

CIVIL COMMITMENT ISSUES

There are a number of controversial practices that are used during civil commitment but are not widely accepted outside of current use against sex offenders:

1. Risk Assessment Tests: Actuarial tests such as the Static-99, the RRASOR, the VRAG, the SORAG, the MiSOST-R, and the MASORR measure “static” or unchanging factors in an offender’s life such as age of offense, history of sex offenses or substance abuse, relationship status, or mental illness. Such tests do not take into account dynamic (changing) factors in a person’s life nor consider the possibility of rehabilitation.
2. Penile Plethysmographs: A device that measures blood flow to the genitals, the tests can be easily overridden and not proven to be scientifically valid for measuring arousal; *US v. Powers and Billips v. Commonwealth* rejected the devices.
3. Polygraphs: Made popular by talk shows, polygraphs have an undeserved reputation of detecting lies; instead they merely determine bodily changes, and studies have shown they are about as accurate as chance. Those subjected to polygraphs rarely disagree with the examiner’s interpretation, even when the assumptions are false, and highly subject to human bias. As with plethysmographs, the Courts have also rejected polygraphs as lacking scientific proof of effectiveness (*US v. Antelope*). Polygraphs are used as a tool for “psychological manipulation” or interrogation.
4. Castration: Castration is a very intrusive procedure to reduce sexual appetite, whether chemforced vasectomy were ruled unconstitutional.

AN UNCIVIL PROPOSAL

Civil commitment is invalidated as currently practiced. It is self-evident that current civil commitment laws are used as detention rather than treatment, as few individuals ever leave civil commitment centers in anything outside a bodybag. There is currently no solid plan to determine who is at risk for re-offending, as risk assessments are subject to human bias and misinterpretations. Furthermore the scores can simply be ignored by the judges presiding the civil commitment hearing. Other methods of assessing risk, such as penile plethysmographs and polygraphs, are largely rejected by the courts yet are commonly used in civil commitment centers. These tests are not considered scientifically valid and ample evidence suggests these tests are largely interpreted by human bias rather than fact and may lead to large numbers of false positives. And castration leads to a number of negative consequences including physiological side effects that may ultimately rule the practice cruel and unusual punishment.

If civil commitment is to ever be utilized, the practice should be used only to handle only the “worst of the worst,” utilizing scientifically and non-intrusive means to achieve the goal of rehabilitating the truly ill. Unfortunately, “predator panic” has led to the abuse of a safeguard against the worst of the worst, a trend sure to only worsen with the advent of the Adam Walsh Act.

CIVIL COMMITMENT A Very Uncivil Proposal

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References to all facts in this brochure
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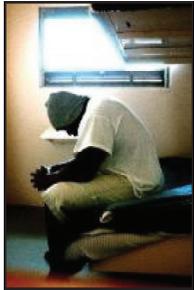


“There’s a little bit of confusion. What is this place? Is it a prison? Is it a mental health center? A residential treatment facility where people are clients? What is it? We ask that question sometimes too. We really don’t have a lot of guidance around what it is the state wants the facility to be, and we would encourage the state to look at that.” – Susan Keenan Nayda, VP of operations at Liberty Behavioral Health Corp., in a court deposition in Arcadia, FL



SOSEN EDUCATIONAL SERIES

The Truth about Civil Commitment



An investigation into a civil commitment center in Arcadia, FL in 2006 found a number of violations with the program; one worker even described the center as a “free-for-all prison.” Such reports highlight the problems with civil commitment, the popular practice of holding allegedly “sexually violent predators” beyond their sentences in the name of public safety.

First developed under the “sexual psychopath” laws in the 1930s, civil commitment laws have seen a resurgence since the early 1990s. The practice was upheld in the landmark *Kansas v. Hendricks* decision, and currently used in 20 states. Civil commitment was also added to the federal Adam Walsh Act (the “Jimmy Ryce Act,” AWA Title III).

However, there are growing concerns that civil commitment laws are being used arbitrarily, neglect treatment, and are prone to other abuses which would render the practice unconstitutional.

PROCESS OF CIVIL COMMITMENT

A typical civil commitment process begins with a petition filed before the offender’s release date, and is brought before a civil judge. The defendant is granted the right to counsel, cross-examine, and present evidence, but is not allowed the right to a jury trial. Furthermore, allegations not leading to an arrest or criminal charge can be considered (thus a false allegation could be considered). The judge then makes his decision using the lower standard “clear and convincing evidence.” If a person is civilly committed, he will remain at the civil commitment center during the appeal, and a review hearing is conducted to determine the need for further commitment. The patient, the patient’s attorney, or the facility medical director can start the process for a hearing before a special review board. The review board makes the recommendation, but the Commissioner makes the final decision, though that decision can be appealed through the courts.

HUMAN BIAS IN CIVIL COMMITMENT

“He’s expressing opinions about how these hearings have been conducted, essentially showing that he’s made up his mind before they’re finished.” — Defense Attorney Eric Tennen [regarding Tyson Lynch, who works on the Mass. S.O. Registry Board]

Of great concern to those critical of the practice of civil commitment is the presence of human bias, as evidenced in a 2009 investigation into the Massachusetts Sex Offender Registry Board. Judges in civil commitment hearings also have great discretion, and can choose to throw out evidence favorable to the defendant in civil commitment hearings. This is just one of the many criticisms of the civil commitment process.

CRITICISM OF CIVIL COMMITMENT

Civil commitment is not without controversy. Below are some of the criticisms of the civil commitment laws:

1. Laws are used punitively, which undermines treatment
2. Inability and overconfidence in assessing risk
3. Basing decision-making on public fear
4. Probability of committing the innocent
5. Hospitals become “dumping grounds” for sex offenders
6. Are two to six times more expensive than prisons
7. Few of the committed are ever released; of the estimated 3000 committed sex offenders in 2007, only 50 had graduated while 115 were released for other reasons, such as terminal illness or legal technicalities
8. Burden of proof is lower, and circumstantial or questionable evidence is allowed



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