



CURE CIVIL COMMITMENT NEWSLETTER

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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

NEW YORK RESOURCES

CIVIL COMMITMENT There have been a number of letters and complaints from people in NY who are being held in civil commitment after serving their sentences. While CURE NY cannot offer legal services, we would refer those concerned to *Steve Harkavy Deputy Director The Mental Hygiene Legal Service (MHLS) Appellate Division First Judicial Department 41 Madison Avenue, 26 th Floor, New York, N.Y. 10010 (646) 386-5891.*

MHLS describes itself as:

" a New York State agency responsible for representing, advocating and litigating on behalf of individuals receiving services for a mental disability.. In 1986, the agency became

the Mental Hygiene Legal Service and over the years has evolved into a dedicated legal advocacy program providing a broad range of protective legal services and assistance to mentally disabled persons under the care or jurisdiction of State-operated or licensed facilities. In the 1990's our mandate was expanded to include critical roles in Mental Hygiene Law ("MHL") Article 81 Guardianship and most MHL §9.60 Assisted Outpatient Treatment ("Kendra's Law") proceedings. Most recently, in 2007, we were mandated by the new MHL Art 10 to provide representation and advocacy to sex offenders alleged to have mental abnormalities making them likely to re-offend and are therefore in need of civil confinement or intensive supervision. "

Federal Case in North Dakota

A federal lawsuit filed Friday by 23 sex offenders who are civilly committed to the North Dakota State Hospital says the state has favored unnecessary punishment over treatment in the 10 years since a University of North Dakota student was killed by a convicted sex offender.

The suit was originally brought in a handwritten document filed in February by Rodney Ireland, Lester McGillis and Gerald DeCoteau, three men incarcerated at the state hospital and classified as sexually dangerous individuals. U.S. Magistrate Judge Karen Klein in June assigned lawyers to file an amended complaint because she said "it appears the plaintiffs' claims may have merit."

Defendants named in the suit are Maggie Anderson, executive director of the North Dakota Department of Human Services; Alex Schweitzer, North Dakota State Hospital superintendent; and Leann Bertsch, director of the North Dakota Department of Corrections and Rehabilitation.

Officials with the state Department of Human Services did not immediately respond Friday to a request for comment. California attorney Christopher Brancart, who wrote the amended complaint, declined to talk about the suit.

The 63-page document filed Friday accuses the state of implementing "a policy of preventative detention" after calls for tougher laws against sex offenders in the wake of the 2003 kidnapping and killing of Dru Sjodin, 22, a UND student from Pequot Lakes, Minnesota Authorities

said Sjodin was raped, beaten and stabbed.

Alfonso Rodriguez Jr., who had been released from a Minnesota prison after serving a 23-year prison term for kidnapping, assault and rape, was convicted of killing Sjodin and sentenced to death. The outcry over Sjodin's murder and Minnesota's civil commitment program galvanized politicians and public officials, the suit says.

"The reaction of public officials in North Dakota was profound: The state adopted a de facto policy of preventative detention, determined to incapacitate sex offenders like Rodriguez from victimizing persons like Dru Sjodin," the plaintiffs state.

The suit, which seeks class action status for all people civilly committed to the state hospital as sexually dangerous individuals, alleges that defendants violated the rights of the plaintiffs and class members by depriving them of a realistic opportunity to be released "as determined by an appropriate mental health professional and that is within the scope of acceptable mental health treatment."

The document says the plaintiffs were discriminated against "solely on the basis of their status as a hated minority of offenders," and were denied their rights to privacy, free speech and trial by jury. Among specific complaints is one that says the hospital has instructed and rewarded evaluators whose recommendations prevent the release of sexually dangerous individuals.

"If an evaluator could write a report that painted each SDI as a high risk of offending, few elected state judges had the stomach for ordering their release," the complaint says.

The plaintiffs say a study commissioned by state corrections and conducted by two University of North Dakota professors concludes that civil commitment in North Dakota is based on punishment instead of disorders or conditions that require treatment.

