

PLANNING SEX OFFENDER TREATMENT WITH SOUND PUBLIC POLICY AND
ECONOMIC ACCOUNTABILITY

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DIPLOMAT

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The State of Minnesota started their sex offender program in 1990. This was initially designed to be an approximately 3 year program. Since 1990 no one has ever been released from this program. There was one man (Hubbard) who was released but was from the prior sex offender program in St. Peter. He was revoked appropriately for leaving the State.

Currently there are about 550 men in the programs at the Minnesota Sex Offender Program (MSOP), St. Peter, and the transitions program at St. Peter at a cost of about \$120,000.00 per man per year. A total of \$75 million per year. The program is finally approving a respondent for provisional discharge to the community. (Rydberg). This is currently before the Supreme Courts Appeal Panel. Mr. Rydberg was approved by the Special Review Board, but the Commissioner of Human Services is appealing the approval. This is the first time the Special Review Board has approved a respondent for release.

A conservative estimate for each respondent indeterminately committed as a sexually dangerous person or sexual psychopathic personality is about 30 months in the secure treatment program, 30 months in the transitions program, and about 30 + months in the community preparations program which must be approved by the Special Review Board. If one starts doing the math it is clear over the course of time this program and the policy the State of Minnesota has developed will cost millions or even billions of dollars during a time when we are in a serious recession.

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I have been a forensic examiner for the past 21 years and have examined over 200 respondents for sexually dangerous persons and or sexual psychopathic personalities. I have advocated for less restrictive alternatives that would be cost efficient and still provide safety to the community. I have been frustrated at the Palenty administration for implementing a policy to build more and more treatment beds, but then to have a policy that “no one gets out on my watch.” A former medical director referred to MSOP as a White Elephant said in so many words it would be cheaper to release sex offenders to a hotel guarded by State Troopers 24 hours per day. The Honorable Judge Lund (Olmstead County) called MSOP/St. Peter a Guantanamo Bay and said a treatment center is not a treatment center unless they release someone.

There has been much controversy as whether or not sex offender treatment actually reduces recidivism. Finally research has shown that a combination of treatment and intensive supervision significantly reduces recidivism. A review of other states that have released sex offenders clearly demonstrate that.

At this time I would like to introduce a review I did emphasizing the need for real intensive supervise release in States that have released sex offenders.

The state of Florida currently has 509 persons committed to confinement and treatment at that Florida Civil Commitment Center (FCCC). In all, 681 persons have at one point been committed to confinement and treatment at FCCC, meaning that 172 persons were at one time committed but are no longer confined to FCCC. Fifty-one of those 172 people have been released by the courts into the community after the courts found that they no longer met commitment criteria. Thirty-three of those 51 progressed to the final phase of treatment (Phase IV) at FCCC before release. Of those 33 people, 18 were described as having reached "maximum therapeutic benefit."

The remaining 121 committed persons no longer confined at FCCC were given the opportunity to comply with terms and conditions of a release plan. If they fail to comply, then the commitment order is rendered active and they are confined at the FCCC. Although the exact number of persons found to have violated the terms of their agreement and subsequently sent to FCCC is unknown, it is reported that there are two people who violated their terms (but did not reoffend) in the last few months and were subsequently sent to FCCC by the courts. The sexual recidivism rate of release persons in the state of Florida is unknown but is currently being studied, although it is informally reported to be “very low”.

Florida's sex offender civil commitment statute does not allow for Less Restrictive Alternative options for committed persons. An active commitment order must result in confinement in a secure facility (FCCC). If the courts find someone no longer meets commitment criteria, a full discharge may result, creating the only release option recognized in statute. Settlement agreements in the courts have been introduced to create, in essence, their own Less Restrictive Alternatives for difficult cases in which the state attorney may not be sure of obtaining commitment trial and the defense is not sure they can prevent this at trial. Essentially, the parties

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have incentive to reach an agreement in lieu of taking the case to trial. Various release plans with attached terms and conditions are involved in these agreements. Given what the statute says about (active) commitment, the court then create options by entering a commitment order but then rendering it inactive on the condition that the person complies with the agreement. If the person fails to comply with the agreement, the state resumes proceedings, which may include taking the case to trial.

