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Sex Offense Civil Commitment

Minnesota's Failed Investment and the \$100 Million Opportunity to Stop Sexual Violence

This Report was produced by the Sex Offense Litigation and Policy Resource Center (SOLPRC) at Mitchell Hamline School of Law, Eric S. Janus, Director, in collaboration with the \$100 Million Committee.

The views expressed in this report are those of its authors, working under the direction of Eric S. Janus, Director, Sex Offense Litigation and Policy Resource Center, and do not necessarily reflect the views of Mitchell Hamline School of Law (MHSL), the MHSL community, or others who assisted in its preparation.

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KEY FINDINGS

- **Minnesota spends over \$100 million each year on Sex Offense Civil Commitment (SOCC)**, administered by the Department of Human Services (DHS). SOCC is by far the most expensive intervention in the sexual violence prevention arsenal.
- **SOCC**, which focuses on preventing a small fraction of recidivist offenses, **neither addresses nor repairs the vast majority of sexual harm in Minnesota.**
- Researchers have found that **SOCC has “no discernible impact” on the incidence of sexual violence.**
- Based on available data, in recent years **the State’s support of primary prevention** (interventions designed to prevent sexual harm in the community *before* it occurs) **is less than 2% of the resources given to SOCC.**
- Most states do not have SOCC schemes. Among the minority of states that have these laws, Minnesota is an outlier. **Minnesota’s SOCC program, called the Minnesota Sex Offender Program (MSOP), has the highest number of civilly committed individuals per capita of any state in the country with one of the lowest rates of discharge.**
- As of September 1, 2023, **only 21 of the 946 people committed to MSOP have been fully discharged from the program (~2%), while at least 94 have died during their commitment (~10%).**
- As of September 19, 2023, **74% (557) of the approximately 747 people detained in MSOP have been there for over a decade**, 48% (364) have been in MSOP for over 15 years, 18% (138) have been detained for over two decades, and 8% (62) have been committed to MSOP for over 26 years.
- Unlike most states with SOCC, **Minnesota does not regularly review detainee risk levels to assess the feasibility of safe reentry into the community.** This increases the risk that detainees who could be moved to a less restrictive and less expensive setting remain in confinement longer than necessary, and thus longer than constitutionally permissible.
- **MSOP detainees wait an average of 625 days for a final decision to be made on their petitions for transfer to a less restrictive environment or discharge.** This also increases the risk that the most expensive and restrictive prevention resource will be utilized unnecessarily.
- Even after a court has ordered transfer to a less restrictive environment, in recent years **detainees have waited years for transfer.**
- Although courts make the final decisions about detainee petitions, **MSOP policies and recommendations by MSOP’s clinical leadership significantly influence decisions about transfer and discharge. Both the courts and MSOP thus bear responsibility for the unnecessarily low rates of transfer and discharge.**
- Despite decades of critique by experts in the legal and treatment fields, **efforts to incrementally reform Minnesota’s SOCC program have failed, leading to growing calls from diverse stakeholders to dismantle Minnesota’s SOCC scheme and reallocate its multi-million-dollar budget to more effective prevention, support, and law enforcement approaches. Navigating the toxic politics around sex crimes may require a collaborative problem-solving process to forge a durable solution to this enduring problem.**

EXECUTIVE SUMMARY

Sexual violence is a pervasive problem that causes devastating harm. Despite limited data collection and substantial underreporting, Minnesota has gathered data on sexual and intimate partner violence throughout the state that show an entrenched social and systemic problem.² In 2005, a study estimated that in a single year more than 61,000 Minnesota residents were sexually assaulted.³ Data from 2010 through 2014 show “steady numbers” of hospital-treated sexual violence cases across the state.⁴ In 2016, another study found that 5.6% of youth surveyed, including 2.6% of males and 8.6% of females, reported experiencing sexual abuse.⁵ Most recently, a 2022 student survey found that by eighth grade, at least 8% of Minnesota youth have already experienced sexual violence victimization.⁶ By eleventh grade that figure grows to 16%.

Government response to sexual violence is critical for the prevention of future violence and the healing and wellbeing of survivors. While the problem of sexual harm is recognized by Minnesota's agencies and political representatives, their response has been largely reactive and ineffective. Instead of preventing sexual violence before it occurs through evidence-based community interventions, education, and support, Minnesota has devoted a large portion of its prevention resources to indefinitely incapacitating almost 1000 individuals based on predictions about their likelihood to cause sexual harm in the future.

Instead of asking “*How can we best prevent incidences of future harm?*” the state has asked “*How can we lock up the people we fear the most?*” Empirical research tells us that those are not the same question, and the state's approach has led us down an expensive path that fails to address sexual violence broadly and effectively. This report challenges Minnesota's allocation of prevention resources, with a particular focus on the harms and missed opportunities caused by the extraordinarily disproportionate allocation of resources to Sex Offense Civil Commitment (“SOCC”) and the Minnesota Sex Offender Program (“MSOP”).⁷

SOCC, enacted in its current form in the 1990s, is indefinite detention for individuals labeled with a “mental disorder or dysfunction” and assessed as having a “high

probability” of committing future sexual harm. A central feature of Minnesota's SOCC law is that it confines people after they have completed their criminal sentences. The “dangerousness” determinations are based on risk assessment algorithms that use an individual's prior history and personal characteristics. But these tools are prone to bias and are based on generalizations from research about group risk, and therefore yield high error rates.⁸

The harsh reality is that instead of making us safer, the state's attempts to predict future crime have created a new form of incarceration, disproportionately confining people of color based on group-based assessments of what they might do at some point in the future. These laws have targeted LGBTQ+ community members in the past, and there is evidence that this community is disproportionately targeted even now.⁹ Custody in SOCC has no end date, and the people who are committed to these facilities are about five times more likely to die there than to be released.¹⁰

Thirty states have chosen to address sexual violence without enacting any form of SOCC.¹¹ Among the twenty states that have an SOCC program, Minnesota is an outlier, notorious for the number of people committed, the extended length of confinement, and the low rate of reintegration into the community.

In Minnesota, SOCC is typically applied to those who have been convicted of a sex crime and already completed their criminal sentence.¹² Commitment proceedings often occur around the time that someone is set to be released from prison. Once someone is committed by a court, they are housed in secure prison-like¹³ facilities run by MSOP, which is administered by Minnesota's Department of Human Services (“DHS”). MSOP's stated purpose is to provide treatment services to individuals who are at risk of reoffending.¹⁴ In early court cases, the state defended the constitutionality of its SOCC scheme by emphasizing the program's anticipated duration of less than three years for “model patients.”¹⁵ Contrary to the state's representations in court, for most people commitment to MSOP constitutes an unofficial, but very real, life sentence. This “life sentence” takes place after someone has already served the time deemed appropriate by the criminal courts.

This report explores three central problems with Minnesota's SOCC legislation¹⁶ and its implementation in MSOP:

- Civil commitment's reduction of sexual violence is vanishingly small compared to its expense, over \$100 million per year. The state's commitment of more than \$100 million per year to sexual violence prevention is salutary, but other approaches would leverage those resources far more effectively than MSOP.
- SOCC—the statute, the judicial system, and the program it embodies—has failed to serve the purported purpose of treating individuals to facilitate safe community re-entry. The state commits too many, and keeps them too long, compounding SOCC's ineffectiveness with civil and human rights violations.
- SOCC embodies a dangerous principle: that impassioned majorities may indefinitely detain a reviled and degraded “other” in the name of preventing some future harm. SOCC thus extends and valorizes a deplorable history of laws targeting racial and sexual minorities, and persons with disabilities.

This report makes recommendations for policy changes and long-term goals that require legislative action. Ultimately, this report concludes that incremental changes to Minnesota's SOCC program will not fix its problems. Instead, to *enact real change, Minnesota's Legislature should repeal the state's SOCC law, implement procedures to safely sunset the incarceration of the 747 people in MSOP's secure facilities, and reinvest MSOP's \$100 million annual budget into community and victim support, sexual violence primary prevention efforts, and effective efforts to resolve sexual violence crimes and hold those who harm others accountable through restorative practices.*

BACKGROUND

The History of Sex Offense Civil Commitment (“SOCC”) and the Minnesota Sex Offender Program (“MSOP”)

The United States has seen two generations of sex offense commitment laws, each with distinct features. The first-generation laws, developed in the late 1930s, were often referred to as “sexual psychopath laws.”¹⁷ These laws were created in response to a series of high-profile sex crimes that were extensively covered by local and national press.¹⁸ Unlike current SOCC laws, the sexual psychopath laws were created as an alternative to the criminal justice system, for those considered “*too sick to be punished.*”¹⁹ They often claimed to identify sex offenders “before” they struck, in contrast to current laws that are aimed exclusively at recidivist sex offending.²⁰

The term “sexual psychopath” did not refer to a psychiatric diagnosis; instead, the term was created by lawmakers and referred to “persons accused of a wide range of sex offenses, including rape, sodomy (anal and oral sex), indecent exposure, exhibitionism, or sex between adults and children or teenagers.”²¹ Although sexual psychopath laws were “often condemned by experts at the time for being overly broad,” “liberal politicians viewed civil commitment favorably because it treated the problem of sex offending as a medical problem,” and was considered more humane than criminalization.²² Even so, the sexual psychopath “medical facilities” resembled conventional jails and prisons more than hospitals.²³

Researchers have concluded that “police, prosecutors, and judges enforced sexual psychopath laws disproportionately against . . . men who were suspected of being gay/bisexual and [men who have sex with men]. Transgender and gender-nonconforming people of color were often targeted as well.”²⁴ Use of these laws against closeted gay men for their consensual adult relationships is well documented.²⁵ Current SOCC laws are vulnerable to the same abusive and discriminatory implementation.

The sexual psychopath laws faced extensive constitutional challenges by LGBTQ activists and anti-psychiatry movement advocates who argued that the laws were discriminatorily applied, overused involuntary psychiatric commitment, and produced overcrowded and unsanitary living conditions in facilities that violated detainees' civil and human rights.²⁶ Eventually, after damning reports by psychiatric and legal organizations, these laws were repealed or fell into disuse.²⁷

- Minnesota was an early adopter of the sex psychopath trend. In the late 1930s, Minnesota enacted a law allowing for the civil commitment of individuals with “psychopathic personalities.”²⁸ As originally enacted, Minnesota’s Psychopathic Personality Act defined persons subject to commitment in extraordinarily broad terms.²⁹ In 1939, the Minnesota Supreme Court narrowed the law to save its constitutionality, limiting its application to individuals with “an utter lack of power to control [one’s] sexual impulses.”³⁰ “The statute was used primarily as an alternative to criminal punishment.”³¹ Commitments under this statute eventually dwindled: “By 1970, civil commitment under the ‘psychopathic personality’ law had dramatically decreased; in the 1970s, only thirteen individuals were civilly committed, and in the 1980s, only fourteen individuals were civilly committed.”³²
- In the late 1980s and early 1990s, the second generation of SOCC laws arose out of a well-documented moral panic completely untethered from empirical evidence about sex offenders. At the time, the media fixated on a few particularly horrific sex crimes committed by men recently released from prison, reinforcing the false narrative that America faced an epidemic of sexual predators.³³ In Minnesota, this led to the resuscitation of the earlier “psychopathic personality” statute. This time, the purpose was not to divert individuals in need of mental health treatment from criminal adjudication. Instead, a task force concluded that Minnesota’s Psychopathic Personality Statute could be used to extend confinement beyond criminal sentences for those “too dangerous to be released.”³⁴ This application quickly spurred litigation challenging its constitutionality.

- In 1994, after the Minnesota Supreme Court reversed a commitment of a notorious offender, on the grounds that there was no proof of an “utter lack” of control over sexual impulses,³⁵ then-Governor Arne Carlson called a special session of the Legislature. In a session lasting just 97 minutes, the Legislature unanimously (1) modified the “psychopathic personality” law to incorporate the “utter lack of control” standard, and (2) passed a new statute with an alternative path to civil commitment that circumvents the narrowed “utter lack” of control construction. That new law, the “Sexually Dangerous Person Act,” broadened the definition of persons subject to commitment. Today, both the Sexually Dangerous Person Act and the older law, now named the Sexual Psychopathic Personality Act, are in use, and local county attorneys often invoke both statutes in petitions for commitment to MSOP.

Under the amended Sexual Psychopathic Personality Act, which codified the judicial holding in *State ex rel. Pearson v. Probate Court of Ramsey County*,³⁶ a person with a sexual psychopathic personality is defined as a person who:

- is irresponsible for personal conduct with respect to sexual matters due to emotional instability, impulsive behavior, lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts;
- has engaged in a habitual course of misconduct in sexual affairs;
- exhibits *an utter lack of power* to control the person’s sexual impulses; and
- as a result, is dangerous to others.³⁷

Under the Sexually Dangerous Person Act, the Legislature defined a “sexually dangerous person” as a person who:

- has engaged in a course of harmful sexual conduct;
- has manifested a sexual, personality, or other mental disorder or dysfunction; and
- as a result, is *likely* to engage in acts of harmful sexual conduct.³⁸

The new Sexually Dangerous Person Act omitted the requirements that persons exhibit an “utter” lack of power to control their sexual impulses and have a “habitual” history of sexual misconduct.³⁹

These changes facilitated a dramatic expansion of SOCC in Minnesota, sometimes at an exponential pace. Although concerns about MSOP’s rapid growth were raised as early as 2002, political backlash stifled reform efforts with political figures speaking openly against discharging individuals committed to MSOP.⁴⁰ In early 2003, then-Governor Tim Pawlenty issued an Executive Order requiring the state to ensure that “no person who has been civilly committed under Minnesota law as a sexually dangerous person or as a person with a sexual psychopathic personality is discharged into the community unless required by law or ordered by a court.”⁴¹ Governor Pawlenty’s chief of staff was quoted as saying, “the governor doesn’t want these guys to get out, and he’s made that clear ever since he was running for office.”⁴²

The expansion of Minnesota SOCC further accelerated in 2003, following the brutal rape and murder of a young

woman, Dru Sjodin, by a man who had been recently released from prison and assessed as a “level 3” risk, but was passed over for civil commitment.⁴³ Following the Sjodin murder, the Minnesota Department of Corrections (“MNDOC”) conducted an “extensive review of sex offenders either incarcerated in prison or living in the community after release from prison” and made an additional 236 referrals for civil commitment, eighteen times the number of referrals made the previous year.⁴⁴ Thirty-one percent of those referrals were ultimately committed.⁴⁵ MNDOC also established a new referral process which led to a massive increase in the number of people it referred to county attorneys for possible civil commitment. As a result, from 2004 to 2008, MNDOC made approximately 158 referrals per year (six times the referral rate from the previous twelve years).⁴⁶

The charts below show these dramatic increases in referrals and commitments. Figure 1 shows a major increase in referrals for commitment beginning in December of 2003, and Figure 2 shows the precipitous increase in commitments beginning in 2004.

