

Minnesota Jails & Prisons

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Locked in limbo



Jim Gehrz,

James Poole was committed in 1999 as a sexually psychopathic personality and sexually dangerous person. Poole is a former Wheaton, Minn., physician. He was committed after he served an eight-year prison sentence for sexually touching female patients during pelvic exams.

Minnesota commits a greater proportion of sex offenders to treatment lock-ups after prison than any other state. No one has been released, costs are mounting, and questions are increasing.

By LARRY OAKES, Star Tribune

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MOOSE LAKE -- In the 14 years since Minnesota's Sexually Dangerous Persons Act cleared the way for the state to detain hundreds of paroled sex offenders in prison-like treatment centers, just 24 men have met what has proved to be the only acceptable standard for release.

They died.

"We would save. 'Another one completed treatment.'" said Andrew

... he would say, another one completed treatment," said Andrew Babcock, a former guard and counselor in the Minnesota Sex Offender Program (MSOP).

Minnesota now has 544 men and one woman behind razor wire as a result of sex-offender civil commitments -- nearly one of every seven nationwide, and the most nationally per-capita.

Most have completed their prison sentences. They are being detained for the stated purpose of treating them until they are no longer dangerous.

Only Washington state preceded Minnesota in handling paroled offenders this way. Now, 19 states and the federal government, which last year began its own commitment system, are detaining a total of nearly 4,000 former prison inmates for indefinite treatment.

The MSOP began with support from the public and legislators angered that paroled rapists had murdered several young women in the late 1980s. The 2003 killing of college student Dru Sjodin by newly released rapist Alfonso Rodriguez Jr. prompted a new surge of commitments of all types of sex criminals, from rapists to nonviolent molesters.

"This is a very unique group that goes after vulnerable victims," said former state Sen. Wes Skoglund, DFL-Minneapolis, who helped draft the Sexually Dangerous Persons law. "Society has a constitutional and moral obligation to keep people from hurting others."

Pam Poirier, the mother of Katie Poirier, who was murdered by released rapist Donald Blom in 1999, said she would be content if no one in the MSOP is ever released. "You can't even call these men animals," Poirier said. "I say build more prisons and put them out in the desert somewhere."

But the MSOP's rising cost -- now \$67 million a year -- and lack of measurable success are causing growing unease among legislators, victim advocates, judges and even the program's designers.

The financial burdens imposed by the program raise compelling questions:

- Taxpayers have spent at least a half-billion dollars on the MSOP and the commitment system feeding it, but the program can't point to the successful treatment of a single offender.
- Each "patient" costs taxpayers \$134,000 a year -- three times the amount state prisons spend to treat sex offenders. Yet the state has

only about 300 adult treatment beds in prison, while the MSOP has plans to double its 400-bed capacity.

- The MSOP deals with less than 3 percent of Minnesota's 20,000 predatory offenders but consumes more than half of what the state spends yearly to control and track them.
- The MSOP's budget, which has tripled since 2004, is more than seven times the amount the state spends to monitor the 3,500 sex offenders on probation. The state spends less to keep 31 offenders on electronic home monitoring each year than it does to keep just one offender in the MSOP.

"It's just an awful lot of taxpayer money for what we're getting," said Sen. Linda Berglin, DFL-Minneapolis, chair of the budget division of the Health and Human Services Committee, which oversees the program's funding. "We've cut everything else in God's green Earth, but we've spent a lot of new resources on this group. They go in but they don't come out."

Ratcheting up

The MSOP was created to treat small numbers of the state's worst sex criminals. But the killing of Sjodin prompted officials to begin committing soon-to-be-released prisoners at a much higher rate, from an average of 15 per year before 2003 to 50 per year since.

That same year, Gov. Tim Pawlenty prohibited releases not required by law or court order. His order came after then-Attorney General and eventual gubernatorial candidate Mike Hatch accused the administration of planning releases to save money.

Pawlenty declined to discuss the program with the Star Tribune. The governor's order barring releases remains in effect, Pawlenty spokesman Brian McClung said late last month.

The MSOP's population surged past all similar programs except California's, which has 703 hospitalized offenders in a state with a population six times greater than Minnesota's. An 800-bed, \$131 million expansion is underway at the MSOP's Moose Lake facility to handle the influx.

"It's kind of gotten way out of control. ... We're filling these treatment facilities as fast as we can build them," said Sen. Don Betzold, DFL-Fridley, who cosponsored the Sexually Dangerous Persons law. "Rodriguez ratcheted everything up. No one wants to be blamed for letting anybody slip through the cracks."