Although committed persons in Florida may be released her settlement agreement and have terms and conditions attached to their release, there is no structure that currently exists to provide supervision or monitor compliance for these persons. However, when an individual has pre-existing probation conditions from their last criminal sentence, then additional terms and conditions may be attached to a settlement agreement and incorporated into the probation conditions. The responsibility of supervision and monitoring the individual then falls on the probation department. In the case when persons do not have probation, there is no structure in place in the state of Florida to monitor or supervise them.

In the state of Illinois, 39 residents have been conditionally released to date, with 12 of those having their conditional release revoked at one time or another, although it is unclear how many of those replications were due to sexual re-offenses. The state currently has 21 residents on conditional release. While on conditional release, they are monitored by their conditional release TM, and live in an apartment by themselves (however they are not allowed to have a computer or Internet). They are allowed cell phones which are monitored. They must get a job and learn to support themselves, and approval is required prior to going anywhere.

The state of Missouri has conditional release for the rest of the life of the sexually violent person, and it includes specific conditions of release. The state has one client who was committed and conditionally released in the same trial. He subsequently went to a nursing home and has since died. Another client was conditionally released by a judge despite the objections from the state. He subsequently violated the conditions of his release by not participating appropriately in treatment and was initially brought back pending a revocation hearing. However, the judge ordered him back out despite the statue saying that he stay in a secure facility until the hearing. The hearing is pending.

In-community supervision in the state of Missouri is provided by Probation and Parole through an established sex offender supervision system, but the Department of Mental Health has control of the essential decision regarding the conditionally released Sexually Violent Predator (SVP).

There have been no discharges from the New Hampshire SVP program.

North Dakota has had 12 discharges in the last two years. The court typically adds supervision upon request that may include GPS monitoring, outpatient treatment, and the usual registry and limitations on school zones, etc. The state of North Dakota reports they have not had early return to the program.

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The state of Virginia currently has 65 individuals who have been conditionally released since the law was enacted in 2003. Of those 65, 42 are on conditional release in the community, seven have violated and are pending hearing, 13 had their conditional release revoked, and three died. Technical violations of the conditional release account for 20% of the revocations. The conditional release sexual recidivism rate in the state of Virginia is three percent. The probation failure rate in Virginia is twenty-seven percent.

Of the 13 conditional release revocations in the state of Virginia, to work for new sex crimes: one was arrested in the summer of 2010 for taking up-skirt pictures in a women's dressing room, and one was arrested in February 2011 for "rubbing" minor females in a mall. It is noted that technical reasons are responsible for the vast majority of conditional release failures, e.g. changing residence without informing the PO, non-compliance with treatment, drug and alcohol use, failing to report to PO, and absconding. The state notes that their communities supervision system is "very robust and catches people and minor violations before they get back into sex offending". They have a Memorandum of Understanding with the DOC/Probation office to provide supervision, and specially trained sex offender officers in the Community Containment model are used. The state also notes that limited housing resources are a major problem in getting people on conditional release, and 20 additional people would be eligible for conditional release today if transitional housing (90 to 180 days) were available.

New York State offers both inpatient civil confinement program and a community program called Strict and Intensive Supervision and Treatment (SIST). Since the passage of the Sex Offender Management and Treatment Act of 2007, the state of New York has civilly confined 185 individuals. The courts have released 15 civilly confined individuals to the SIST program in the community. No individuals have been released from confinement without being placed on SIST. "The primary goal of SIST is to successfully manage, in the community, sex offenders who are determined to suffer from mental abnormalities that predispose them to commit sexual offenses, but who are not deemed to be dangerous enough to require civil confinement. SIST provides increased public protection through mandatory treatment and intensive supervision while avoiding the high costs associated with confinement in a secure treatment facility" (New York State Office of Mental Health, 2010, p.16).

Only New York and Texas authorize the direct placement of civilly managed sex offenders into the community (New York State Office of Mental Health, 2010).

Since the inception of Article 10: The Sex Offender Management and Treatment Act (SOMTA) in New York, 77 individuals were subject to SIST order. Approximately half were simultaneously serving a parole term. Of the 77 who had been subject to SIST, 13 were in local custody pending proceedings for violating the SIST conditions, six were in DOCS custody, three were relating released to the community, and 46 remained in the community under active SIST orders as of October 31, 2009. Of the 77 individuals subject to a SIST order, 30 had been charged with either violating the SIST order conditions or parole conditions. Eight of the 30 violations involved inappropriate sexual behavior, two of which resulted in a new criminal charge. Both offenses involved frotteurism, and the two individuals were returned to DOCS

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custody on parole violations. The remaining individuals were not charged with new crimes, but modifications were made to their supervision conditions and treatment plans. Six SIST violators were subsequently civilly confined and adjudication was pending on the remaining 16 violators at the end of the reporting period. Figures for 2010 are not yet finalized.