FIGURE 1
Referrals from MNDOC to be evaluated for SOCC⁴⁷

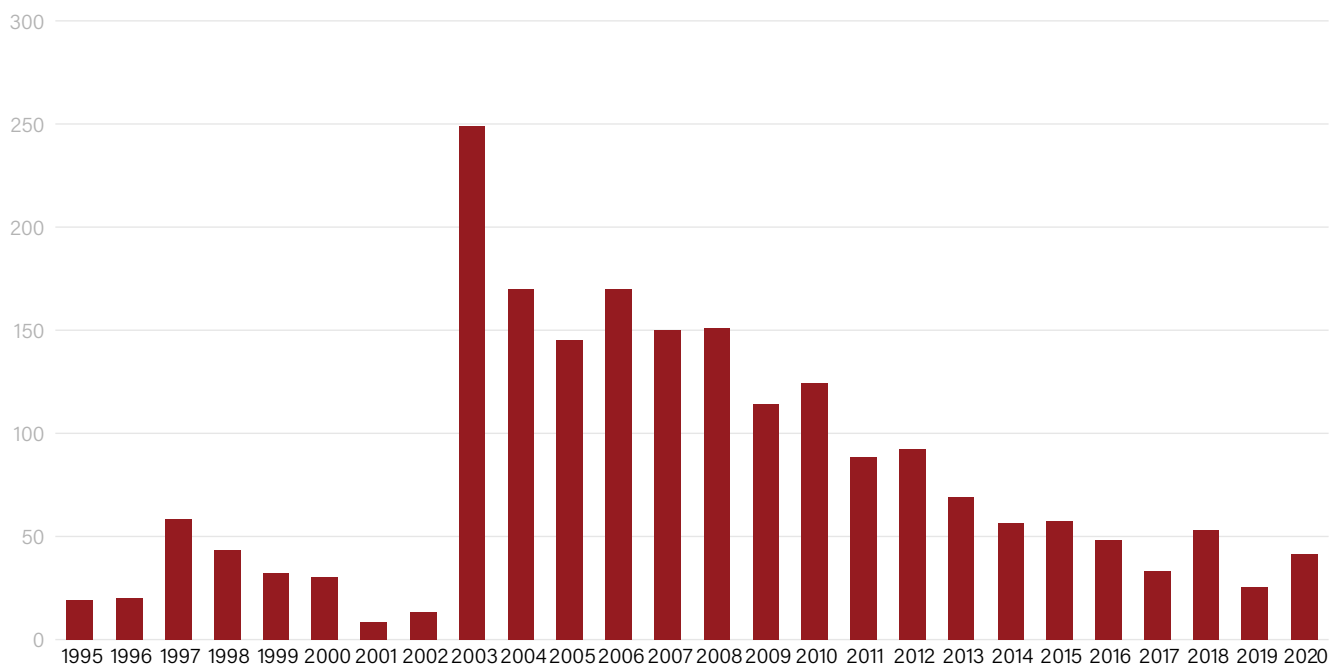
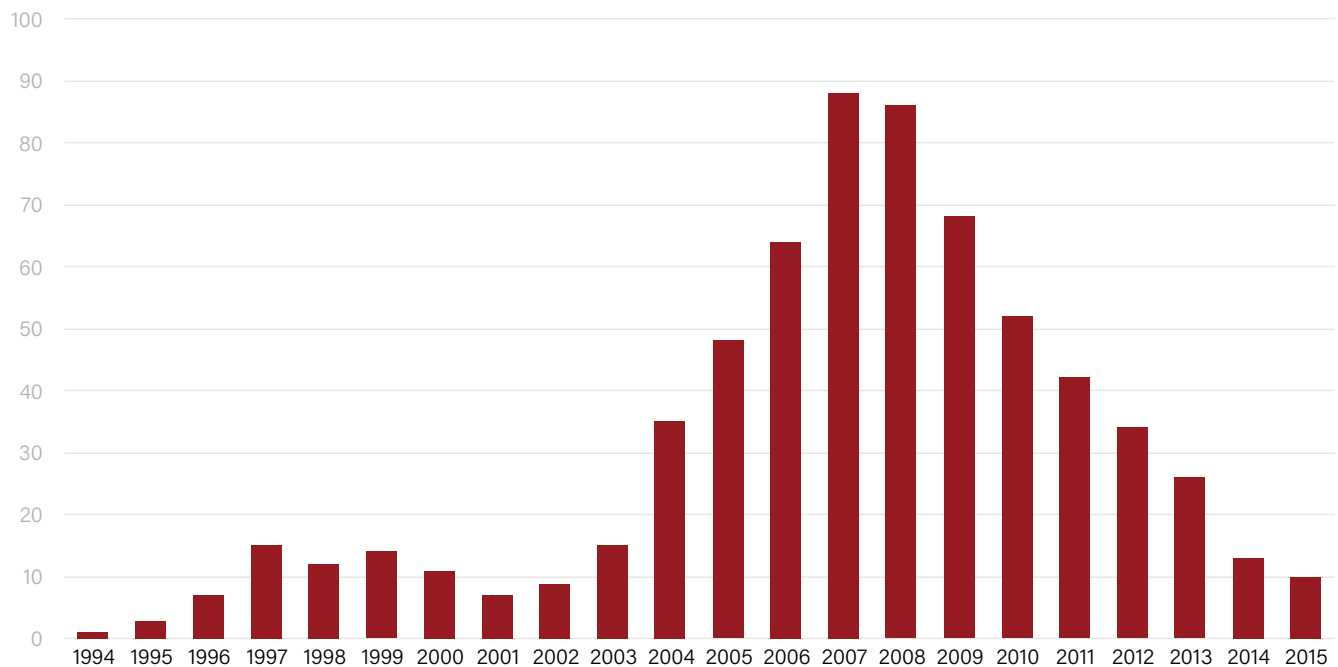


FIGURE 2
Commitments to MSOP by Year⁴⁸

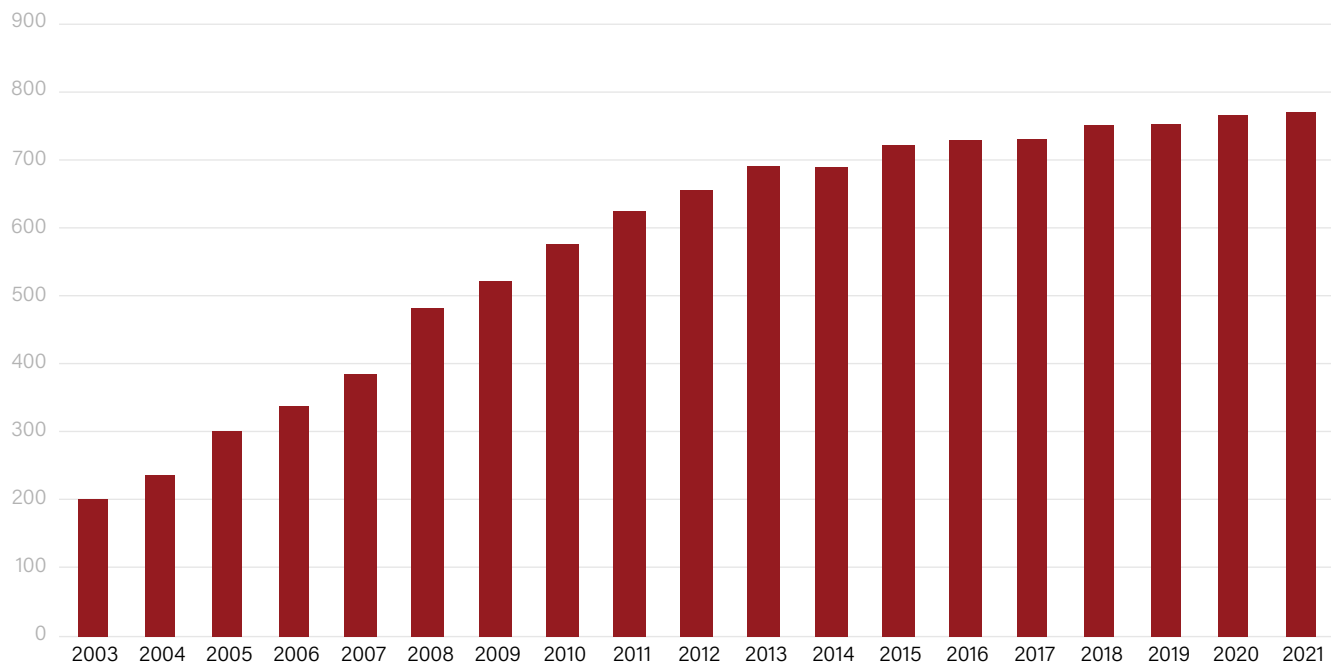


Although the state and those who support SOCC claim that commitment is scientifically based and captures only “the worst of the worst,” the wide variation (temporally and geographically) in the rate of referrals and commitments belies this argument. For example, in 2001 fewer than ten individuals were committed to MSOP, while several years later, in 2007, over eighty people were committed. This significant increase was not based on a radically different offender pool, nor was it based on any changed legal standard for commitment. Instead, in the wake of Dru Sjodin’s murder, reignited moral panic created political pressure for an exponential increase in commitments to MSOP. Over several years, as the panic receded, commitment rates returned to pre-2007 levels.

Commitment rates have also varied significantly by county, raising concerns that local politics and the commitment philosophies of local prosecutors—rather than scientifically-sound predictions of future violence—dictate the number of commitment petitions. A *MinnPost* article in 2015 that reviewed two decades of SOCC commitment data found that “[t]he most dramatic spikes [in commitments following Dru Sjodin’s murder] took place in Minnesota’s rural counties, which commit sex offenders at disproportionately high rates relative to their populations. . . .”⁴⁹

With increased commitments and no discharges, the population of individuals civilly committed to MSOP soared in the mid-2000s and has remained high ever since, as shown in Figure 3 below.

FIGURE 3
MSOP Client Census as of June 30 Each Year⁵⁰



Running parallel to civil commitment's expansion over the last three decades, Minnesota has also increased criminal sentences and post-confinement supervision for those convicted of sex offenses.⁵¹ For example, in Minnesota, the average prison sentence for First Degree Criminal Sexual Conduct increased from 75 months in 1988 to 190 months in 2017.⁵² And in 2005, a life sentence became possible for a single "heinous" sex crime.⁵³

At the time of its enactment in the 1990s, Minnesota's SOCC scheme was justified as a stop-gap measure, necessary to compensate for criminal sentences that were considered too short. Given the expansion of criminal sentences and post-carceral supervision for sex crimes, the need for any such extraordinary measures has long passed. Yet, despite the material lengthening of criminal penalties, Minnesota's program of civil commitment continues to grow, contradicting the solemn promises of legislators that this form of extraordinary confinement would soon disappear, restoring the criminal justice system to its primary role in holding harm-doers accountable.

The Legal Anomaly of Sex Offense Civil Commitment

SOCC, a lengthy form of preventive civil detention, is a legal anomaly. Like incarceration in jail or prison, involuntary civil commitment is a "massive curtailment of liberty," implicating fundamental rights such as the "freedom from physical restraint."⁵⁴ But criminal incarceration and civil commitment are given different legal treatment by courts.

The criminal justice system provides certain constitutional legal protections to those who are accused of a crime. These include the double jeopardy clause (protection against being tried for the same crime twice), the ex post facto clause (protection against retroactive punishment for prior conduct that was legal at the time it occurred), a high burden of proof (the state must prove guilt of a specific crime "beyond a reasonable doubt"), and the right to a jury trial, among others.

In the civil commitment context, these foundational protections are turned on their heads. Instead of requiring proof of a specific past criminal act, SOCC locks people up based on a prediction of some unspecified dangerous behavior at some unspecified point in the future. SOCC confinement also dispenses with the procedural protections applied in the criminal context. The government is allowed to evade these sacred constitutional rights because it claims that the purpose of SOCC is to provide *treatment, not punishment*.⁵⁵ “The purpose [of sex offense civil commitment] must not be punitive, as punishment is reserved for the criminal system.”⁵⁶

Still, the United States Supreme Court has held that civil commitment complies with the Constitution only when it meets certain criteria. These include:

- the person to be committed must have a qualifying “mental disorder”;⁵⁷
- as a result of the mental disorder, the person to be committed is a danger to themselves or others;⁵⁸
- the commitment program must promise to provide treatment, if available;⁵⁹ and
- the nature and duration of commitment must bear a reasonable relationship to the purpose of the commitment (the “durational principle”). When the conditions justifying commitment (danger and mental disorder) end, liberty must be restored.⁶⁰

Where SOCC statutes and treatment programs persistently fail to meet these constitutional requirements, they should be swiftly branded as unconstitutional deprivations of liberty and terminated. Our conclusion is that the Minnesota SOCC scheme fails all these standards, and most egregiously the last. For that reason alone, it should be terminated in an orderly, but prompt, manner. But there are further compelling reasons to support the sunset of SOCC. We turn to those next.