"There is little doubt that there are individuals that should, in fact, be committed," the suit says. "It appears likely though that unsupported fears about sex offenders and poorly thought out policies and procedures may lead to casting too wide a net in the commitment process, thereby weakening it and making it more susceptible to challenge in the long term."

The complaint asks that the state discontinue and

change "policies, practices or procedures" that might violate the plaintiffs' civil rights.

SAME SEX WEDDING IN WASHINGTON CIVIL COMMITMENT

The bride will don a traditional white veil. The groom will wear a Grim Reaper cloak. They will step into a Wiccan circle to exchange vows and rings before being ushered back to their respective units at the Special Commitment Center, the state's institution for sex offenders on McNeil Island. Their relationship is unlike most.

When Hank Pollock and his transgender bride Rebecca Elmore - who changed her name from Keith in 2002 - tie the knot Thursday, they will become the first two residents to marry each other. Just because you're in there, you don't lose your civil rights," said Chris Case, a spokeswoman for the Department of Social and Health Services, which operates the SCC. "Washington law says they can get married so they can get married. "Basically this will not change their lives in any way except they will be legally married."

The ceremony will cost the state nothing but will be rewarding for the couple. It will be the first time they are allowed to kiss or hold hands. It also could be the last. Strict rules govern the sex offenders at the SCC and, from there forward, physical contact will be prohibited. A honeymoon is out of the question. They will not be allowed to live in the same unit, let alone the same room. Sexual contact, prohibited for sex offenders receiving mental health treatment, results in punishment.

Pollock, 47, and Elmore, 57, say their day-to-day lives might not change much but they hope their marriage will pave the way for others, including fellow sex offenders who are civilly committed at 20 or so institutions nationwide. That, however, is secondary to wanting to commit their lives to each other. "There's a lot of excitement around it, the fact we'll be making history," Elmore said. "There's some nervousness, too. We're breaking a lot of groundwork, but the main thing is us getting married."

The friendship between Pollock and Elmore reaches back a decade to when Pollock moved to the SCC. Elmore was already there after pleading guilty in 1995 in Clark County to second-degree kidnapping and second-degree assault with sexual motivation. When Elmore petitioned to be released in 1999, the state Attorney General's Office persuaded the judge to deny it based on Elmore's "sexually-motivated cannibalistic fantasies." Pollock, who changed his name from Andrew Drescher in 2002, was convicted of five counts of sex crimes against children in Kitsap and Thurston counties from 1987 to 1993. He was committed to the SCC for being a repeat sex offender.

When a mutual friend at the center died in 2003, Pollock helped Elmore with her grief. The bond thickened the next year when Pollock tore his knee and Elmore tended to him, fetching food and pushing him around in his wheelchair.

Pollock, who was married to his third wife at the time, realized his growing feelings for Elmore around that time. "I started falling in love with this person and I was all confused," Pollock said, adding that this is his first gay relationship. When Pollock's divorce was finalized last year, he and Elmore began talking about getting more serious. Then one night, Pollock handed Elmore a note and asked her not to read it until they returned to their respective units. Inside he'd written: "Roses are red, violets are blue, I hope you're sitting down because I want to marry you, too." Elmore immediately called Pollock and yelled, "I do!" several times before hanging up.

Their first order of business was filling out a six-page application for marriage. Elmore combed the document and changed the necessary language to suit a same-sex marriage. They submitted the paperwork to the SCC on June 14 and waited for approval. Once it came, the planning began.

An SCC staff member supervised them while they searched online for rings, eventually selecting matching sterling silver bands.

Pollock sewed Elmore a white wedding blouse, a veil and a 12-by-15-foot train. He made himself a Grim Reaper cloak to wear over a white shirt, white tie and brown pants.

To find a pastor to conduct the ceremony, they wrote the nonprofit organization Parents, Families & Friends of Lesbians and Gays. A Seattle Christian pastor agreed to officiate at their wedding free of charge.

