



CURE CIVIL COMMITMENT NEWSLETTER

VOLUME III, ISSUE 3 PO Box 2310 WASHINGTON, DC 20013

JULY 2014

E-MAIL: CCN@CURENATIONAL.ORG

FROM THE EDITOR

It is hard to believe that we are in the "dog days" of summer and that the year is half over. Even though we are in the season when people take vacations and many organizations go on hiatus, there is a lot going on in the states on the issue of civil commitment. The legal challenges to civil commitment continue to make progress in a number of the states. No new state has implemented civil commitment as the states that have it begin to examine the practice.

In addition, courts in a number of states have examined their SORNA-styled registry laws and found them wanting. In Oklahoma, the State Supreme Court found in *Starkey v. Oklahoma Department of Corrections* that the retroactive application of the registry law is unconstitutional and approximately 2,400 registrants were ordered removed. In Maryland, the state's highest court determined in *Department of Public Safety and Correctional Services v. Doe* that the state cannot apply the registry law retroactively. We are still awaiting a decision in a similar challenge to New Hampshire's registry law and during oral argument it appeared that at least one justice on that court thought the current law goes too far. Any time there is a successful challenge of SORNA-type laws, whether regarding civil commitment or sex offender registration, we win one more battle against those who are waging this very public war on sex offenders.

In each of the 2014 issues I have reminded our readers to make sure that they register and vote in both the primary and general elections this year. While some in civil commitment are barred from voting, there are many in civil commitment who are able to vote. Voting is an important duty of responsible citizenship. This is the opportunity of "we, the people" to determine who our leaders will be and to give direction to the laws and policies that will govern us. While we are seeing concrete actions in a number of courts to reduce some of the more draconian measures that have been approved by legislatures, we need to change the legislatures themselves to end the flow of ever-more punitive laws that destroy the lives of those with a conviction for a sexual offense as well as their families.

It is important that we let government officials know that not everyone is on board with their war on sex offenders. If you can, cast your ballot and let your voice be heard.

Thomas Chleboski
Editor

IS DEATH THE ONLY WAY OUT OF CIVIL COMMITMENT?

Recent controversies in the Texas Office of Violent Sex Offender Management has caused legal experts, former employees and legislators to suggest that the biggest controversy may involve the program itself: Why outpatient treatment supposedly intended to transition offenders out of confinement once they complete rehabilitation programs, never has. Not one. Not in 15 years.

"The only way out appears to be to die," said Nicolas Hughes, a Harris County assistant public defender who has represented several offenders in the program. "That's not how it's supposed to work. In that regard, it's clearly not constitutional. These people are just being kept locked up."

Proponents of civil commitment programs for sex offenders insist it is legal, pointing to a string of court decisions upholding its strict rules. However, State Sen. John Whitmire, a Houston Democrat who is chairman of the Criminal Justice Committee, concedes that he has questions about how the program is being run - and whether it's even needed anymore, considering that prison sentences for sexual predators have been increased in the past decade. Roughly half of those in Texas civil commitment live in county jails, halfway houses and other semi-secure facilities and the rest who were back in prison for violating the program rules.

To be civilly committed, they must have been convicted of at least two sex crimes. Many now confined have sexually assaulted children and the elderly. Records indicate many also are mentally ill or disabled, even blind, men who are supposed to receive treatment so they can eventually graduate and live in the community again with supervision. Agency reports show that from 1999 to 2012, no one appears to have graduated. Eight died.

Texas is the only state that says its program is based on an outpatient model, even though offenders are kept under round-the-clock supervision and clustered in lockup-style centers such as jails and

halfway houses. Offenders' daily lives are closely structured and their movements are restricted. Each offender is required to wear a satellite-monitoring device on their ankle that tracks their every movement, and any time they leave their assigned center they must be escorted.

Texas' ability to charge the civil-commitment offenders with a third-degree felony for violating the rules has, in a sense, created a private criminal law code, and criminalized behavior that for anybody else is not a crime.