SOCC IS A FAILED STRATEGY FOR THE REDUCTION OF SEXUAL VIOLENCE

The Direct Effect of Sex Offense Civil Commitment on Sexual Violence is Minimal

Despite the serious loss of personal liberties entailed by SOCC, researchers have found that SOCC schemes like MSOP do little to reduce sexual violence. Many of SOCC’s flaws are rooted in its exclusive focus on preventing recidivism.⁶¹ As Professor Eric Janus stated in a recent publication, “framing the central question about sexual violence in terms of managing the risk of recidivistic violence presupposes that recidivism is one of the central problems to be managed. It isn’t.”⁶² Although recidivism has come to fill our field of vision on issues of sexual crime prevention, it is an extremely small part of the larger problem of sexual violence.

Contrary to popular misconceptions, sex offense recidivism rates are low

The difference between the touted and actual impact of SOCC laws is partly due to misconceptions about the recidivism risk posed by those convicted of a sex offense.

Contrary to the often quoted and erroneous claim that sex offense recidivism rates are “frightening and high”—with unsupported estimates as high as 80%—those convicted of sex offenses have one of the lowest same-crime recidivism rates across all offender categories.⁶³ A 2019 Department of Justice (DOJ) study tracking recidivism rates of persons released from state prisons in 2005 found that, among those released after serving a sentence for rape or sexual assault, 92.3% were not rearrested for a new sex offense during the 9-year follow-up period, yielding a 7.7% recidivism rate.⁶⁴

Other studies have found similarly low rates for both “low risk” and “high risk” offenders, and that civil commitment provides only small reductions in already low recidivism rates. In a 2013 Minnesota study, Grant Duwe, Director of Research at the Minnesota Department of Corrections, estimated the impact of civil commitment on sex offense recidivism by examining the predicted risk of reoffense among 105 Minnesotans convicted of sex offenses who were civilly committed between 2004 and 2006.⁶⁵ Duwe reported that Minnesota’s four-year recidivism⁶⁶ rate for those convicted of sex offenses and released from prison during that period (instead of being civilly committed) was 2.8%.⁶⁷ He then used standard risk assessment techniques to estimate that the individuals committed to MSOP, had they instead been released after prison, would have had a four-year recidivism rate of 9.2%.⁶⁸ Based on these projected recidivism rates, Duwe concluded that civil commitment of these 105 people reduced the four-year sex offense recidivism rate from 3.2 to 2.8 percent.⁶⁹

In other words, SOCC provides only a minor reduction in the already low rates of recidivist sexual violence in Minnesota.⁷⁰

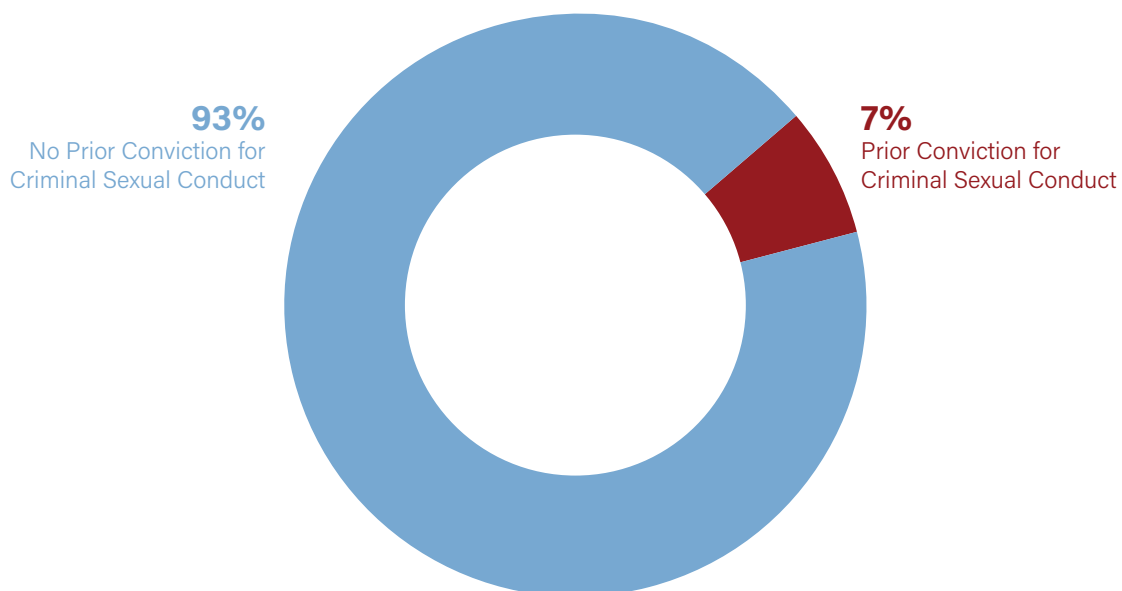
Sex offense civil commitment’s narrow focus on recidivist violence does not address most sexual violence in Minnesota

With its exclusive focus on recidivism, SOCC fails to address most sexual violence in Minnesota. The vast majority of sex offense convictions in Minnesota result from crimes perpetrated by individuals without a criminal record of such conduct. Data by the 2016 Minnesota Sentencing Guidelines Commission found that from 2001 through 2015, 93% of criminal sexual conduct convictions in Minnesota involved defendants with no such prior convictions.⁷¹ Data from New York and Pennsylvania show similar results.⁷²

Further, civil commitment claims to focus on only a small part of recidivism—that predicted in individuals assessed to be “high risk”—and does not address recidivism by the much larger group of individuals assessed to be low to moderate risk. As it turns out, recidivism by the group not subject to SOCC swamps the recidivism prevented by SOCC.⁷³ Thus, SOCC addresses only a sliver of a sliver of sex offense convictions.

FIGURE NO. 4

Criminal Sexual Conduct Convictions in Minnesota (2001–2015)⁷⁴



Finally, recall that the focus of SOCC is almost exclusively on predicted recidivism after a conviction. But convictions represent only a small fraction of the incidents of sexual harm. Studies estimate that sex offenses committed against adults are reported only 14% to 35% of the time.⁷⁵ That figure is even lower for children, with reporting rates estimated to be around 8% to 12%.⁷⁶ Of those offenses that are reported, only about 40% lead to arrests, and an even smaller percentage (an estimated 10%) lead to convictions.⁷⁷ In short, the problem of sexual violence is much broader than recidivistic offending. Yet, for all its expense, SOCC has a vanishingly small effect on even that small portion of sexual violence.

In sum, *SOCC, which typically occurs after an individual has been convicted of a sex crime and completed a prison sentence, simply does not address most sexual violence.* By focusing disproportionate state resources on the long-term incapacitation of a tiny sliver of the problem of sexual violence, we deprive Minnesota of more comprehensive and effective prevention efforts.

Civil commitment has “no discernible impact” on the incidence of sex crimes

Perhaps unsurprisingly given the data on SOCC's limited scope and tiny impact on recidivism, researchers have found that SOCC has no discernible effect on sexual violence in general. Civil commitment is based on the idea that it prevents the “most dangerous” from committing future crimes, and SOCC will therefore decrease the incidence of sex crimes.⁷⁸ On this theory, states with SOCC should have sex crime rates that are lower, other things being equal, than states without SOCC. But a careful comparison of states with and without SOCC shows that civil commitment does not measurably reduce the incidence of sexual crimes.

The most comprehensive study of SOCC programs to date, published in 2013, found that such laws “have had no discernible impact on the incidence of sex crimes.”⁷⁹ The study's authors used two different regression models to compare sex-related homicide, rape, and child sexual abuse

data in states with and without SOCC laws,⁸⁰ and concluded that “neither [regression model] provides discernible evidence of preventive effects.”⁸¹ The study found that “[either there are no preventive benefits associated with these laws, or the benefits are too small to measure with these methods.”⁸² In the end, the 2013 study noted “we believe states could more effectively fight sex crimes by allocating scarce resources elsewhere.”⁸³

A Choice: Devoting \$100 Million Each Year to MSOP Starves More Effective Interventions

Despite data revealing the ineffectiveness of SOCC programs, Minnesota's policymakers invest over \$100 million per year on civil commitment while leaving other critical sexual violence services and interventions, including primary prevention, wanting.

“Primary prevention” strategies are designed to prevent sexual violence before it occurs. Such interventions are essential to any comprehensive sexual violence reduction program because they can be widely implemented at the community level, where even a small reduction in perpetration behavior may have a broad impact on sexual violence reduction.⁸⁴ Yet primary prevention efforts have not received financial support even remotely approximating that given to MSOP.

For fiscal year 2024, Minnesota Department of Human Services (DHS) reported the cost of MSOP per client per day to be \$479 (\$174,835 annually),⁸⁵ an operating cost far higher than community-based interventions, halfway houses, and even incarceration.⁸⁶ DHS has reported that MSOP's total operating budget for fiscal year 2024 will be \$112.3 million dollars.⁸⁷ Given MSOP's large population and low rates of community re-entry, that cost is likely to increase in the coming years.

By contrast, Minnesota has given little funding to primary prevention interventions that might break the cycle of sexual violence. Funding for violence prevention in Minnesota is primarily administered by the Office of Justice Programs (OJP), a division of the state's Department of Public Safety

(DPS).⁸⁸ DPS currently administers two relevant grants: First, the Community Crime Prevention⁸⁹ grant is open to all community-based programs that work towards community safety through crime control and prevention efforts, including sexual violence prevention efforts.⁹⁰ The Legislature appropriated \$1,218,000 for this grant and funds are awarded through a competitive request for proposal process.⁹¹ Second, the Programs for Sexual Assault Primary Prevention⁹² grant is only open to public or private nonprofit agencies that provide sexual assault primary prevention services.⁹³ The Legislature appropriated \$300,000 for this grant, all of which was allocated to the Minnesota Coalition Against Sexual Assault (MNCASA).⁹⁴ MNCASA keeps a portion of the funds for its own operating costs and sub-grants the other half to community organizations.⁹⁵

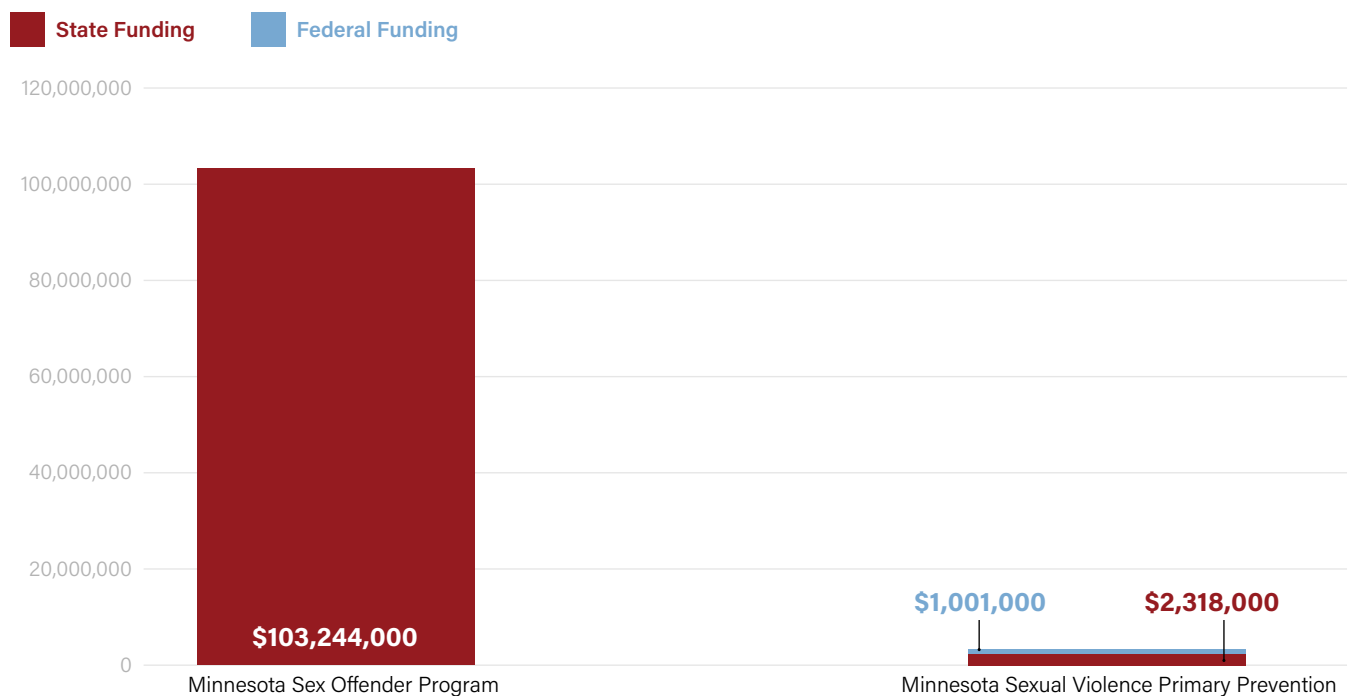
In 2019, the Legislature approved a one-time appropriation of \$750,000 over two years in the Domestic Violence and Sexual Assault Prevention Program grant.⁹⁶ The Minnesota Department of Health administered this grant to six Minnesota-based nonprofit organizations that incorporate community-driven and culturally relevant practices to prevent domestic violence and sexual assault.⁹⁷ Since its completion, the program has not been renewed.⁹⁸

In recent years, the state has also allocated \$50,000 annually for campus sexual violence prevention, response, and outreach.⁹⁹

All told, then, Minnesota spends about \$2 million annually on primary prevention efforts to reduce sexual violence at large.¹⁰⁰ That figure is less than 2% of MSOP's massive annual budget.

FIGURE 5

Illustration of Annual Funding for MSOP v. Funding for Sexual Violence Primary Prevention Programming in Minnesota¹⁰¹



In fact, a substantial portion of the limited sexual violence primary prevention funds utilized in Minnesota comes from the federal government. The Center for Disease Control and Prevention (CDC) provides this funding to the Minnesota Department of Health through two grants.¹⁰² The Division of Violence Prevention provides Minnesota with approximately \$883,000 yearly through the Rape Prevention Education (RPE) grant.¹⁰³ The Center for State, Tribal, Local, and Territorial Support receives approximately \$118,000 yearly through the Preventative Health and Health services Block Grant (PHHS).¹⁰⁴ Even including this federal funding, government spending on primary prevention in Minnesota is dwarfed by the funds dedicated to MSOP. (See Figure No. 5, above.)