The core program services of Sex Offender Treatment Programs in New York include rigorous assessment, education/vocational training, psycho – educational interventions, pro – social development, and process – oriented treatment.

In contrast to other states in the nation who civilly commit sex offenders and place them in locked, secure residential facilities, the state of Texas stands out by the fact that their civil commitment is comprised entirely of an outpatient program. The SVP is not held in a secured environment, but instead is allowed to transition back into the community where they are mandated to actively participate and comply with intensive outpatient sex offender treatment and supervision. According to the Texas Department of State Health Services, the Texas outpatient program has been the most successful in treating SVP's, while maintaining the highest level of community safety.

The success rate of inpatient sex offender treatment is about half that of outpatient treatment (Texas Department of State Health Services, 2011). According to the report, sex offenders who are civilly committed and placed in locked, secure residential facilities can choose not to participate in treatment. In California, 80% of offenders in inpatient settings refuse treatment. The rates of treatment refusal in Wisconsin and Florida are also high (75% and 70%, respectively). According to the report, it has been suggested that clients are routinely advised by their attorneys to avoid disclosure and refuse treatment.

Treatment refusal in the state of Texas, however, is not an option. Clients are mandated to participate and if the commitment conditions are violated they will be returned to the Department of Corrections. The Texas Department of State Health Services notes that treatment gains made in an inpatient setting do not readily transfer to the community because the client did not have to develop internal controls such as identifying triggers and stopping deviant behaviors because of the intensive extra all controls that are in place. They also note that clients in inpatient settings do not have to deal with “normal” stressors found in the free world such as access to drugs and alcohol, and the inadvertent contact with potential victims. The state of Texas instead deals with these issues directly through the offender’s outpatient treatment.

As of August 31, 2010 there were 175 sexually violent predators who had been civilly committed in the state of Texas (The State of Texas Council on Sex Offender Treatment, 2010). Of those 175, 92 resided in the community, 75 were awaiting release into the outpatient Sex Offender Treatment/Supervision program, one had been committed to the state hospital, one was placed at a state school, and one had absconded. Additionally, five were deceased and not counted in the total number of commitments.

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Sixty-eight SVP's, (38%) committed nonsexual offenses and were returned to prison. All 68 had technical violations and were subsequently sentenced to the Texas Department of Criminal Justice – Correctional Institutional Division, State jail, served County time, or received probation. Four of the 68 were charged with new nonsexual felony criminal offenses.

Of particular significance is the fact that as of December 1, 2010, the Council reported that none of the SVP's committed to the program had been charged with or convicted of a new sexual crime (The State of Texas Council on Sex Offender Treatment, 2010). This represents a 0% sexual recidivism rate, and the Council names this absence of sexual recidivism as one of the most compelling performance measures supporting the Texas outpatient program.

The recidivism rates in states that use Intensive Supervised Release programs are, as a whole, quite low. It appears that the successfulness of Intensive Supervised Release (ISR) programs is dependent upon the participants having detailed discharge plans and strict conditions that must be adhered to completely. Violations of the conditions of release most often result in the person's Provisional Discharge being revoked. Accordingly, it is important that a discharge plan be specific and measurable.

Governor Palenty has never been held accountable for the massive waste of funds spent on sex offenders. Today we need a Governor and a legislator that will follow solid research and science in formulating programming for special populations. One of the myths about putting sex offenders away indeterminately is that we are protecting the public. Rape is significantly under reported and rape, molestation, date rape, incest occur frequently in our communities in all socio-economic classes. Only 20 states in the Union release sex offenders. Other States administer long sentences which is still cheaper than indeterminate commitment. Texas of all States has the most (liberal) program in terms of not locking respondents up and still has a low recidivistic rate.

We have had other special populations such as the chemically dependent knowing full well that the average recovery rate is .35. However we know when individuals stay involved in aftercare their relapse potential is reduced. This is what we have discovered about sex offenders. First, complete treatment then offer them intensive supervision.

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