Prior to 2004, many of the offenders were allowed to live at home. But starting then, records show, state officials began moving them back into supervised confinement, filling beds in halfway houses and local jails that were intended for other prisoners.

A new executive director will take over the embattled state agency that supervises high-risk sex offenders after they finish serving their prison sentences. The three-member board for the Office of Violent Sex Offender Management unanimously voted Saturday morning to appoint Marsha McLane, a program specialist for the Texas Board of Pardons and Paroles, to permanently head the agency. According to McLane's resume, she has more than 30 years of experience working in Texas' criminal justice system.

Lawyers, constitutional experts and mental health professionals have questioned whether the Texas program can withstand a court challenge because of the way it is being operated. Although it is supposed to be a treatment program for sex offenders with "a behavioral abnormality," not one single detainee has successfully completed treatment and been released in the program's 15-year history.

MASSACHUSETTS CIVIL COMMITMENT

Massachusetts state courts are much more likely than not to keep convicted sex offenders locked up indefinitely after they finish their prison sentences. Between 2010 and 2012, juries and judges sent 57 of the 83 detainees who sought release back to detention, even though their sentences were up, according to

statistics kept by the Massachusetts District Attorneys Association.

About 20 states use civil commitments — in which a convict is ordered held after a sentence is over — for sex offenders, a controversial practice that critics call a form of double jeopardy. Until four years ago, prosecutors did not have a say in whether a civil commitment case in Massachusetts would be decided by only a judge or by a jury. But prosecutors fought for the right to advocate for juries to hear the cases, thinking they would be more likely to keep convicted sex offenders off the street.

As convicted sex offenders near the end of their prison sentences, county prosecutors review their cases to determine whether they believe the convict still poses a threat. Prosecutors request court-appointed psychologists, known as "qualified examiners," to review cases, a process that entails interviewing the convict and analyzing his or her history. If at least one of the qualified examiners concludes the person remains sexually dangerous, prosecutors will usually seek a trial for civil commitment.

If both examiners conclude the person no longer poses a threat, prosecutors typically will not fight the convict's release. Prosecutors say limited funds and heavy caseloads lead them to seek trials for the offenders they deem the most dangerous.

During the trial, both sides present mental health experts. After hearing the expert testimony, a judge or jury, depending on what is agreed upon before the trial by all parties, decides whether the person is sexually dangerous. If deemed sexually dangerous, the person can be ordered held indefinitely, but can petition for release. When that happens, Department of Correction officials, rather than a county prosecutor, determines whether to take the petition to trial. The department said 31 inmates convicted of sex offenses have been released from civil commitments between Jan. 1, 2013, and March 2014, but the agency did not say how many of them were released

following a trial or how many inmates petitioned for release.

Still, national and state studies have also shown that sex offenders are less likely than other offenders to commit another crime: A 2008 study by the Urban Institute Justice Policy Center found that 22 percent of Massachusetts sex offenders who were released were arrested again, compared with 40 percent of other violent offenders.

FLORIDA JUSTICE TRANSITIONS

Florida Justice Transitions is an organization established to assist Ex-offenders with productive and responsible re-entry into society. The program offers; Housing, Counseling, Mentoring, Agency Assistance and compliance assistance.

FJT deals with Local, State and Federal law enforcement on a daily basis. To date the program has a 0% recidivism rate. Although some residents have returned to prison on technical violations, Florida Justice Transitions has never had a resident reoffend. The organization recognizes that their residents are entering a world that is different than what they left. The goal is to provide assistance and guidance that helps the individual quickly adapt and thrive, as much as possible, in this new world.

Their program helps the resident plan a new life, devoid of bad behavior and poor lifestyle choices that allow them to achieve as much self-sufficiency as they are capable of. In order for this program to succeed, FJT needs community involvement. This particularly includes family members of the resident.

Men and women, who have been assigned to this program directly by a judge, are monitored by the program staff as well as by the other residents who reside within the park adding another safety buffer as they police themselves.