The massive funding for MSOP is a poor investment strategy. While SOCC has “no discernible impact” on sex crimes, “primary prevention arguably has the best opportunity to effectuate the biggest change because it has the potential to be widely implemented at the upstream end of the funnel.”¹⁰⁵ Further, research shows that well-designed primary prevention interventions have great potential for the widespread reduction of sexual violence. Canadian researcher Charlene Senn, a social psychologist at the University of Windsor, reported in the *New England Journal of Medicine* on a primary prevention program used to reduce sexual assault on college campuses.¹⁰⁶ The study showed that the incidence of rape was reduced by 50% during the year following the program.¹⁰⁷ Senn and her colleagues concluded that “only eight women would need to have participated in the program in order to stop a nonconsensual, nonpenetrative act, and only 22 women to avert one completed rape.”¹⁰⁸ In terms of sexual violence reduction at large, the results found by Senn and her team dwarf the impact of SOCC.

Although historically many sexual violence primary prevention efforts were focused on women, evidence shows that programs focused on men, who commit close to 90% of all sexual violence,¹⁰⁹ are also critical to breaking cycles of violence. For example, a local non-profit in Duluth, MN called

Men As Peacemakers (MAP) has developed and implemented educational and supportive strategies that prevent violence against women and children.¹¹⁰ Each year, MAP serves approximately 1,050 youth, engages 250 volunteers, and provides presentations, workshops, and training to at least 10,000 people.¹¹¹

By funding SOCC to the detriment of primary prevention programs and research, Minnesota misallocates critical resources, harming our community and hindering our state's progress toward reducing sexual violence. Resource allocation choices make a difference.

CIVIL COMMITMENT AT MSOP

With a current population of 747 detainees,¹¹² MSOP is the largest per capita state SOCC program in the nation.¹¹³ From the time of its creation in 1994 until a federal district court ruled the program unconstitutional in 2015¹¹⁴ (a ruling which was later overturned), no one was fully discharged. Since that time, a slow trickle has begun, but releases are still outpaced by deaths in custody. ***As of September 2023, only 21 people committed to MSOP have ever been fully discharged from the program, while at least 94 people¹¹⁵ have died during their commitment.***¹¹⁶

Minnesota's SOCC scheme is governed by Minnesota Statute Chapter 253D, with commitments and discharges ordered by a court and implemented by MSOP. MSOP has two secure facilities in Minnesota, one in Moose Lake and another in St. Peter. Both facilities have secure perimeters fenced in by razor wire. When civilly committed individuals leave MSOP's facilities for medical treatment, they do so in handcuffs. MSOP also runs a less restrictive third facility, also located in St. Peter, called Community Preparation Services (“CPS”). CPS is located just outside the razor wire of St. Peter's secure facility. As of June 30, 2022, 59% of MSOP detainees were housed at the Moose Lake secure facility, 26% at the St. Peter secure facility, and approximately 15% at CPS.¹¹⁷

Under the Constitution, civil commitment must bear a reasonable relationship to its justification. If a detainee's risk is low, their confinement should be modified accordingly. But MSOP detainees are not regularly reviewed for their risk level and consequent appropriateness of secure confinement. Instead, to be transferred to a less restrictive facility or discharged, the burden is placed on the detainee to initiate a petition to begin a process which takes years and through which few are successful.

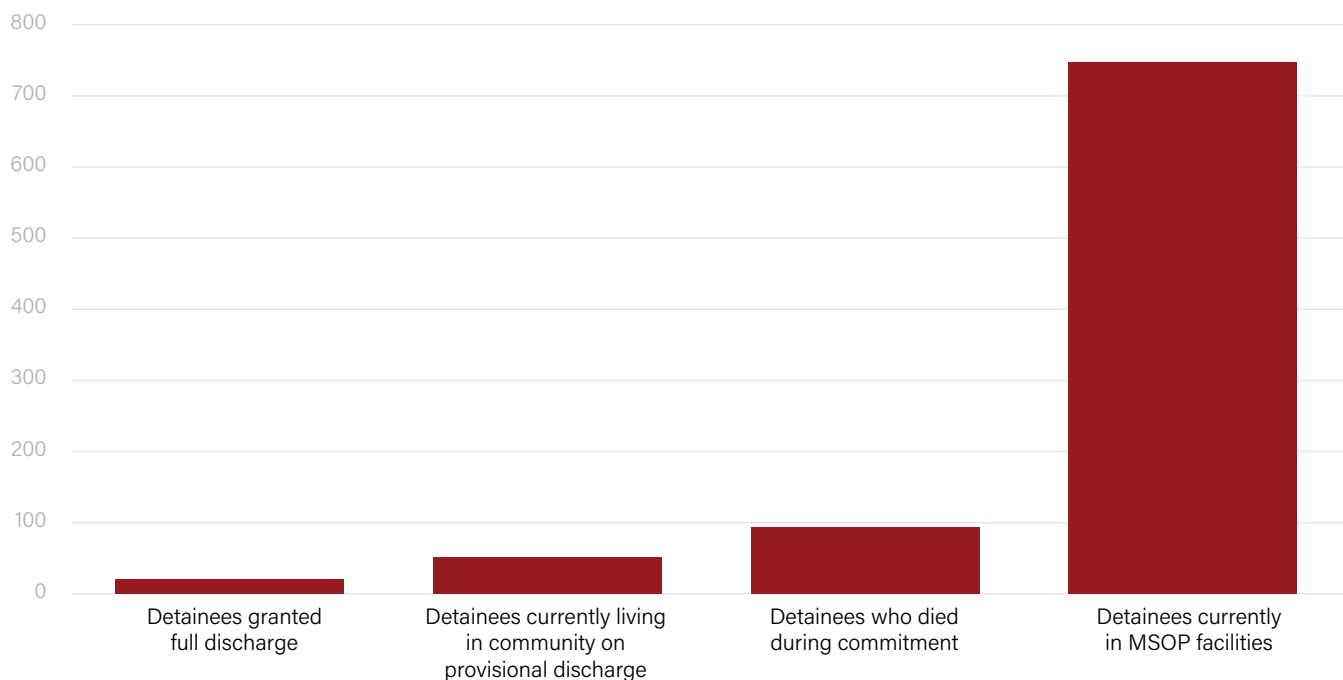
There are three types of commitment step-downs for which those detained can petition: (1) Transfer to the less restrictive CPS facility, (2) provisional discharge, and (3) full discharge. Detainee petitions are initially reviewed by a panel called the Special Review Board ("SRB").¹¹⁸ After conducting a hearing, the SRB issues a report with written findings of fact and recommends denial or approval of the petition to the Judicial Appeal Panel (also known as the Commitment Appeal Panel

("CAP")).¹¹⁹ Any party to the petition process (the detainee, the relevant County Attorney, or the Commissioner of DHS) may then petition CAP for a rehearing and reconsideration of a recommendation of the SRB.¹²⁰ Due to significant backlogs, discussed further below, this process currently takes years to complete.

As of September 1, 2023, a total of 92 people have been granted provisional discharge by the CAP.¹²¹ Of these 92, MSOP's quarterly statistics show that currently 52 individuals are living in the community under provisional discharge and "less than ten" remain in MSOP awaiting placement in the community.¹²² Provisional discharge can be revoked if the conditions of release are violated. In 2021, MSOP Executive Director Nancy Johnston reported that fewer than 10 provisional discharges had been revoked and none of the provisional discharge revocations was due to sexual re-offenses.¹²³

FIGURE 6

MSOP Discharges v. Deaths, as of September 1, 2023¹²⁴



Overall, for the vast majority of MSOP detainees, who have already served a lengthy criminal sentence, there is no clear path to community reentry and little hope of being granted a full discharge.

This reality is in stark contrast to the representations made by the state when the program was created. In the early 1990s, the state touted MSOP's new treatment program as a short-term intervention. MSOP was designed by Dr. Michael Farnsworth, the director of forensic psychiatry for the state of Minnesota.¹²⁵ The program was based on Farnsworth's research and designed to be a relatively short-term step-level program.¹²⁶ To defend the program's constitutionality, the state in 1995 made a formal representation to the Minnesota Supreme Court that an "average patient" was expected to

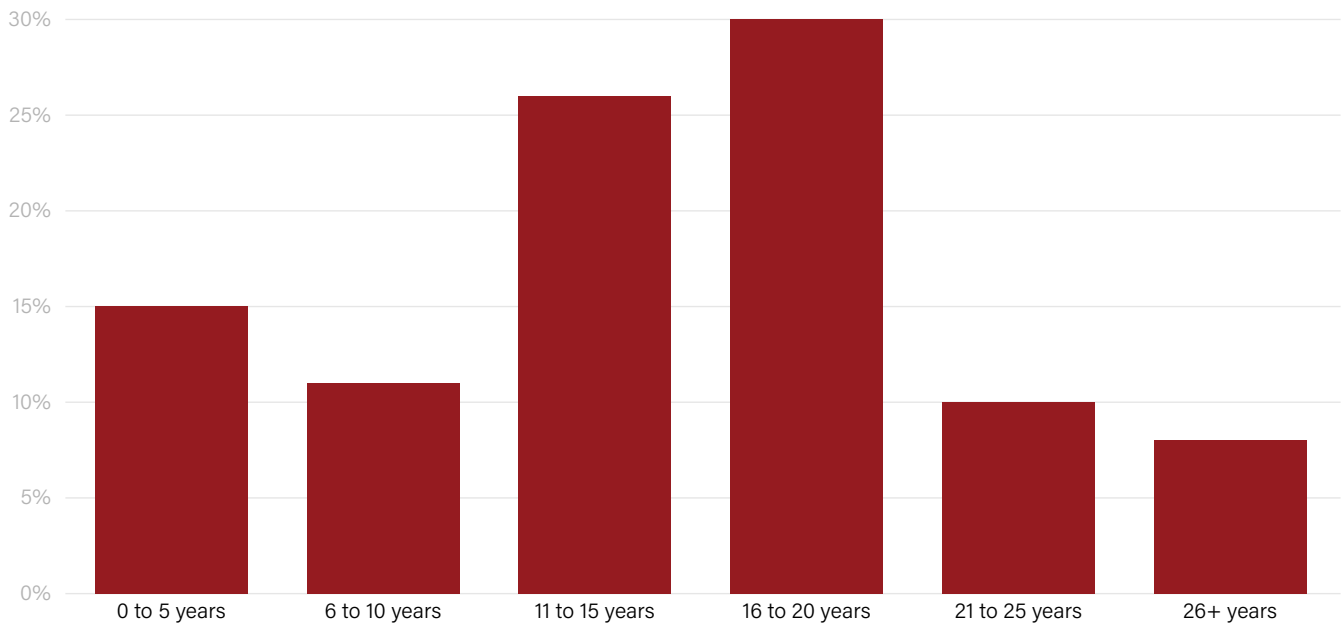
complete the state's treatment program in a "minimum of 24 months."¹²⁷ Treatment officials began backtracking as early as 2002, but only marginally: they then described the length of treatment as at least four years, noting that most patients are unable to complete the program in the minimum period.¹²⁸

As it turned out, **not a single detainee was fully discharged from MSOP in the first twenty years of the program.**

Today, most of the MSOP detainee population has been committed for well over a decade. As of September 19, 2023, 74% (557) of the approximately 747 people detained in MSOP had been there for over 10 years, 48% (364) had been in MSOP for over 15 years, 18% (138) had been detained for over two decades, and 8% (62) have been committed to MSOP for over 26 years. (See Figure 7.)

FIGURE 7

Years in Commitment for MSOP Detainees as of September 19, 2023¹²⁹



Minnesota's SOCC scheme has been widely criticized for the glacial rate of release from confinement. Careful critiques, discussed further below, include reports from the Office of the Legislative Auditor in 2011, a Sex Offender Civil Commitment Advisory Task Force in 2012 and 2013, and a 2015 Federal District Court case, *Karsjens v. Jesson*, 109 F. Supp. 3d 1139 (D. Minn. 2015).¹³⁰

A close look reveals that the low rate of discharge is due to an absence of procedural safeguards in the SOCC statute, administrative bottlenecks in the discharge and step-down petition process, administrative policies which impede releases of non-dangerous individuals, and the social and political pressure to keep detainees in MSOP out of sight and out of mind.

Minnesota's Failure to Provide Adequate Procedural Protections

SOCC programs currently exist in 20 states.¹³¹ However, Minnesota's SOCC statute provides fewer procedural protections and extends civil commitment to a wider range of predicted conduct than other comparable state programs. As a result, Minnesota has become the highest per capita program in the nation (*see* Figure 8) with few discharges (*see* Figure 9) and the third-lowest rate of conditional release among states reporting data (*see* Figure 10).