And no one wants to release someone who might reoffend -- although 13 other states have released a total of more than 250. Experts say the MSOP's lack of discharges increases the odds that the courts will declare the program unconstitutional and order the detainees released.

"At some point a federal judge might say all you're doing is incarcerating people after their prison sentences," Betzold said. "At some point you have to show some result."

Some state judges have already reached that point. In February, Olmsted County District Judge Kevin Lund refused to commit rapist Robert Tolbert, even as he ruled that Tolbert, 30, is a sexually dangerous person.

Instead, the judge ordered Tolbert back to prison for treatment or until the end of his sentence in 2012.

"Since no patient has ever been discharged," Lund wrote, "... the [MSOP] is not a treatment program, and [MSOP] facilities are not treatment facilities. These facilities are nothing more than detention facilities."

The county, joined by the state Corrections Department, has appealed.

Wes Kooistra, assistant commissioner of the Department of Human Services, which runs the MSOP, said the lack of releases "deserves public discussion." But he added that the bar for release should be high.

"That's why they're in our program -- because they have victimized innocent people," he said.

Most molested children

The patients, as the program refers to its residents, range from 19 to 81 years old. While state officials refused to release their names, citing privacy laws, the Star Tribune obtained names and other information on about 350 of them through other means, including their commitment papers and other public records.

Of the 350, seven are convicted killers, and a few dozen have histories of violent rape. The majority molested children, usually by means of coercion or manipulation. Many victimized their own children or other relatives. About one in 10 have only juvenile

records.

Many were molested themselves as children.

Their histories are disturbing but don't all fit the violent predator stereotype. Here are four examples:

- Christopher Welin, 29, was committed on his 19th birthday. He spent most of his teens in juvenile detention after being declared delinquent at 12 for molesting and raping his little brother and other children.
- Dr. James Poole, 69, was convicted in 1991 of molesting female patients and imprisoned for eight years. He also admits sexually abusing a 6-year-old girl and several teens, including his daughter. He was committed in 1999.
- Ben Alverson, 32, had sexual relationships with two girls, ages 13 and 14, while he was in his early 20s. He was imprisoned three years and committed in 2005 after violating probation.
- Dwane Peterson, 28, is one of two patients with no sex crime on his record. Peterson, however, had sexual fantasies about children and wrote to them. He also kidnapped an elderly man. He was committed based on his history of sexual obsession and stalking, and the risk that he might offend.

Then there is Dennis Linehan, 67, who calls himself the MSOP's "poster child" and whose history is a parent's worst nightmare.

Imprisoned for killing 14-year-old Barbara Iversen in 1965 during an attempted rape, he escaped in 1975 and was caught while trying to assault a 12-year-old girl.

His prison release was approaching in 1992 when authorities committed him as a "psychopathic personality." The state Supreme Court overturned the decision, saying he didn't have an "utter lack" of control over his sexual impulses, the standard required by Minnesota's 1939 Psychopathic Personality law. The Legislature responded by passing the Sexually Dangerous Persons Act, allowing the recommitment of Linehan and lowering the standard. Judges can now commit any offender deemed by psychologists to have a mental or personality disorder and likely to reoffend.

In 1995, the state opened the \$20 million, 100-bed Sexual Psychopathic Personality Treatment Center in Moose Lake. As the program grew, it divided offenders primarily between Moose Lake and another site in St. Peter, though about 100 of the 545 inmates

and another site in St. Peter, though about 100 of the 545 inmates now are housed elsewhere and typically not reported as part of the population. Sixty-three of the about 100 were sent back to prison for release violations, to be returned to the MSOP afterward. An additional 37 who are developmentally disabled or elderly are in different facilities, including three in a state nursing home.

More treatment in prison

Both prison-based treatment and the MSOP provide group therapy, classes and other meetings. But the MSOP provides less treatment at a higher cost. According to prison officials, it costs about \$100 a day to treat and house a sex offender in prison. In the MSOP, it costs more than \$350 a day.

While the state says MSOP residents get five to 18 hours of treatment weekly, treatment records released by patients show that many got only five to six hours. Margretta Dwyer, former director of a sex offender outpatient program at the University of Minnesota and a volunteer adviser to MSOP residents, surveyed patients and came to the same conclusion.

"It averaged out around 5 1/2 hours per week, which makes it more like outpatient treatment," said Dwyer, a critic of the program. In contrast, Lino Lakes prison offers a minimum of 12 treatment hours weekly, according to the Corrections Department and former inmates.

