offenders once they are about to be released from prison (or brought in from the street) through either conditional release or maximum expiration of their prison sentence is two-fold: There is the identification of the possible need for treatment pursuant to the Sex Offender Management and Treatment Act (SOMTA), and the actual trial process pursuant to Article 10 of the Mental Hygiene Law. This is supposed to be designed to determine if an offender "currently" suffers from a "mental abnormality" with "only" the truly dangerous offenders being petitioned by the State for Civil Confinement. I emphasize the words currently, and only because the reality is that there is no time-frame which to subject offenders to this blatantly punitive process and there are many offenders in this State that are being subjected to this process that do not have a violent or extensive history of sexual offending. Most certainly, the word "violent" must be qualified to those offenses where there was significant physical injury. However, every offender ought to know that there is a fundamental element of violence in all contact sex offenses. I believe this is confirmed by virtue of the fact that in New York State, all non-contact sex offenses are not included in the Article 10 process, and indeed are not even viewed as sex offenses proper.

What I want to speak about is the "under belly" of this so-called treatment paradigm once offenders are confined and specific to this focus is the Central New York Psychiatric Center (CNYPC). This is the main facility designated by the Commissioner of the Office of Mental Health (OMH) as a Secure Treatment Facility. However, this facility is anything but treatment oriented! Yes, there is a program scheme where offenders are exposed to a multitude of treatment concepts that appears to be open-ended. Unfortunately, there is a systemic pattern of abuse by staff upon resident/patients that has been documented as early as December, 2011, by the agency charged with protecting our Civil and Constitutional rights. Also, there is permissiveness among rank and file administrators and other staff that helps to perpetuate this abusive environment either through sanctions without due process of law, and in the extreme, actual criminal prosecution of the residents who are in fact victims of said abuse. I was punched in my face, kicked in my back and groin at the hands of several staff during a so-called "restraint" procedure, and now I am the one who stands charged. This tactic is used again and again at this facility. Also residents are taken to seclusion wards (off camera) where the assault and battery is repeated sometimes two and three times for "selected" patients.

Under SOMTA, we are supposed to be seen as "civil detainees," but in fact, we are treated worse than prisoners. The staff is conditioned to scream at us, trash our rooms during ward searches, herd us about like cattle, and deprive us (and our families) of the dignity of being human. This seems to be predicated upon the crimes that we have committed (and served our time for), and the idea of serious therapeutic intervention becomes secondary. This place needs to be investigated by some agency outside of OMH because corruption and vice run rampant. At the tax payer's expense, there are sex rings among the staff, and stealing through the misappropriation of Federal and State funding. I fully understand and support the need for serious treatment of offenders when it has been legitimately determined. However, to be subject to systemic conditions of abuse is totally unacceptable. It is only a matter of time before a resident (or staff) is killed. Even the elderly are not spared from this horrendous treatment. Many have serious medical conditions. The Supreme Court legitimized the Civil Confinement scheme on the premise of treatment and not punishment. I'm confident that systemic abuse was not considered.

A MOTHER'S VIEW OF CIVIL COMMITMENT

I was born a minister's daughter and was raised to care very much what people thought about me and my family. I was also raised to believe in the United States and our justice system. I was so proud of the fact my sons were policemen and firemen. I raised my sons that if they made a mistake, to admit it and take responsibility. No excuses.

I got a home computer when my last son was in 10th grade. I thought it would really help him with his homework as his handwriting was always so bad. I also got the Internet. This was 1991. No one knew the risks of becoming addicted to porn or chat rooms. I learned of these risks in 2003 when the police knocked on our door looking for my son Charlie. He had come to our house after he got off work at the fire station to use the computer. We were mortified when he was questioned about meeting an underage girl and having a sexual encounter with her. Then he volunteered he had exposed himself to a group of girls a few weeks earlier when he drove past them. We paid his bail and he spent the rest of the weekend telling us how sorry he was and how guilty he had felt about all of this. He wanted to do the right thing and pay for his crimes. We believed in the judicial system. We trusted when the judge sentenced him to five years for the statutory rape and five years for exposure that once he had completed his sentence, he would be home then.

When he was told he would be out three years earlier for good behavior we were so happy. We moved back to the town he was raised in and to a house that was not near day care centers, schools or parks. We followed the letter of the law. Two businesses in our town agreed to provide him with a job. The parole officer came and gave his home plan thumbs up. Everything was set for his homecoming on June 2, 2013. We lived, breathed and set all our hopes and dreams on that day. Our son had made mistakes but he had manned up and had taken responsibility and paid the price the law said he needed to pay. We had prayed every day for the girls he had hurt. He had done the same. We knew by this time they were grown. We hoped and prayed they were leading good productive lives and had recovered from any damage done to them. We knew our son would have to live with that guilt. We were prepared to help him in any way. We love and miss our son so much.