They chose Oct. 31 to be wed, because it is Samhain, the start of the Wiccan New Year. Not only is it an important date for their religion, they said, but it also symbolizes a new start for the couple. The ceremony will take place in the visiting room at SCC and be limited to two hours. Seven residents will be allowed to attend, not including the pastor and his partner.

The wedding will include a Wiccan hand-fasting tradition in which their hands are bound together with twine to symbolize their union.

Few wedding traditions will be honored at Pollock and Elmore's wedding. The bride will not walk down the aisle or toss a bouquet of flowers. They did not register for gifts and do not get a best man or a maid of honor.

They say it's more important to express themselves in other details. Two ring bearers will hold pillows with pentagrams on them, and the oldest guest will escort Elmore to the outside of the circle, where she will be joined with Pollock. They will recite vows they wrote and Elmore will take Pollock's last name. Afterward they will share cake with their guests.

"This is marrying my best friend," Pollock said. "We're ready

to stand up and start working on our rights as a married couple."

Florida Commitment Facility Audit

Dan Montaldi's words were prophetic. [Speaking to Salon magazine](#) last year, the former director of Florida's civil commitment program for sex offenders [called](#) innovative rehabilitation programs "fragile flowers." The backlash from one bad deed that makes the news can bring an otherwise successful enterprise crashing down.

Montaldi was referring to a community reintegration program in Arizona that was derailed by the escape of a single prisoner in 2010.

But he could have been talking about Florida where, just a year after his *Salon* interview, the highly publicized rape and murder of an 8-year-old girl is sending shock waves through the treatment community. Cherish Perrywinkle was abducted from a Walmart, raped and murdered, allegedly by a registered sex offender who had twice been evaluated and found not to meet criteria for commitment as a sexually violent predator (SVP).

[Montaldi resigned](#) amidst a witch hunt climate generated by the killing and a simultaneous investigative series in the *Sun Sentinel* headlined "[Sex Predators Unleashed](#)." His sin was daring to mention the moral dilemma of locking up people because they might commit a crime in the future, when recidivism rates are very low. Republican lawmakers called his statements supportive of "monsters" and said it made their "skin crawl."

Montaldi's comments were contained in an email to colleagues in the Association for the Treatment of Sexual Abusers, in response to the alarmist newspaper series. He observed that, as a group, sex offenders were "statistically unlikely to reoffend." In other words, Cherish Perrywinkle's murder was a statistical anomaly (also known as a [black swan](#), or something that is so rare that it is impossible to predict or prevent). He went on to say that in a free society, the civil rights of even "society's most feared and despised members" are an important moral concern. A subscriber to the private listserv apparently leaked the email to the news media.

The *Sun Sentinel* series had also [criticized](#) the

decline in the proportion of paroled offenders who were recommended for civil commitment under Montaldi's directorship. "Florida's referral rate is the lowest of 17 states with comparable sex-offender programs and at least three times lower than that of such large states as California, New York and Illinois," the newspaper reported.

In the wake of [the Sun Sentinel investigation](#), the Florida agency that oversees the Sexually Violent Predator Program has released a comprehensive review of the accuracy of the civil commitment selection process. Since Florida enacted its Sexually Violent Predator (SVP) state in 1999, more than 40,000 paroling sex offenders have been reviewed for possible commitment. A private corporation, GEO Care, LLC, runs the state's 720-bed civil detention facility in Arcadia for the state's Department of Children and Families.

Three independent auditors -- well known psychologists Chris Carr, Anita Schlank and Karen C. Parker -- reviewed data from both a 2011 state analysis and an internal recidivism study conducted by the SVP program. They also reviewed data on 31,626 referrals obtained by the *Sun Sentinel* newspaper for its Aug. 18 expose.

All of the data converged upon an inescapable conclusion: Current assessment procedures are systematically overestimating the risk that a paroling offender will commit another sex offense.

In other words, Montaldi's controversial email about recidivism rates was dead-on accurate.

First, the auditors examined recidivism data for a set of sex offenders who were determined to be extremely dangerous predators, but who were nonetheless released into a community diversion program instead of being detained.