FIGURE 8
Per Capita Commitments by State as of 2023¹³²

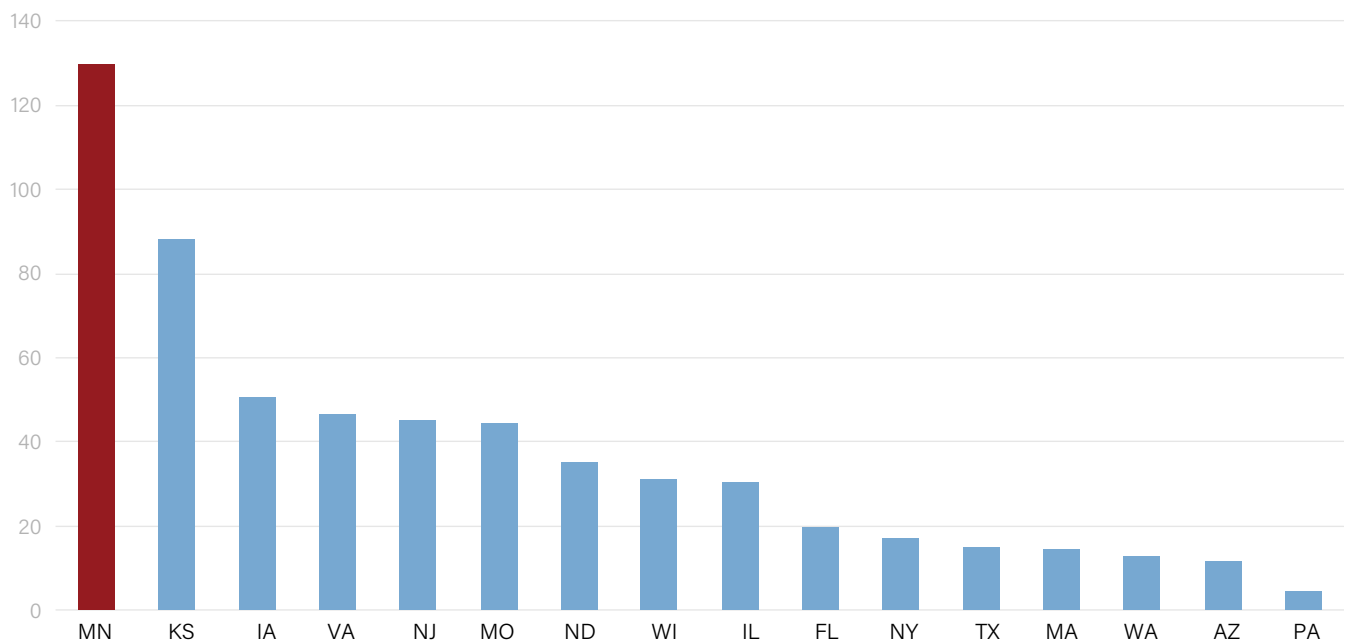


FIGURE 9
SOCC Full Discharges by State as of 2023¹³³

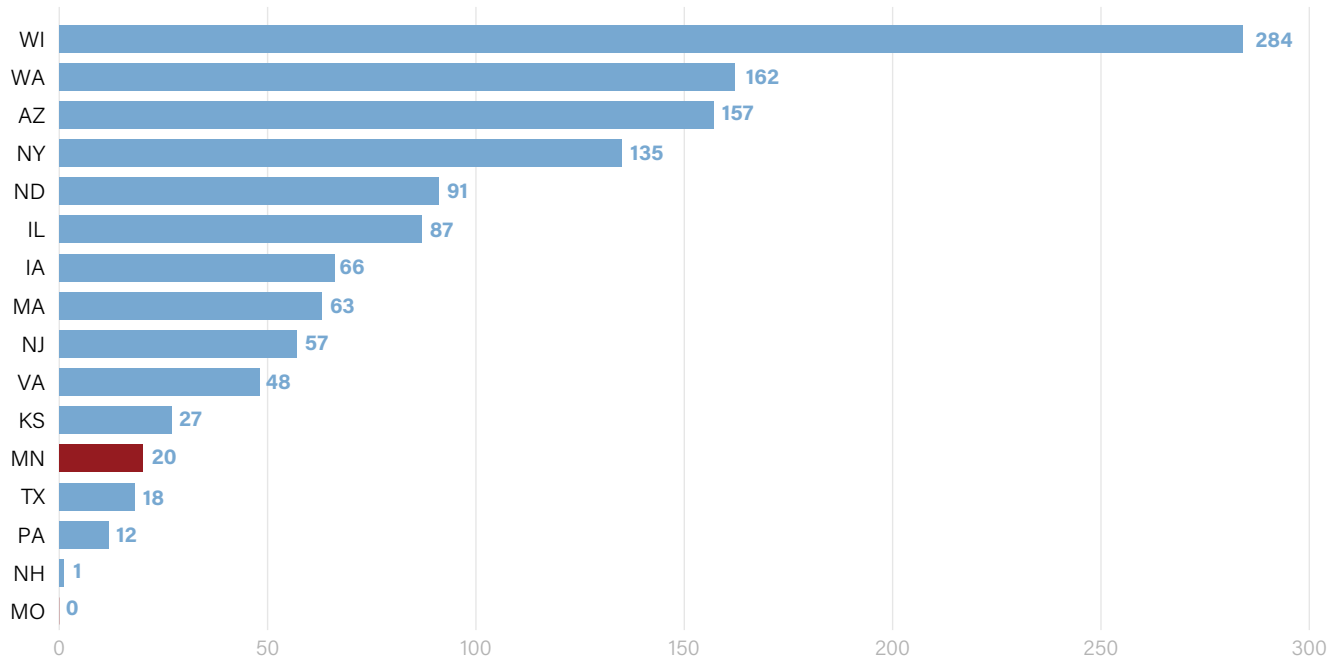
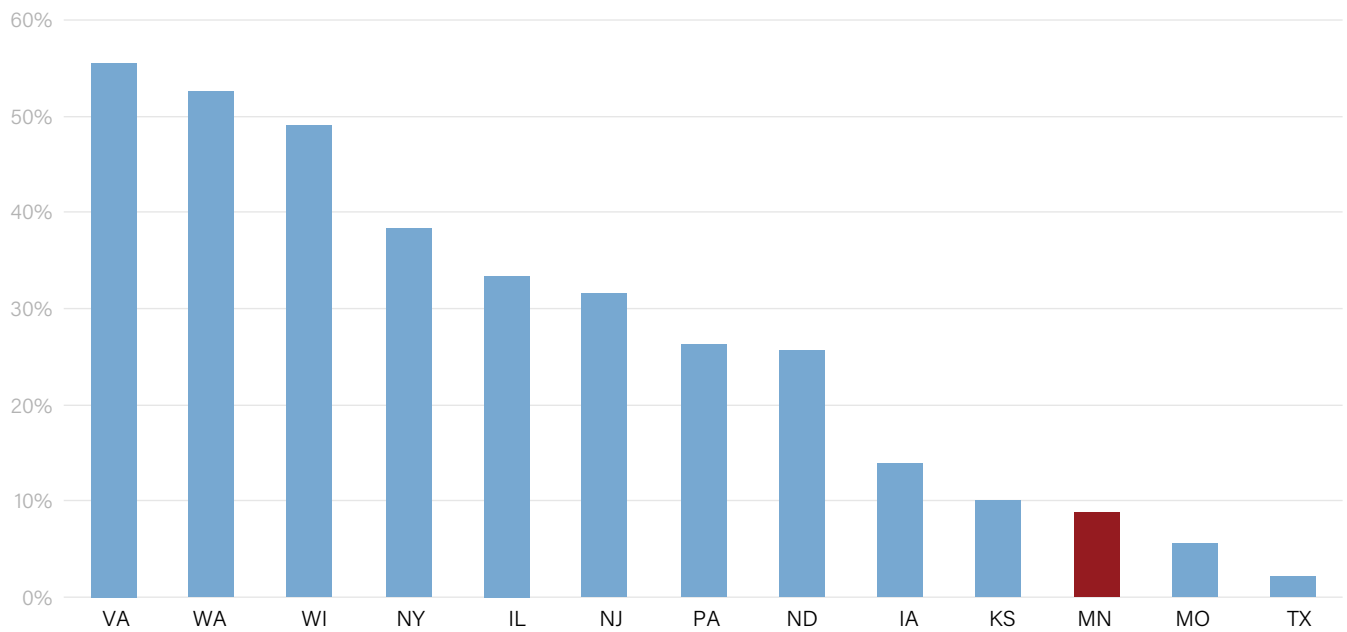


FIGURE 10
Rate of Conditional Discharge Among Those Ever Committed as of 2023.¹³⁴



Initial Commitment to MSOP

Understanding the lack of procedural protections first requires some background on the commitment process. As discussed above, commitment to MSOP typically occurs at the end of a prison sentence. The first stage of the commitment process occurs when the Minnesota Department of Corrections (“MNDOC”) refers an incarcerated person to a county attorney for possible commitment. A 2011 Legislative Auditor’s report described the DOC’s evaluation for referral as a three-stage vetting process involving an initial computer screening, a three-person screening committee, and consultation with independent legal counsel.¹³⁵ If the DOC’s screening committee or legal counsel recommends referral or if the DOC Commissioner determines referral is appropriate, the department forwards the incarcerated person’s name to the appropriate county attorney.¹³⁶

Once referred, a county attorney must determine whether “good cause” exists to petition for commitment.¹³⁷ The county attorney may then petition a court to commit the individual as either a “sexually dangerous person” or as a person with a “sexual psychopathic personality,” or both.¹³⁸ Minnesota’s statute does not provide for a jury trial in commitment proceedings. Therefore, a single judge must evaluate whether, by “clear and convincing evidence,” the state has shown that the respondent has met the statutory criteria.

Notably, “clear and convincing evidence” is a lower standard of proof than the “beyond a reasonable doubt” standard used in criminal proceedings. Comparable state programs, like that in Wisconsin and at least nine other states, employ the heightened “beyond a reasonable doubt” standard in their commitment proceedings.¹³⁹

Compounding the problem, two of the key requirements for commitment—that the respondent (1) have a “mental abnormality or disorder” and (2) pose a likelihood of future sexual harm—are elastic and overbroad, allowing a wide swath of people to fall in their ambit and providing prosecutors and judges dangerously wide discretion to decide which individuals meet the standards for commitment. As the Office of the Legislative Auditor put it, Minnesota’s “standard for commitment is relatively low, and many offenders qualify for commitment.”¹⁴⁰

“Mental Abnormality or Disorder” Is Ill-Defined and Overbroad

The nebulous nature of the “mental abnormality” requirement has received much criticism.¹⁴¹ In 1999, the American Psychiatric Association convened a taskforce to evaluate the new SOCC laws. The Task Force concluded that “sexual predator commitment laws represent a serious assault on the integrity of psychiatry, particularly with regard to defining mental illness and the clinical conditions for compulsory treatment.”¹⁴²

In the SOCC context, “mental abnormality” does not require psychosis or a severe and incapacitating mental disorder. On the contrary, many of those committed under SOCC laws do not struggle with psychotic disorders. Instead, many are committed based on comparatively common disorders. And, importantly, these disorders do not distinguish them from other individuals with criminal convictions, nor do they impair their connection to reality or their ability to make rational decisions.

Under Minnesota’s SOCC statutory scheme, an individual can meet the “mental abnormality” requirement of a “Sexually Dangerous Person” if they have “manifested a sexual, personality, or other mental disorder or dysfunction.”¹⁴³ Even more broadly, an individual meets Minnesota’s “Sexual Psychopathic Personality” definition if they have “such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters.”¹⁴⁴ Both are broad legal definitions that do not correspond neatly to psychiatric diagnoses. For that reason, in Minnesota, many common diagnoses allow for SOCC.

Two common categories of diagnoses in Minnesota’s SOCC commitment proceedings include Personality Disorders and Paraphilias. These diagnoses rarely indicate impairment of an individual’s ability to make rational decisions, and, most importantly, do not distinguish candidates for SOCC from individuals who are commonly incarcerated: “estimates suggest that between 40% and 80% of all imprisoned males would meet the criteria for Antisocial Personality Disorder.”¹⁴⁵ This is at odds with the United States Supreme Court, which

has repeatedly emphasized that those subject to SOCC must be different from the general population of those incarcerated for sexual offenses, stating:

*Hendricks underscored the constitutional importance of distinguishing a dangerous sexual offender subject to civil commitment “from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings.” . . . That distinction is necessary lest “civil commitment” become a “mechanism for retribution or general deterrence”—functions properly those of criminal law, not civil commitment.*¹⁴⁶

As to paraphilias, many individuals committed under SOCC statutes were diagnosed with DSM-IV diagnosis “Paraphilia, Not Otherwise Specified (NOS)”¹⁴⁷ for either sexual interest in pubescent children or forced sexual acts on others. This diagnosis has been criticized by psychiatrists, psychologists, and social scientists who raise concerns that vague “catch-all diagnoses” are used to “justify the continued deprivation of liberty.”¹⁴⁸ There has been much debate within psychology, psychiatry, and sexology about whether a sexual interest in pubescent children should be considered a “mental disorder.” The same is true for “forced sexual acts on others.” Both were explored for inclusion in the DSM-5 and rejected. Thus, psychologists have “expressed concern that this diagnosis should not have been used to meet the mental disorder prong of the commitment standard.”¹⁴⁹ Further, psychologists note concern that evaluators may sometimes erroneously assume the presence of a paraphilia simply based on the commission of a sexual offense.¹⁵⁰ If this is the case, then the “mental abnormality” requirement does nothing to create that “critical distinction” between offenders subject to civil commitment and those subject to criminal punishment alone.¹⁵¹

The problems with relying on these broad categories to support SOCC are compounded by the underlying nature of psychiatric diagnosis. Scholars have noted that because psychiatric diagnoses were “designed to serve purposes that are largely descriptive,” they are “ill suited to act as justifications for detention.”¹⁵²

Predicting Risk of Future Harm Is Subjective, Biased, & Inaccurate

In addition to a mental abnormality or disorder, a judgment of commitment requires a finding that the individual presents a risk of future harm.

In *Kansas v. Hendricks*, the Supreme Court held that SOCC commitments are constitutional only for individuals who are likely to reoffend and, therefore, pose a danger to the public.¹⁵³ A few states define “likelihood” of reoffending in this context as “more likely than not.”¹⁵⁴ Minnesota’s Legislature, however, has not articulated a clear legal threshold for likelihood. The Minnesota Supreme Court held that a trial court must find that future sexual crime is “highly likely,”¹⁵⁵ but neither the legislature nor the courts have further defined the term. The result is an amorphous and highly subjective standard.