Our son had told us about a special unit at the prison called SORTS. He had explained this was for the men that had been determined could not be rehabilitated and would be confined for life. We were always so sad for these men every time we drove past that building. We never dreamed anyone would ever think our son Charlie would need to be there. He had done everything the MO Dept. of Justice had asked, completed MOSOP, completed an Anger Management course, plus got his Tutor's Certification so that he could help other young men in prison get their GEDs. His therapists had always assured him he had done very well. This was prior to him meeting Amy Griffith, a new therapist at FCC. She met with him for one hour a few months before he was due to be released. Then, two weeks before he was to be released he was notified he would not be released but rather transferred to the county where he had offended for a hearing to

determine if he should be held for mental evaluations! We all went into complete shock. His family and friends thought we were kidding with them. How could this be? Why would anyone think Charlie was such a risk to society he needed to be locked up for life? He had never been arrested before this all started. He was moved to a special unit in Vernon MO County Jail few people know anything about. He has been there for three months awaiting his trial (for what we do not know). He does not understand what he did wrong to not be allowed out on parole. I do not know either. Please help my son.

Federal Court Rules on Florida Newsletter Ban

The 11th Circuit found that a civil detainee at the Florida Civil Commitment Center (FCCC) is not subject to the same restrictions as a prison inmate. James Pesci is a detainee, where he and 600 others are committed under the Involuntary Civil Commitment of Sexually Violent Predators Act. The residents of the FCCC are not prisoners, having already fulfilled their terms of incarceration. For years, Pesci has published a newsletter both in print and online called *Duck Soup* that is highly critical of the center and its policies. To limit Duck Soup circulation, director Budz forbade residents in 2009 from copying the newsletter, which he claimed disrupted order at the FCCC and adversely affected its mission of rehabilitating the residents. Pesci sued Budz for violating his First Amendment rights, leading Budz to implement an even stricter rule, declaring *Duck Soup* "contraband," and prohibiting its possession or distribution.

The 11th Circuit vacated and remanded the case noting that Pesci is not a prison inmate, but a civil detainee.

The Court noted that "the standard must be modified to reflect the salient differences between civil detention and criminal incarceration. The government's interests in retribution and general deterrence - plainly legitimate justifications for prison regulations - decidedly are *not* a proper foundation for the restriction of civil detainees' constitutional rights."

KANSAS TASKFORCE ISSUES FINAL REPORT

Members of a task force charged with developing a plan for reforming the state's Sexual Predator Treatment Program recently completed a rough draft of their recommendations. A final version will then be delivered to Shawn Sullivan, secretary of the Kansas Department for Aging and Disability Services, the agency that oversees the predator program and Larned State Hospital, where it is located. In 2012, Sullivan asked the task force to look for ways to rein in the program's growth and costs without jeopardizing public safety. Between 2005 and 2013, the treatment program's population increased from 136 to more than 220 residents, all of whom are kept in confinement. Spending on it has increased from $6.4 million to almost $17 million.

The program, created in 2004, is designed to block the release of people who have committed sex crimes, and have completed their prison sentences but are deemed likely to commit new sex crimes. According to state reports, more than 250 men have entered the program in the last 18 years. Only four have been released, though at least 16 have died.

Members attributed much of the delay to their willingness to listen to concerns raised by residents' family members and having to wade through the various therapeutic, legal, and political issues that hold sway over the program's operations. Many of the recommendations are similar to those in a 2005 report from the Legislative Division of Post Audit. Though the committee had initially asked the auditors to also study care and treatment concerns at the sex predator program, it was reported that the focus of the new report would be limited to safety and security issues because the task force had taken on those having to do with care and treatment.

Special VCBR Law Snuck Onto Books by Legislature

Recently Mary Devoy, a citizen advocate who has worked tirelessly to reform sex offender laws, objected to SB1182 and HB1751 that would have given Department of Behavioral Health and Developmental Services employees ONLY at the Virginia Center for Behavioral Rehabilitation in Burkeville, VA, the same protection as judges, law enforcement officers and fire fighters when it comes to an assault. These bills were defeated in the 2013 General Session, only to be slipped into SB1033 during the ***one day*** Governor's veto/amendment session. This begs the question how can an amendment that failed as two separate bills just be slipped in ***after*** the regular session with ***no*** public debate or notice?

It is noteworthy that the residents of the V.C.B.R. are ***not*** inmates but patients with mental and impulse control issues according to the Virginia Attorney General's office and that's why they must be committed. Holding a patient responsible for an assault, as if he can control his impulses, flies-in-the-face of the basis for the original commitment. The Virginia Attorney General's Office claims in court these men (SVP's) are mentally incapable of controlling themselves but with the passage of SB1033 the State is NOW claiming these men know better than to assault an employee and charge them with a felony for doing so. So much for high-morals, honesty and transparency in Virginia government...this statute is based on logic worthy of Alice in Wonderland!