"This study provided an opportunity to see if offenders who were recommended for

commitment as sexually violent predators, actually behaved as expected when they were placed back into the community," they explained.

Of the 140 released offenders, only five were convicted of a new felony sex offense during a follow-up period of up to 10 years. Or, to put it another way, more than 96 percent did not reoffend. "This finding indicates that many individuals who were thought to be at high risk, were not," the report concluded.

Next, they analyzed internal data from the program itself. As of March 2013, 710 of the roughly 1,500 men referred for civil commitment were later released for one reason or another. Of those, only 5.7 percent went on to be convicted of a new sexually motivated crime.

Interestingly, this reconviction rate is not much different than that of a larger group of 1,200 sex offenders who were considered but rejected for civil commitment after a face-to-face evaluation. About 3 percent of those offenders incurred a new felony sex offense conviction after five to 10 years, with about 4 percent being reconvicted over a longer follow-up period of up to 14 years.

The recommended and the non-recommended groups differed by less than 2 percent in the percentage of offenders obtaining a new felony sex offense conviction after release," the investigators found. "Such a minor difference is surprising and indicates that the traditional approach to determining SVP status needs to be improved. There are too many false positives (someone determined to fit the SVP definition when he does not, or someone determined to be likely to re-offend but he is not)."

Overestimation of risk was especially prevalent for older offenders. Only one out of 94 offenders over the age of 60 was arrested on a new sex offense charge, and that charge was ultimately dismissed.

Finally, the auditors reanalyzed the data obtained by the *Sun Sentinel* newspaper via a public records request. Of this larger group of about 30,000

paroling offenders who were NOT recommended for civil commitment, less than 2 percent were convicted of a new sex offense.

What the public is most concerned about, naturally, is sex-related murders, such as that of young Cherish Perrywinkle. Fourteen of the tens of thousands of men not recommended for civil commitment had new convictions for sexual murders. This is a rate of 0.047, or less than five one-hundredths of 1 percent – the very definition of a [black swan](#).

Determining which offender will reoffend is extremely difficult when base rates of sex offender recidivism are so low. However, the auditors identified an actuarial risk assessment tool, the widely used Static-99R, as a key factor in Florida's epidemic of over-prediction. Florida mandates use of this tool in the risk assessment process.

Florida Civil Commitment Center
In 2009, government evaluators in Florida and elsewhere in the United States began a controversial practice of comparing some offenders to a select set of norms called "high risk." This practice dramatically inflates risk estimates, thereby alarming jurors in adversarial legal proceedings. The decision rules for using this comparison group are unclear and have not been empirically tested.

The recidivism rate of the Static-99R "high risk" comparison sample is several times higher than the actual recidivism rate of even the highest-risk offenders, the auditors noted. Thus, consistent with research findings from other states, they found that use of these high-risk norms is a major factor in the exaggeration of sex offender risk in Florida.

(It is certainly gratifying to see mainstream leadership in the civil commitment industry coming around to what people like me have been pointing out for years now.)

"The precision once thought to be present in using the Static-99 has diminished," the report states. "It seems apparent that less weight needs to be given to the Static-99R in sexually violent predator evaluations."

Due to the identified problems with actuarial tools, and the Static-99R in particular, the independent

auditors are recommending that more weight be placed on clinical judgment.

"It now appears that clinical judgment, guided by the broad and ever-expanding base of empirical data, may be superior to simply quoting 'rates,' which may lack sufficient application to the offenders being evaluated."

Ironically, the subjectivity of clinical judgment was the very practice that the actuarial tools were designed to alleviate. I have my doubts that clinical judgment will end up being all that reliable in adversarial proceedings, either. Perhaps the safest practice would be to "bet the base rate," or estimate risk based on local base rates of reoffending for similar offenders. This, however, would result in far fewer civil commitments.

Consistent with [recent research](#), the auditors also recommended re-examining the practice of mandating lengthy treatment that can lead to demoralization and, in some cases, iatrogenic (or harmful) effects.