Several programs are available to residents, including, but not limited to sex offender therapy classes several times a week, N/A and A/A classes, as well as a Twelve Step Program free to all, and a number of social events that assist in promoting healthy lifestyles. In addition, there are bible study classes for those interested are available for all faiths.

Men who are released through "CIVIL COMMITMENT" contracts are made aware that they are under very close watch by the program staff, and local city and county authorities. The staff maintains the state's Zero Tolerance Rule. Deviation from terms of probation are not tolerated, and may result in a violation of said person and possible arrest.

This program is designed to aid the resident's transition to society and not as a permanent residence. The sole purpose and goal of the program is to effectively and positively assist residents with re-entry into the community. For this, the men and women successfully completing the program have a significantly low rate of recidivism.

Florida Justice Transitions has strict criteria for acceptance. They maintain a non-violent and drug free community. For the resident who wishes to do something about his or her life, Florida Justice Transitions are there to help. The first step in that process is finding the right environment to prepare oneself. For more information, please feel free to contact them with any questions at: Florida Justice Transitions, 2500 54th Avenue North Suite 100-B, Saint Petersburg, Florida 33714, 727-289-7020

OKLAHOMA LAW REVIEW ARTICLE

Deirdre M. Smith - University of Maine School of Law

In the 1997 opinion, *Kansas v. Hendricks*, the U.S. Supreme Court upheld a law that presented a new model of civil commitment. The targets of these new commitment laws were dubbed "Sexually Violent Predators," and the Court upheld this form of indefinite detention on the assumption that there is a psychiatrically distinct class of individuals who, unlike typical recidivists, have a mental condition that impairs their ability to refrain from violent sexual behavior. And, more specifically, the Court assumed that the justice system could reliably identify the true "predators," those for whom this unusual and extraordinary deprivation of liberty is appropriate and legitimate, with the aid of testimony from mental health professionals. This Article evaluates the extent to which those assumptions were correct and concludes that they were seriously flawed and, therefore, the due process rationale used to uphold the SVP

laws is invalid. The category of the “Sexually Violent Predator” is a political and moral construct, not a medical classification. The implementation of the laws has resulted in dangerous distortions of both psychiatric expertise and important legal principles, and such distortions reveal an urgent need to re-examine the Supreme Court’s core rationale in upholding the SVP commitment experiment.

IOWA CIVIL COMMITMENT

Gov. Terry Branstad has signed 25 bills into law, including legislation adopted in the wake of the kidnapping and slaying last year of Kathlynn Shepard of Dayton. Senate file 2211 relates to the civil commitment of a sexually violent predator. The bill allows those convicted of a violent sexual offense as a juvenile to be sent to a civil containment unit for sexually violent predators upon release from prison. Officials now don’t consider such juvenile convictions when making adult release decisions. Lawmakers said that those who commit sex offenses as juveniles could be dangerous as adults.

Minnesota News

Minnesota’s sex offender treatment program came under harsh criticism in federal court Monday for indefinitely confining a young man who has never been convicted of a crime as an adult and a woman who has been locked up with only male sex offenders since 2008.

In strongly worded testimony, four court-appointed specialists in the treatment of sexual misbehavior argued for the immediate and unconditional release of the young man, as well as the transfer and possible release of the woman, who sexually assaulted two boys and is the only woman ever committed as a sex offender in Minnesota.

The hearing marks a pivotal moment in the broader debate over the constitutionality of Minnesota’s sex offender program, which has successfully discharged only one sex offender in its 19-year history. Attorneys for a class of sex offenders have sued the state, claiming the program violates their due process rights by failing to provide sex offenders with effective treatment and the opportunity for release.

The witnesses also said the pair’s current treatment courses are inappropriate in part because they have failed to address their traumatic experiences as children. One of the experts argued that commitment in a facility filled only with men may have worsened the woman’s mental state. The testimony of these experts raises all sorts of questions about why the system has failed to identify people who ought to be released.

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: _____ @ _____