Judges typically determine “likelihood” based on the testimony of mental health professionals and the results of actuarial risk assessment tools. But the Minnesota courts have never subjected risk assessment testimony to the sort of reliability review that is normally applied to expert or scientific testimony.¹⁵⁶ And the courts have never insisted that risk assessment testimony be presented in quantified form with information about error rates and confidence intervals—critical information that would reveal the degree of certainty or uncertainty in the risk assessment methods used. Further, there is no dispute that some commitment decisions have been based on unreliable and outdated risk assessment tools. Although many of the empirical-actuarial risk assessment tools relied on to order commitments in the early 2000s have been updated to reflect more recent population data, Minnesota’s SOCC system has no process to reconsider the commitment of individuals who were committed based on inflated and misleading risk.¹⁵⁷

This means that likelihood determinations are largely subjective, relying on judicial and expert definitions of “highly likely” that vary from person to person. As a result, there is no structural assurance that persons who are committed are really the “most dangerous.”

Indeed, the “highly likely” standard is so permissive that even some individuals with low to moderate risk assessment scores and expert testimony supporting treatment in a less restrictive environment have been deemed “highly likely” to commit sexual harm and indefinitely committed.

An example is highlighted in a recent habeas corpus case, *Rick v. Harpstead*, currently on appeal before the Eighth Circuit.¹⁵⁸ In what all sides agreed was a “close case,” Rick was committed to MSOP in 2004 despite empirical-actuarial risk assessment tools showing that he presented only a “moderate risk” of committing future sexual harm. In his commitment case, two court-appointed evaluators and the state district court concluded that Rick could be safely treated in the community.¹⁵⁹ But Rick was nonetheless committed because he couldn’t gain access to outpatient treatment. The state court required nine months of treatment, but the state refused to provide funding and Rick was unable to find treatment as a ‘private pay’ client.¹⁶⁰ In effect, the state committed Rick instead of providing him with the community-based care that both experts and the court agreed was sufficient, and that would have been far less costly. He has remained confined for nearly two decades.

Based on scientific advances in the field of risk assessment and properly updated empirical actuarial tools, Rick brought a *habeas corpus* case asserting that he *never* met Minnesota’s standard for commitment. He argues that his risk level was meaningfully overestimated by the inaccurate risk assessment tools relied on in his 2004 trial. Two of the experts who originally testified that Rick met Minnesota’s commitment standard now support his claims and have taken the extraordinary step of recanting their prior testimony. The Minnesota Federal District Court also agreed, finding Rick’s commitment to be unconstitutional and ordering his release.¹⁶¹ The County has appealed the matter to the Eighth Circuit.

Another example arose recently in *In re Civil Commitment of Cook*.¹⁶² In this case, Cook, a 27-year-old man, had been convicted and served prison time in Wisconsin for a series of serious crimes including sexual assault, sexual harassment, and stalking. After serving his prison term, he was assessed for civil commitment in Wisconsin and deemed not to meet the criteria. Cook then moved to Minnesota where he spent three years in residential community-based treatment. Cook’s

treatment providers reported substantial positive changes and no incidents of criminal conduct during his three years living in the community. Empirical-actuarial risk assessment tools concluded that he had only a “moderate-risk” of committing future offenses. Two of three forensic evaluators opined that Cook did not meet criteria for commitment in Minnesota. Nonetheless, the court concluded that Cook met the “highly likely” standard and committed Cook to MSOP.¹⁶³

As these cases show, although on paper Minnesota’s commitment standard is “highly likely” to commit future sexual harm, in practice, Minnesota courts have regularly approved commitments despite evidence showing only low or moderate risk of future criminal sexual conduct.¹⁶⁴

Lack of Procedural Safeguards for Discharge

In addition to involuntarily committing more individuals per capita than any other state, Minnesota fails to properly release those who are committed. Both the structure of Minnesota’s statute and MSOP’s policies contribute to this problem.

Most states provide for automatic and regular review of an individual’s risk and need for continued confinement annually or biannually,¹⁶⁵ but Minnesota does not. The state conducts no review until the detainee himself or herself petitions for a reduction in custody or discharge. And opportunities to file such petitions are limited. Detainees must wait six months after the disposition of their last petition (and, as mentioned above, petitions can take years to reach a decision).¹⁶⁶ This not only differs from what is done in other states, but also differs from procedures for those civilly committed in Minnesota as mentally ill and dangerous.

The Executive Director of MSOP also has the right to file a petition on behalf of an individual, without any timing restrictions.¹⁶⁷ Thus, if the Executive Director of MSOP believes that an individual should no longer be confined they can immediately file a petition to have that person discharged. But this prerogative is rarely, if ever, exercised.

On paper, this system sounds like it might provide appropriate review. ***In practice, however, this petition process – and the review of suitability for confinement that***

depends on it -- has been encumbered by major delays and has left even the most proactive detainees with infrequent review of their commitment.

Although there have been well over 700 detainees confined in MSOP since 2015, on average only about 200 detainees per year initiate a petition for transfer to a less restrictive environment or discharge—less than 30% of the total detainee population.¹⁶⁸ Placing the burden of petitioning on detainees, no matter how simple the process, comes with the risk that some detainees who do not meet the criteria for continued confinement will not seek review. Whether the failure to petition comes from a sense of hopelessness, a lack of clear information about the process, or an inability to engage in the process, this policy risks leaving people who no longer meet the commitment standard confined in MSOP facilities for life. This risk is heightened for individuals with cognitive disabilities.¹⁶⁹

One detainee, Jacob Flom, expressed his thoughts:

*The level of hopelessness . . . around here has reached . . . almost crippling levels to the point where people don't even try, people don't attempt anything, and people don't have any motivation. People are willing to do nothing, to try nothing, to get out of here because nothing we do works.*¹⁷⁰

In addition, detainees currently do not receive acknowledgement or confirmation of receipt when they file a petition for transfer or discharge. Instead, the detainees hear nothing on the status of their petition until a hearing has been scheduled with the Special Review Board (“SRB”), a process that can take six months to a year after filing. ***At a minimum, detainees should be notified that their petition has been received and that a hearing will be scheduled in due course.*** A lack of communication leaves detainees in limbo without certainty that they are truly in the queue for their case to be heard and leaves them without the basic information needed to be effective self-advocates.

Although this risk of unnecessary and unlawful confinement could be mitigated by the Executive Director’s statutory right to petition on detainees’ behalf, we are not aware of MSOP’s Executive Director requesting transfer or discharge with any regularity.

Unnecessarily long confinement is, of course, a violation of law, the Constitution, and basic human rights. It is also a wholly avoidable waste of state prevention resources. Fixing this problem does not require statutory change and should be a top priority.

Lack of Notice of Legal Rights

In addition, detainees may be unaware of their right to petition for transfer to a less restrictive environment or discharge. Providing committed individuals with effective and actionable notice of their legal rights is crucial in protecting detainees from confinement that goes beyond the Constitution’s “durational limit.”

Though we have not collected extensive data, recent conversations with detainees revealed that at least some of them only learned of the petition process through other committed detainees, essentially by word of mouth. Especially because there is no regular review, it is critical that MSOP develop effective and periodic methods to inform individuals how to exercise their rights to petition for reduction in custody.¹⁷¹

Bottlenecks in the Step-Down Process

Even where individuals learn of and exercise their statutory rights to petition for transfer or discharge, massive delays prevent timely review and unnecessarily extend the confinement of MSOP’s population.

The step-down and discharge process consists of two steps: (1) review by the Special Review Board (“SRB”), and (2) review by the Commitment Appeal Panel (“CAP”). Critically, no reduction in custody recommendation by the SRB is effective until it has been reviewed by CAP, and a CAP order has been issued. As a result, and as discussed further below, this two-step process has been criticized for redundancies and delays which leave detainees in confinement longer than can be justified.

First, after a petition is filed the SRB holds a hearing and issues a recommendation and report. The SRB is made up of three members and must include one attorney, one psychiatrist or psychologist, and one other mental health professional.¹⁷² After filing a petition, the detainee is entitled

to a court-appointed attorney to represent them throughout the petition process.

Before the SRB makes its recommendation, MSOP's clinical leadership files a "Treatment Report" that sets forth its position on the petition, and forensic evaluators employed by the DHS file a "Sexual Violence Risk Assessment."¹⁷³ At the SRB hearing, counsel for the petitioner typically offers information supporting the petition.

Petitions are reviewed in light of statutory criteria that vary depending on the requested relief.

In assessing a petition for transfer to Community Preparation Services (CPS), five statutory factors must be considered: (1) "the person's clinical progress and present treatment needs;" (2) "the need for security to accomplish continuing treatment;" (3) "the need for continued institutionalization;" (4) "which facility can best meet the person's needs;" and (5) "whether transfer can be accomplished with a reasonable degree of safety for the public."¹⁷⁴

When the petition requests a provisional discharge, the SRB and CAP must consider: "(1) whether the committed person's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person's current treatment setting"¹⁷⁵ – this in practice has been whether treatment professionals employed by MSOP believe that the petitioner has completed the MSOP treatment program¹⁷⁶; and "(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community."¹⁷⁷

For a full discharge, the SRB and CAP assess whether the "committed person is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of treatment and supervision."¹⁷⁸ And "whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the committed person in adjusting to the community."¹⁷⁹

Once the SRB issues a report and recommendation, the parties can appeal by filing a petition for rehearing and reconsideration with CAP. Most SRB determinations are appealed. CAP gives all petitions that come before it de novo review, meaning that it gives no deference to the SRB's

findings or conclusions. Once a petition comes before CAP, CAP may appoint an independent examiner to offer an opinion as to risk level.¹⁸⁰

As noted above, "[n]o reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the [CAP] ..."¹⁸¹ This means that two layers of review must occur for a petition to be granted. Further, the SRB process does not serve the function of building a record for review by CAP. Instead, CAP reviews the cases afresh, without relying on the SRB's findings. As a result, the SRB's time consuming review process is entirely superfluous.

A review of available public data from 2018 through 2021 shows that a petition for transfer, provisional discharge, or discharge remains pending for an average of 625 days before CAP issues a final order.¹⁸² Thus, ***simply following the procedure to get from a petition to an order on that petition takes almost two years.***

Several problems with the petition process combine to produce these delays. First, the statute's rigid multi-layer reduction-in-custody procedure unnecessarily slows the review process. To address constitutionally dubious delays in discharge and step-down, legislators should consider options to streamline this process, including eliminating the superfluous SRB process from Minnesota's SOCC statutory scheme.

Independent examiners provide critical information, but recently too few engaged in the CAP review process to meet demand.¹⁸³ As of January 2023, 141 petitions were awaiting review by an independent examiner.¹⁸⁴ This is at least partially due to the low rates of compensation that DHS has historically offered to independent examiners.¹⁸⁵ ***Backlogs in the process could be significantly reduced by consistently providing at or above market-level compensation to independent examiners.***

To this end, compensation for independent examiners should not be set by DHS, an entity that is also a party to CAP proceedings. Most often, DHS opposes discharge or transfer, and therefore ***may have little incentive to address backlogs in the CAP process.*** To ensure that DHS is not able to unilaterally stall the transfer and discharge process,

independent examiner compensation should be set by the judiciary and sufficient funds allocated to ensure that the shortage of examiners does not continue to cause delays.

MSOP Failures to Transfer Detainees Result in Due Process Violations

Even when a petition is granted, recent lawsuits have highlighted major delays in the implementation of CAP orders directing transfer to the less restrictive Community Preparation Services (“CPS”) facility.

In December 2021, the CAP held the DHS Commissioner in contempt for failing to transfer an MSOP detainee to CPS after CAP had granted his petition for transfer.¹⁸⁶ In CAP’s findings of contempt, *the Court noted that “55+” MSOP detainees have had their progression similarly delayed by a failure to transfer for two years or more.*¹⁸⁷

Even more recently, in February 2023, the Minnesota Supreme Court ruled on the right to timely transfer in *McDeid v. Johnston*. In *McDeid*, two civilly committed individuals filed a lawsuit after waiting over two years to receive the transfer to CPS that CAP had ordered.¹⁸⁸ The State argued that a CAP transfer order is not binding on the state.¹⁸⁹ On February 1, 2023, the Minnesota Supreme Court squarely rejected the State’s argument,¹⁹⁰ holding that detainees have a clearly established due process right to CPS transfer within a reasonable time following a CAP transfer order.¹⁹¹ This case was remanded to the Court of Appeals on a separate legal question and it remains to be seen how this holding will impact delays in the transfer process.

These delays have serious implications for MSOP’s legitimacy and effectiveness. Timely advancement in the program is not only a minimal constitutional requirement, but it is essential for maintaining even the appearance of legitimacy. Understandably, unjustified delays in advancement lead individual detainees to become frustrated and angry, sometimes leading to regression in their behavior. This regression is then viewed by staff as an indication that they are not ready for the already approved advancement. Further, detainees who see their peers’ advancement blocked, even after approval, may conclude that there is little hope of advancement and of being discharged. This has produced an overall culture of hopelessness and frustration.

In recent years, MSOP administrators have cited a lack of beds to accommodate the detainees with orders for transfer to CPS. They have further noted repeated unsuccessful requests to the legislature for funding to expand CPS facilities. In fact, in the State’s filing in *McDeid*, DHS asserted that it requested funds to expand CPS in 2016, 2017, 2018, and 2019, but that the legislature did not provide that funding.¹⁹² More recently, MSOP administrators report that the delay in transfer to CPS is not due to a lack of beds, but rather the need to hire additional clinical staff, and that the 2023 legislative session approved construction of an additional 30 CPS beds.¹⁹³

Detainees, judges, attorneys, and the MSOP administration have all acknowledged that these delays, no matter the cause, are unacceptable. They imperil not only the program’s constitutional legitimacy, but the appropriate allocation of scarce prevention resources. Each unnecessary day in the MSOP program represents a violation of constitutional rights and a substantial expenditure of money that does not advance the prevention agenda that all agree is of central importance. This is a clear problem with a clear solution. It should be fixed promptly.

Both MSOP and the courts are responsible for the low rate of moving low-risk detainees to less restrictive and less expensive settings.

MSOP leadership generally disclaims responsibility for the excessive duration of confinement at MSOP, emphasizing that the commitment process is “courts in, courts out.” Of course, a court must order commitment to and release from MSOP, and in this sense the claim is legalistically correct. But MSOP’s disclaimer ignores the significant influence that the program has over the discharge process.