The disparity widens when breaks are factored in. The MSOP has monthlong breaks between "trimesters," each of which contains its own weeklong break. That adds up to almost four months a year without treatment -- a deficiency cited by the Department of Human Services' own Licensing Division.

In contrast, Lino Lakes prison has four weeks of breaks a year.

A 2005 report by the Vermont Legislative Council concluded that Minnesota "is essentially warehousing sex offenders in mental health facilities at a cost far higher than that to incarcerate them in prison."

In most ways the MSOP is indistinguishable from prison, with cell blocks and lockdowns for searches. Residents earn modest wages cleaning bathrooms or making signs for state office buildings. They can also work out in the gym, read in the library and visit a computer room, though it lacks Internet access.

The MSOP counts work, classes and exercise as treatment because each is therapeutic, said assistant commissioner Koestler, who added

each is therapeutic, said assistant commissioner Kooistra, who added that the number of breaks is something "we're going to look at." But he said that the breaks are more than the term implies.

"What's going on during that time is a lot of assessment, a lot of team meetings," Kooistra said. "There's an increase in patient activities," such as work and recreation. "It's not like everybody's watching TV."

Administrators say that constant supervision also is part of their treatment, done mostly by "security counselors" trained to guard patients and document day-to-day behavior.

Growing uneasiness

Last year, the MSOP published a mission statement: "To promote public safety by providing a safe and secure environment in which civilly committed sex offenders are offered the opportunity to participate in high-quality treatment programs that enhance the success of their re-entry into society."

In theory, then, eventual releases from the program are a given. But in February, Ann LaValley-Wood, the assistant clinical director, wrote in a memo to a patient that "the focus of the program is not completion. It is consistent demonstration of behavioral change."

As the program grows older and larger, so too, critics say, grows the distance between its promise and what it delivers.

Dr. Michael Farnsworth, the psychiatrist who helped design the program, quit his post after the 2003 exchange between Pawlenty and Hatch, saying the MSOP was "mired in politics." Farnsworth said the state has a dilemma: "How do you release somebody after building them up as monsters?"

The MSOP's rapid growth has forced the Legislature to appropriate additional money for it in every bonding bill since 2003. Berglin said that meanwhile the state has cut millions from programs for at-risk kids -- the pool from which experts say many sex offenders emerge.

"You'd have to conclude that the only people we're concerned about in the state of Minnesota during the past four years are [committed] sex offenders," Berglin complained during one hearing. Other legislators have asked why treatment costs so much less in prison, where 83 offenders have completed the two- to three-year program since 2002.

Last fall, Dennis Benson, then deputy commissioner of corrections, told a House-Senate subcommittee that the prison system offers

told a House Senate subcommittee that the prison system offers better "economy of scale" -- larger facilities and more inmates to spread out the costs.

Benson said corrections officials were castigated after the Sjodin killing for referring too few offenders for possible civil commitment - only eight in 2001. He said employees "were accused of saving money -- all kinds of what I think are ridiculous accusations." After Sjodin, he said, "we tried to tighten it up," jumping to 170 referrals in 2004.

"We are trying to put the right people through the process so that we don't have another tragedy," he said.

Berglin replied: "When it was eight or 13, I said it wasn't enough. But I didn't think that meant we'd get 150." In an interview, she added: "The vast majority of sex offenders in this state are not committed. They're living out in the community, and for the most part successfully. ... You know, it's very possible that some of the people who have been committed would have been in that [group]."

This spring the state appointed Benson to head the MSOP. Almost immediately he and some legislators toured Wisconsin's program for civilly committed sex offenders. The program has discharged 14 people after what was deemed successful treatment. An additional 19 won release in legal challenges or risk reassessments, according to director Steve Watters.

Of those 33, only two have reoffended sexually, which Watters attributes partly to the close tabs kept on those transitioning to freedom.

Benson said he'd like to model more of the MSOP after Wisconsin's program.

A 'Pandora's box'?

In 2006 the MSOP's citizen review board observed that the program "is beginning to look like a black hole. ... There has to be a way to assuage the public's fear while providing a genuine therapeutic intervention."

A former member of that board, retired state District Judge Linn Slattengren, said that "the system is so restricted by political pressures that some offenders are effectively imprisoned for life" after committing crimes that wouldn't merit that sentence in criminal court.

Slattengren said the system fails to distinguish between those who belong there and those who don't.

"There were a large number of patients who ought to be restrained indefinitely. There were a small number who should never have been sent there in the first place, and some who society no longer needed to restrain in an institution," Slattengren said.