Although the detailed report may be helpful to forensic evaluators and the courts, it looks like Florida legislators aiming to appease a rattled public will ignore the findings and move in the opposite direction. Several are now advocating for new [black swan](#) legislation to be known as "Cherish's Law."

As sex offender researcher and professor Jill Levenson [noted in a commentary](#) on the website of WLRN in Florida, such an approach is penny-wise but pound-foolish:

“Every dollar spent on hastily passed sex offender policies is a dollar not spent on sexual assault victim services, child protection, and social programs designed to aid at-risk families.... We need to start thinking about early prevention and fund, not cut, social service programs for children and families. Today's perpetrators are often yesterday's victims.”

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!

Study Finds Adam Walsh Sex Offender Registry Wanting ; Risk Assessment System Is Superior

The is Part III of NCJR's series on the problems of the War on Sex Offenders. The March article focused on the plight of civilly committed sex offenders, the high incarceration rate of all sex offenders, their low recidivism rate ,which is 5% to 15% vs. 25 to 65% for other offenders, and the oppressive climate for sex offenders created by LB 1199. In June, Part II, reported on the interim report on the sex offender registry. It criticized LB 285, which "abandoned psychological assessments in favor of rankings based solely on the type and seriousness of the crime..." As a result, "...many low risk sex offenders are lumped with high risk offenders, thus making it more difficult for the public to identify potential offenders ...It also makes housing and job attainment more difficult for sex offenders." The article concluded that the "registries further stigmatize without providing greater safety to the public." And that sex offender legislation is headed in the wrong direction. A re-evaluation of current legislation is in order and is a task for the Legislature.

The Final Report of the Sex Offender Registry Study came out on July 30, 2013. It was 56 pages long, complex, sophisticated, and nuanced. An adequate summary would entail a lengthy article. Please forgive me for this "half-a-loaf" attempt. The bottom line of the Study is: "This analysis suggests that as an overall tool for identifying more nuanced risk to reoffend, the old risk-based system appears more effective." This study suggested that the Adam Walsh Act Tier system might be more effective in distinguishing high risk offenders, but it cautioned that this finding "sharply contrasts to published research on sex offenders in other states."

Other findings of the study were:

1. "A typical registered sex offender in Nebraska is a white male over the age of 26. The typical victim is a female acquaintance age 12 to 17.
2. By far, the most common offense is fondling... "
3. The one and two year recidivism rate with either registry was low, 1.7% to 2.6%.
4. Male offenders were more likely to reoffend, particularly those with a personality disorder.
5. Regarding victim characteristics, rates of recidivism were significantly elevated if the victim was a family member or an acquaintance.

Some of the policy recommendations of the Study: "To have evidence-based knowledge available for predicting recidivism and to not use it seems foolhardy, at best. It appears that the

Adam Walsh Act was founded more on public emotion than good science, which is its fundamental shortcoming.”

“From a public safety standpoint, (similar) research (i.e. , done in four other states) suggests that public safety has not been enhanced by the Adoption of the Adam Walsh Act tiering system.”

The study affirms that identifying the most dangerous sex offenders meets a public safety goal, but questions the wisdom of the registry identifying all sex offenders. “To put it simply, if sex offender registration causes labeling and stigmatization that virtually precludes registrants from maintaining employment and pro-social bonds, the overall harm to society and sex offender registration might outweigh the benefit.”

Finally, “The Adam Walsh Act tiers result in the community being notified about more sex offenders...(Thus) it becomes more difficult... to discern which offenders on the list are the most dangerous and most likely to recidivate.”

My conclusion is that it is better to used risk based assessment and that we should put only sex offenders who are most likely to reoffend on the public registry. Despite public pressure to continue the wrongheaded War on Sex Offenders, the Legislature should revisit LB 1199 and LB 285 and make our public policy better from a public safety standpoint as well as more humane to released sex offenders.

In future articles I hope to address the effectiveness of Nebraska’s sex offender treatment programs and whether the \$30 million plus expenditures are cost effective.

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:

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