Unresolved Questions Concerning Sex Offenders and Civil Commitment in Nebraska

In my previous article, I made some observations and asked questions about sex offenders and community commitment in Nebraska. The article took exception to the "War on Sex Offenders" mentality that has made sex offenses the most common cause of incarceration in Nebraska. Evidence was presented to refute the myth that sex offenders are more likely to recidivate. The rate of recidivism for sex offenders is between 5% and 15% whereas that of non-sex offenders is 25% and as high as 65% nationwide. I took exception to the wisdom of LB 1199 which has complicated and lengthened the stay of civilly committed offenders.

The article generated some response from Dr. Shannon Black, Clinical Director of Nebraska's Sex Offender Program. She pointed

out that sex offender treatment is not a simple problem. Some sex offenders are treated while in prison. Some are uncooperative and refuse treatment. Others are committed under the Sex Offender Commitment Act, while mental health boards have committed 42 patients since 2006. There are approximately 100 patients currently receiving sex offender treatment at the Lincoln and Norfolk Regional Centers. As was stated in the March article, the price for this is in the $30 million range annually.

Dr. Black stated: "From 2010-2012, about 700 sex offenders were discharged from the Nebraska Department of Correctional Services. Of those 427 were evaluated due to the statutory requirements. Only 61 were found to meet Dangerous Sex Offender criteria and 29 were committed for inpatient services, which is less than 10% of those evaluated. Another 13 were placed under outpatient commitment. The remainder was in some pending status or had some other outcome." Dr. Black confirmed my statement that about 10 Committed Sex Offenders were released from 2006-2010, but noted that more had been released in 2011- 2013. We still need to know more about rates of release and years of confinement, but this information is a welcome addition to our knowledge.

This article will primarily address the wisdom and effectiveness of the sex offender registries. It is based on the Nebraska Sex Offender Registry Study: Interim Report, produced by the UNO Consortium for Crime and Justice Research, Dec. 10, 2012. The goal of this report is to evaluate the effectiveness of sex offender registries. The purpose of registries is to lessen the chance of sex victimization. The precise question proposed is "Do registries required by acts such as Adam Walsh using type of crime predict risk as well as evaluating sex offenders using validated risk assessment instrument?" In 2009, Nebraska passed LB 285 which "abandoned psychological assessments in favor of rankings based solely on the type and seriousness of crime of which they were convicted." As a result of this many sex offenders who are in fact at low risk of reoffending are lumped with high risk sex offenders. About 65 per cent of Nebraska offenders fall into this category. This large number on the public registry actually makes it more difficult for the public to identify potential offenders who might be a danger to them, but also makes housing and job attainment more difficult for many sex offenders. I know of one middle aged woman, who never actually offended sexually but "aided and abetted" by not protecting her children. After serving ten years in prison, she is required to be on the registry for life and has to re-register every three months. Failure to update information on whereabouts and employment for sex offenders is a crime! Another young man pled guilty to a misdemeanor sexual offense and instead of getting off the registry in 5 years, the new legislation requires him to carry the stigma for his whole life.

Another example of misguided legislation is Nebraska Statute Article 40, Section 29-4002 that states: "The Legislature finds that sex offenders present a high risk to commit repeat offenses." Research indicates exactly the opposite! A meta-analysis involving 61 studies over 29,000 sex offenders found an aggregate sexual offense recidivism rate of 13.4% over 4-5 years. And an update of this analysis conducted in 2005 that included 82 studies found a similar re-arrest record. Additional research indicates that registries using risk assessment are much more accurate in predicting recidivism than the Adam Walsh tiers based solely on the crime. The Study concludes that "in nearly all cases adoption of the Adam Walsh Act tiers results in the community being notified about more sex offenders and it becomes more difficult for citizens in the community to discern with offenders on the list are the most dangerous and the most likely to recidivate. If the purpose of the registry and community notification laws is to promote public safety, this widening of the net of offenders placed on the public list is directly in conflict of the primary purpose of sex offender registries."

So what are we to conclude? First, recent legislation both nationally and locally is headed in the wrong direction. More severe restrictions on former sex offenders have not been proven to be effective. These punitive restrictions isolate, stigmatize, and limit the opportunities of former sex offenders to re-establish themselves in the community and live normal lives. And the registries' further stigmatizes without providing greater safety to the public. A re-evaluation must be done of the current legislation and the wrongheaded attitudes that are producing it.

John Krejci is an emeritus professor of Sociology, Anthropology and Social Work. He holds a Ph.D. from the University of Notre Dame and a Masters in Social work from the University of Nebraska at Omaha

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:

Name: _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

If you would like to receive the newsletter electronically, please send us your e-mail address:

E-mail: _____ **@** _____