Begin with the facts. MSOP recommendations on step-down petitions are almost always outcome determinative. MSOP’s own data show that clinical leadership supported only 15% of petitions for discharge or transfer during the seven-year period from 2015 to 2021.¹⁹⁴ In that same period, CAP, which makes final discharge and transfer decisions, granted approximately 91% of those petitions supported by

clinical leadership.¹⁹⁵ Conversely, CAP granted discharge or transfer petitions which were not supported by MSOP only 9% of the time.¹⁹⁶ ***In other words, the position of MSOP is tremendously influential in the petition process.***

That influence is shaped by two key interrelated practices adopted by MSOP, both of which improperly raise the bar for granting step-down petitions, though neither is mandated by law. The first is MSOP's longstanding practice of supporting petitions for step-down based primarily on treatment progression. While treatment progression is not irrelevant to risk-assessment, it should not be the dispositive factor. Some detainees are low risk even though they have not progressed in treatment. Other states recognize this important nuance and base their step-down decisions on a holistic assessment of risk.¹⁹⁷

The second practice compounds the problem. As discussed above, MSOP's practice is to place the burden on detainees to initiate the step-down process. But MSOP's Executive Director has statutory authority to initiate the process herself. **To our knowledge, this has not been done, despite recommendations from outside entities that have reviewed MSOP, such as the Expert Panel appointed by Federal District Judge Donovan Frank in *Karsjens et al. v. Jesson et al.* in 2015.**¹⁹⁸

The burden of this administrative practice falls most heavily on detainees who have compromised cognitive function, serious disabilities, or who are elderly. Progress in MSOP's treatment program may be impaired for these populations because of their compromised functioning. But these same limitations likely also reduce their risk, and they may meet the criteria for safe re-entry despite their failure to complete the treatment program. Their compromised functioning may also impair their ability to follow the administrative guidelines to file a step-down petition.

At a minimum, MSOP's Executive Director should actively identify detainees whose risk is low, even if they have not progressed in treatment. And the Executive Director should promptly submit step-down petitions on their behalf to facilitate safe re-entry. Although courts make the final decision, ***MSOP's administration should acknowledge***

its influential role and exercise its statutory power to identify and support discharge petitions for those low-risk individuals likely to meet Minnesota's SOCC step-down standards.¹⁹⁹

Minnesota's Failure to Provide Appropriate Treatment and Conditions of Confinement

MSOP's Treatment Program

MSOP is required to provide "treatment, best adapted, according to contemporary professional standards, to rendering further supervision unnecessary."²⁰⁰ Generally accepted practices of inpatient treatment for those who have committed sex offenses have been published by two organizations: the Association for the Treatment of Sexual Abusers ("ATSA")²⁰¹ and the Sex Offender Civil Commitment Programs Network ("SOCCPN").²⁰² According to ATSA and SOCCPN, treatment programs in inpatient civil commitment settings should be grounded in Risk-Need-Responsivity ("RNR") principles.²⁰³ Research shows that treatment programs that follow RNR principles of offender rehabilitation are associated with lower rates of sexual recidivism when compared to programs that do not.²⁰⁴

ATSA summarizes the RNR principles as follows:

[T]he Risk principle indicates that the intensity of services should be determined by the risk level of the individual, with higher risk individuals receiving more intensive services than lower risk individuals.

The Need principle maintains that interventions should target criminogenic needs (i.e., the factors that predispose an individual to sexual offending) associated with recidivism risk.

The Responsivity principle states that interventions should be provided in a manner that incorporates the individual's unique characteristics such as learning style, level of motivation, and other individual factors that may impact delivery of services, to maximize their treatment response.²⁰⁵

In conjunction with RNR principles, ATSA's practice guidelines state that treatment programs must foster engagement and internal motivation, clearly delineate the criteria for successful completion, and regularly communicate and assess progress. ATSA and SOCCPN have jointly recognized that "once risk and need are reduced to a level that is manageable within a community-based setting," "there should be a mechanism to swiftly transition individuals to less restrictive alternatives and full discharge, without preventable delays."²⁰⁶

As we set out below, clear and consistent evidence shows that the MSOP treatment regime violates the statutory command that it provide treatment meeting these "contemporary professional standards."

MSOP currently employs a three-phase treatment program. MSOP describes its phased approach, stating:

Clients initially address treatment-interfering behaviors and attitudes (Phase I) in preparation for focusing on their patterns of abuse and identifying and resolving the underlying issues in their offenses (Phase II). Clients in the later stages of treatment focus on deinstitutionalization and reintegration, applying the skills they acquired in treatment across settings and maintaining the changes they have made while managing their risk for re-offense (Phase III).

Detainees do not have clarity on the criteria for successful completion of each phase and they are often stuck in Phase I or II for decades. This confusion has been exacerbated by the significant delays in the petition process and transfer to CPS.

MSOP has been repeatedly criticized for failing to establish clear expectations to advance through the treatment program. In the 2015 Federal District Court case, *Karsjens v. Jesson*, the Court noted that "[t]he lack of clear guidelines for treatment completion or projected time lines for phase progression impedes a committed individual's motivation to participate in treatment for purposes of reintegration into the community" and that committed individuals "consistently expressed concerns that slow movement through the program . . . was demoralizing, increased hopelessness, and negatively impacted motivation and engagement."²⁰⁷

Recent conversations with detainees reveal that progression often feels unpredictable and can depend on external conditions like staffing turnover. Due to poor staff retention at MSOP, detainees often find that their treatment progress is interrupted when they are placed with a new provider.

As one detainee, Joshua Brooks, stated:

*"It doesn't matter how much treatment you do, it starts over. There's therapists changing out. I, myself, have had 22 different therapists in 11 years."*²⁰⁸

Detainees further report that treatment progression can be interrupted by disciplinary infractions. Within MSOP, disciplinary infractions are documented using "BERs" or Behavioral Expectation Reports. Detainees report that BERs are issued for "bad" behavior which can include any policy violation, including speaking negatively about MSOP's program. It can also include conduct that is a symptom of a mental health disorder. BERs can result in extended periods of isolation when a detainee is punished by being confined to their room, sometimes for weeks. During these periods of administrative segregation, detainees are reportedly unable to attend treatment sessions and, as a result, treatment progress is stalled. Additionally, as reported in the 706 Expert Report, treatment progress is often delayed or reversed because of BERs for behaviors that have no relationship to sexual offending risk or are for relatively minor infractions.²⁰⁹

The State's failure to provide clarity on the criteria and timeline for treatment progression undermines client expectations that they will ever be released from confinement, no matter how carefully and earnestly they adhere to MSOP's treatment program. The failure to provide clarity also violates the state's statutory obligation to provide the treatment "best adapted, according to contemporary professional standards, to rendering further supervision unnecessary." These are cascading failures that lead to decreased engagement, trust, and motivation across the MSOP population, thus reducing the efficacy of MSOP treatment and preventing the program from achieving its stated treatment and public safety goals. Correcting these deficiencies is completely within the prerogative of MSOP and requires no legislative change.

MSOP's Restrictions on Speech

In response to recent hunger strikes among MSOP detainees asking for a clear path to release, MSOP has restricted detainee speech and organizing activities both through formal policies and punitive actions, such as filing incident reports, BERs, and making referrals to the Office of Special Investigation.

This recent change in policy targets speech content, particularly advocating for legislative and policy change to MSOP. These restrictions impact internal communications between detainees, a detainee's ability to communicate with individuals outside of MSOP, and outside individuals' ability to send news to detainees.

One such recently issued policy is entitled "Maintaining a Therapeutic Treatment Environment."²¹⁰ The policy states that MSOP clients who engage in activities that disrupt or "potentially disrupt[]" the therapeutic community or treatment experience of other clients are subject to disciplinary proceedings. The policy includes but is not limited to:

1. printing, dispersing, or displaying any written communication outside the client's room (without staff prior approval);
2. assembling, organizing, or acting in a protest or demonstration, or any other actions that are disruptive to the treatment experience of clients;

3. holding unauthorized meetings; or
4. recruitment materials and/or written materials promoting behaviors that could compromise safety and security and/or the treatment environment.

Staff are to secure any materials discovered "that compromise[] the safety and security of the community and/or the treatment environment."

Similar in tone to MSOP's new policy, MSOP has revised its Behavioral Expectations Handbook to include the following restriction.

Under these new policies, MSOP has restricted clients' printer access, confiscated printed materials, and punished clients for alleged violations.

We also recently learned that MSOP has blocked detainee telephone access to a national advocacy organization, Citizens United for Rehabilitation of Errants (CURE), that provides information and research to SOCC detainees and advocates the reform of SOCC laws. MSOP has confirmed the block, but has repeatedly declined to explain the reasons for this restriction on political speech.²¹¹

These restrictions chill communication between MSOP detainees and outside political organizations, human rights groups, journalists, and legislators, among others. In our view, there is no legitimate justification for such blanket speech restrictions.

BOX 1

MSOP Behavioral Expectations Handbook

INCITING/UNLAWFUL ASSEMBLY/PROTEST

A client or group of clients who assemble, organize, or engage in a protest, demonstration, or other unauthorized gathering in which they violate or encourage the violation of any facility rule, or in which their words, actions or tone disrupts the therapeutic environment or impacts the security or orderly operation of the facility, are in violation of this rule. Additionally, Clients will not gather, assemble or meet in a group of eight or more clients in any unsanctioned activity regardless of the group's purpose.

Maximum Restriction Level RS 3

Repeated Identification of SOCC's Deficiencies has Failed to Result in Significant Change

Minnesota's program has been repeatedly studied and the problems the program faces today are largely the same issues raised by experts repeatedly over the last decades.

2011 - Office of the Legislative Auditor's Report

In March of 2011, the Office of the Legislative Auditor ("OLA") issued a report noting that Minnesota had the nation's highest commitments rate and suggested that Minnesota's laws may "facilitate" civil commitment in a way other states do not. To address that issue, the OLA report recommended that the Legislature "consider assuring offenders the same level of procedural protections—such as jury trials, the inadmissibility of hearsay evidence, and the 'beyond a reasonable doubt' standard for evidence—in commitment trials as are required in criminal trials."²¹²

The 2011 OLA report also noted "significant inconsistencies" in Minnesota's commitment process "which have resulted in the commitment rate in some parts of the state being almost double that in other areas."²¹³ This included the finding that some individuals who were committed may have had a lower risk of recidivism than others who were released from prison without commitment.²¹⁴ Based on these concerning inconsistencies, the report suggested that the Legislature implement a centralized commitment court and a centralized prosecution and assessment unit to replace the current system of decentralized county attorneys and courts.

The 2011 OLA report further noted that Minnesota's release standard for those committed is, in practice, stricter than other states. Most states explicitly allow for discharges if an offender no longer meets the commitment criteria. But Minnesota does not and, to our knowledge, MSOP does not support any discharges without substantial progress through the treatment program.²¹⁵ To correct this, the report recommended that the Legislature amend the provisional discharge criteria to allow for the provisional discharge of offenders who no longer meet commitment criteria.²¹⁶

These recommendations were not implemented.

2012 to 2013 - Sex Offender Civil Commitment Advisory Task Force

Just two years later, the OLA's concerns were echoed by the "Sex Offender Civil Commitment Advisory Task Force." The Task Force, ordered by U.S. District Court Chief Magistrate Judge Arthur Boylan, was created to examine and provide the Human Services Commissioner with recommendations on the civil commitment processes for sex offenders in Minnesota. The Task Force was convened and appointed by DHS Commissioner Lucinda Jesson, led by retired Minnesota Supreme Court Chief Justice Eric Magnuson, co-chaired by retired United States District Judge James Rosenbaum, and included 22 individuals including judges, legislators, victim's advocates, academics, prosecutors, and defense attorneys. The Task Force issued two reports, the first in December of 2012 and the second in December of 2013.

In its final 2013 report, the Task Force stated, "*there is broad consensus that the current system of civil commitment of sex offenders in Minnesota captures too many people and keeps many of them too long.*"²¹⁷ The Task Force unanimously concluded that Minnesota's civil commitment program suffers from serious problems that can and should be addressed by legislative actions that: (1) rationalize the process, (2) make it more objective, and (3) eliminate to the greatest extent possible the influence of politics on commitment, placement, and release decisions.

Among other recommendations, the Task Force said that the need for continued commitment should be regularly reviewed and that special criteria should be developed for persons who are developmentally disabled or whose offending behavior was as a juvenile.

Finally, the Task Force noted that civil commitment addresses "only one element of the problem of sexual violence in our society . . . Preventing the victimization of others and providing for the effective treatment of those persons who perpetrate the violence are both necessary elements to improve public safety." To that end, the Task Force urged the Legislature to direct the appropriate state agencies to develop a comprehensive program for the prevention of sexual violence.

Legislation based on this work was introduced but was not enacted.

Karsjens v. Jesson Litigation

In 2011, a federal lawsuit alleged constitutional and state law violations relating to Minnesota's SOCC program. Plaintiffs and Class Members were all civilly committed to MSOP.

Before trial, the district court bifurcated the claims into cases known as *Karsjens I* and *Karsjens II*. *Karsjens I* includes claims that Minnesota's SOCC scheme unlawfully detains people in violation of constitutional rights, whereas *Karsjens II* challenges conditions of confinement inside MSOP facilities.

In 2015, following a six-week trial in *Karsjens I*, the federal district court held that the state's SOCC program was unconstitutional because it failed to comply with the "durational limit" on confinement.²¹⁸

In reaching its conclusion, the District Court made the following factual findings:

- "It is undisputed that there are civilly committed individuals at the MSOP who could be safely placed in the community or less restrictive facilities."
- MSOP is a "treatment system with 'chutes-and-ladders'-type mechanisms for impeding progression, without periodic review of progress, which has the effect of confinement to the MSOP facilities for life."
- "Providing less restrictive confinement options would be beneficial to the State of Minnesota and the entire civil commitment system without compromising public safety."
- The process for adjudicating reduction in custody "can take years."