Testifying to Berglin's committee, Eric Janus, president of William Mitchell College of Law, argued that the civil commitment of criminals is a "Pandora's box" that could reach beyond sex offenders.

"We as a society will be locking people up for years, based not on a crime that they committed ... but because they pose a risk, and we think they might [someday] commit some undefined, unspecified crime," said Janus, author of "Failure to Protect -- America's Sexual Predator Laws and the Rise of the Preventive State."

Some experts say the emotion evoked by sex crimes makes it hard to craft policies that recognize differences among offenders or the pervasiveness of sexual violence.

"We can't incarcerate and punish our way out of this problem; it doesn't get at the root causes," said Nancy Sabin, director of the Jacob Wetterling Foundation, named for the St. Joseph, Minn., boy who was abducted in 1989 and never seen again.

"Where are these guys coming from? They're coming from our own homes," Sabin said. We have to own the problem so we learn how to get past the hysteria in order to find better solutions."

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Treatment, or shadow prison system?

By Nancy Barnes, Editor, Star Tribune

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Larry Oakes, our longtime northern Minnesota correspondent, regularly drives through Moose Lake, home to one of the state's treatment centers for sexual offenders. He has seen the place grow over time, and he became curious about who was in there and why.

That curiosity led to a three-part series, starting today, exploring

why Minnesota has become the nation's leader in civil commitments of men who have completed their prison sentences but have been judged to pose an ongoing risk for sexual violence. On a per capita basis, Minnesota has more offenders in its Sex Offender Program (MSOP) than any other state and is second in raw numbers only to California, which has six times the population.

One major reason: Unlike other states with similar systems, no one in Minnesota has been released from treatment.

That raises some important questions about whether this is really a treatment program or a shadow prison system.

This project was not particularly popular in our newsroom. No one wants to see another case like that of Dru Sjodin, who was murdered in 2003 by a recently released sex offender. Her case resulted in a surge in the number of offenders sent to the program. Earlier that year, controversy over the possibility of someday easing certain offenders back into the community prompted Gov. Tim Pawlenty to issue an order that no one be released unless required by law or by a court. That order still stands, and Pawlenty declined to answer questions about the system.

"There's a justifiable reaction to these crimes from the public and state officials -- never again," said Tom Buckingham, a senior editor who worked on this project. "But if the MSOP is supposed to be the answer to 'never again,' it has to have accountability and some demonstrable success. Otherwise, the courts could rule at some point that it's merely a parallel prison system that must be disbanded."

I urge readers to put aside their emotional responses to the question of sex offenders -- I respond that way myself -- and read these stories to get a true understanding of what is happening here. If our society wants to throw away the key, lawmakers and judges have that power. But in Minnesota, prisoners are being committed based on a consensus of psychologists. They are treated, with the stated goal of allowing them to reenter society, but never released. Meanwhile, the costs to taxpayers are staggering.

"We're questioning whether this is a smart way of dealing with sexual offenders," Oakes said. "Everyone knows sexual violence needs to be dealt with, but a lot of people who examine this program come away with pointed questions. The MSOP costs three times more than treatment given in prisons. So far, the treatment has never ended for anyone in the MSOP except when they die. It puts the taxpayer on the hook forever."

Oakes spent many months reporting this story. He faced difficulty getting information on the residents of the MSOP, because the state took the position that they were patients and thus their records were private. He had to go directly to the patients and ask them to release their records.

Last month -- after nearly two years of trying -- he was allowed to tour one of these facilities.

Many of the patients you will read about over these three days committed terrible crimes. None of us would want to see them on the streets again unless they receive successful treatment. But the parameters under which commitment is allowed are expanding, raising the prospect of an ever-widening population locked up indefinitely.

Some patients have been detained, first in prison and then in the MSOP, since they were juveniles. And two didn't actually commit a sex crime -- they are there for sexual obsession and stalking and the fear that they could rape or molest someone.

Oakes has covered some heinous crimes involving sexual offenders -- he knows the danger they create for society. "I've seen the damage that predators can do. ... I don't feel sympathetic to them. It's the system that needed examination, not because it is treating sex offenders poorly, but because of the effect on taxpayers and because of the legal template it creates. It can grow into something larger."

Everyone fears that someone released from the MSOP could commit a new crime. Our role in reporting this project is not to suggest that this fear is unfounded; it's to raise questions about the way the state has responded to it.

http://www.geocities.com/three_strikes_legal/Minnesota.html

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