This holding was later reversed by the Eighth Circuit which found that the District Court had applied the wrong legal standard.²¹⁹ The Eighth Circuit did not, however, question the District Court's factual findings.

In *Karsjens II*, the plaintiffs argued that the manner in which they are detained in MSOP, including inadequate medical treatment, amounts to punishment in violation of the Fourteenth Amendment.²²⁰ The plaintiffs asserted that:

- There are individuals at MSOP who could and should be treated in a less restrictive setting.²²¹ They note that

according to experts, "[i]t is a fundamental principle in mental health treatment that individuals should be treated in the least restrictive environment to ensure that infringement on individual liberties is kept at a minimum."²²²

- Policies, unrelated to treatment, delay progress through MSOP's treatment program, including Behavioral Expectation Reports, changes to treatment protocols, and leadership and staffing changes.²²³
- MSOP has failed to provide adequate medical treatment for members of the class.

Many of plaintiffs' claims are supported by the findings of court-appointed experts, known as "706 Experts," who issued their Report and Recommendations in 2014.²²⁴ In their 108-page report, the 706 Experts echoed many of the proposed changes of the Task Force and the OLA.²²⁵ Among them, the 706 Experts recommended "recognition that the MSOP, especially in Moose Lake, includes many clients who may no longer or never did clinically or legally meet the criteria for civil commitment . . ."²²⁶

Nonetheless, in February 2022 the district court ruled in favor of the state, rejecting "Plaintiffs' claims related to the conditions of confinement and inadequate medical care." The court added, though, that "the confinement of the elderly, individuals with substantive physical or intellectual disabilities, and juveniles, who might never succeed in the MSOP's treatment program or who are otherwise unlikely to reoffend, remains of serious concern for the Court."

On appeal, the United States Department of Justice ("DOJ") added its support to the *Karsjens II* plaintiffs with an amicus brief filed in July 2022. Acting on the United States Attorney General's authority to investigate and seek relief for unconstitutional conditions in state and local institutions, the DOJ argued that the district court applied the wrong legal standard to assess the constitutionality of how MSOP detains people who are civilly committed. The court should have applied legal precedent involving *indefinite* confinement to a treatment facility, but instead relied exclusively on cases involving only *temporary* pretrial detention in criminal cases. With this error, the DOJ argued, the court did not adequately consider plaintiffs' claims.²²⁷

But on July 13, 2023, the Eighth Circuit affirmed the District Court's decision rejecting Plaintiffs' conditions of confinement claims.²²⁸

Annual Performance Reviews

Finally, since 2009, the legislature has required that three commitment experts conduct an annual review of MSOP. These reports note ongoing problems with staff shortages and staffing turnover that undermine treatment for those detained at MSOP.²²⁹

In sum, although a diverse set of experts, policymakers, and advocates have repeatedly identified the problems with Minnesota's SOCC scheme, the state has been unable, or unwilling, to reform the statute or the administrative practices. Instead of engaging with a controversial and difficult issue, legislators and political leaders have allowed those in MSOP to languish, and precious prevention resources to dissipate.

SOCC & "DIMINISHED PERSONHOOD"

In addition to diverting scarce resources from far more effective solutions, SOCC embodies a dangerous principle. SOCC deprives individuals of a fundamental right – the right to freedom – based on *predicted* future harm.²³⁰ This loss of freedom harms those who are detained in SOCC facilities and their family members. But the harm goes deeper.

U.S. history includes numerous odious examples of targeting unpopular minorities in the name of preventing future crime and excluding them from legal protections enjoyed by the broader population. By relying on *predicted* harm, SOCC gives ongoing vitality to this dangerous historical precedent in which "degraded others" are considered less than full persons and therefore inhabit a realm of diminished legal rights.

In 1927, in *Buck v. Bell*, the United States Supreme Court upheld a state statute permitting the compulsory sterilization of the intellectually disabled and those considered "unfit" to reproduce.²³¹ That decision, now recognized as one of the

worst decisions in Supreme Court history,²³² stated that "[it is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."²³³

In 1944, the United States Supreme Court issued its decision in *Korematsu v. United States*, which upheld a World War II military order initiating the internment of citizens and residents of Japanese ancestry.²³⁴ That order was based on the *potential* "disloyalty" of some Japanese Americans and was "rooted in dangerous stereotypes about, *inter alia*, a particular group's supposed inability to assimilate and desire to harm the United States."²³⁵ Under this order, from 1942 to 1945 approximately 120,000 Japanese Americans were held in internment camps. In 2018, the Supreme Court repudiated the *Korematsu* decision, stating "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'"²³⁶ Today, the incarceration of Japanese Americans is generally considered "one of the most atrocious violations of American civil rights in the 20th century."²³⁷

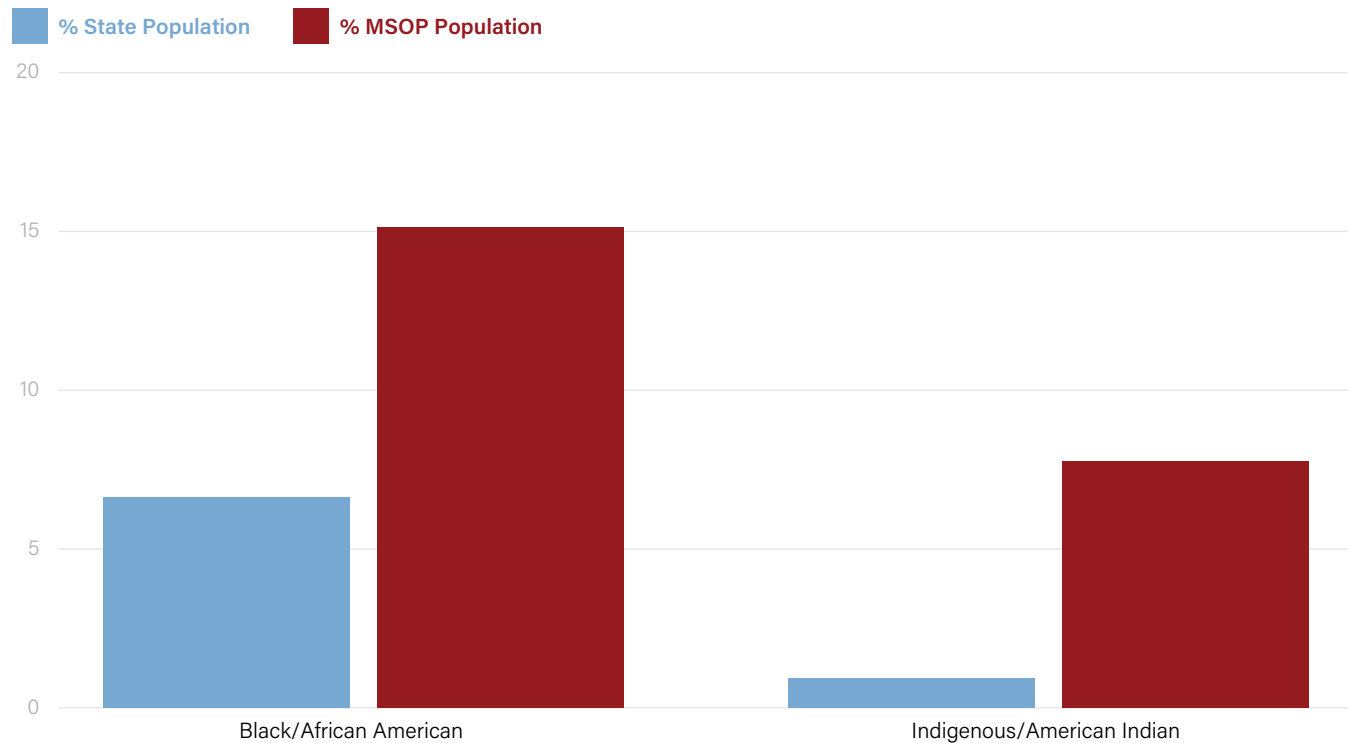
Like those impacted by these discriminatory laws, individuals detained by SOCC laws have their freedoms drastically limited not as punishment for prior conduct, but because of an ill-defined "risk" that they present to society.

As in other contexts, the "degraded others" indefinitely confined to prison-like facilities are disproportionately those in society with the least power and who have been historically marginalized. Of the approximately 6,300 people currently detained in SOCC programs across the country, studies show that a disparate proportion are racial and sexual minorities.²³⁸

In most states, Black men were vastly overrepresented among those civilly committed.²³⁹ In Minnesota, the state SOCC scheme exacerbates the disproportionate carceral impact on Black and Indigenous people. Figure 11 highlights the disproportionate percentages of Black and Indigenous individuals detained in MSOP's facilities.

FIGURE 11

Overrepresentation of Black and Indigenous Populations at MSOP in 2023: Minnesota State Population vs MSOP Population.²⁴⁰



Evidence also suggests that sexual minorities and transgender individuals are disproportionately civilly committed throughout the United States,²⁴¹ though this analysis is complicated by a lack of data. To our knowledge, information on how detainees describe their sexuality (e.g., gay, straight, bisexual) has not been systematically collected by MSOP or other state civil commitment programs.²⁴² Even so, researchers have suggested that sexual minority men are overrepresented.

A 2020 report by the Williams Institute at UCLA relied on the gender of victims to glean insight on the prevalence of sexual minorities in civil commitment. This measure is “not an ideal solution” because some perpetrators of sexual violence against same-sex victims identify as heterosexual.²⁴³ But even recognizing the limitations of its approach, the Williams report found “a pattern that suggests that sexual minority men are at an increased risk of civil commitment as compared to their heterosexual counterparts.”²⁴⁴ The Williams report further noted that many risk assessment tools used in making civil commitment decisions, including the STATIC-99R and STATIC-2002R, assign higher

scores (and thus higher risk) to men who had victims that were male, as opposed to those who had female victims.²⁴⁵ These higher scores illustrate how risk assessment tools based on conviction rates fail to account for the biases baked into the criminal legal system, including how certain populations, such as sexual minorities, face inequitable policing. To mitigate bias, the Williams report calls for the federal government, states, and independent researchers to conduct internal audits of risk assessment tools and consider revising the STATIC-99, STATIC-99R, and STATIC-2002R instruments.²⁴⁶

A more recent report in Illinois further supports the conclusion that sexual minorities are disproportionately civilly committed. The Illinois report, issued in December 2022, used a survey sent directly to civilly committed individuals in Rushville, IL. In response, 26% of respondents reported that they identify as bisexual, 11% identified as gay or lesbian, and 3% identified as transgender.²⁴⁷ For comparison, only 4.3% of the Illinois general population identifies as lesbian, gay, bisexual, or transgender.²⁴⁸

Minnesota's SOCC scheme of preventive detention has been criticized both nationally and internationally. The High Court of Justice in the United Kingdom refused extradition of a person accused of rape to Minnesota, holding that Minnesota's SOCC law constituted a "flagrant violation" of the European Convention on Human Rights ("ECHR").²⁴⁹

We do not minimize the harms perpetrated by many of those committed to MSOP; people who commit sex crimes should be held accountable for the harm they inflict. But civil commitment is not the appropriate means for holding individuals accountable for past wrongs. Civil commitment is fundamentally different in nature and scope from criminal sanctions, which address harm that was previously committed. Civil commitment, in contrast, is pre-crime confinement, and eschews any claim of accountability or punishment.

With no visible path to release, there is ever increasing hopelessness among those civilly committed to MSOP. In January and July of 2021, a group of individuals confined in MSOP called attention to the conditions of their indefinite detention by going on hunger strikes.²⁵⁰ Some hunger strike participants pushed themselves to the point of medical emergency. Strike participants presented a list of "Barriers to Release" along with corresponding solutions.²⁵¹ These proposed solutions included, among others, elimination of the SRB, the creation of an Independent Oversight Committee to review all mental health diagnoses of the detainees, a clear path to release from confinement, and changing the name of MSOP to reduce the stigma associated with the term "sex offender."²⁵²

In response to the hunger strikes, a legislative hearing was held in the summer of 2021. Only two presenters were allowed to speak, MSOP's Executive Director, Nancy Johnston, and Professor Eric Janus, Director of the Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law (SOLPRC). No questions or discussion by legislators were permitted.²⁵³ No legislative reforms to Minnesota's SOCC system came out of the 2021 hearing.

In early March of 2023, SOLPRC learned that some detainees had begun to hunger strike once again, desperate to be heard

by those with the power to reform Minnesota's SOCC law and policy.

After nearly three decades of litigation, expert reports, investigations, scholarship, news articles, and advocacy calling for reforms to Minnesota's SOCC scheme, little has changed. Minnesota has shown itself unwilling to address SOCC and the "degraded" persons inhabiting that system of diminished legal rights.

CONCLUSION & RECOMMENDATIONS

Minnesota spends over \$100 million annually on the indefinite commitment of more than 740 individuals at MSOP. Research shows that this massive financial investment has "no discernible impact" on reducing sexual violence. Yet Minnesota has prioritized this failed policy while starving more effective evidence-based sexual violence interventions, such as primary prevention, adequate services for victims of sexual violence, and practices that improve perpetrator accountability. In doing so, our state has chosen the wrong path, one that fails to meaningfully address the severe problem of sexual violence in our community.

In addition to Minnesota's harmful misallocation of resources, the state fails to recognize the humanity of those it permanently confines. Although Minnesota's SOCC scheme was initially defended as a short-term treatment program, almost 30 years later only 21 people have ever been fully discharged, all in the last 7 years and most over the objections of MSOP and DHS leadership. Many more—at least 94²⁵⁴ people—have died during their commitment. With such dismal reentry statistics, many civilly committed to MSOP have lost hope of being released. The disconcerting reality is that for most of the people in MSOP, civil commitment is a life sentence.

Minnesota's SOCC scheme is plagued by myriad deficiencies, including failures that have made Minnesota a national outlier with the most commitments per capita in the country and one of the lowest release rates. For too long Minnesota legislators have allowed obvious statutory and administrative issues to go unaddressed. If history is a lesson, future efforts to progressively reform MSOP will be unsuccessful, not

because they are unneeded, but because legislators are unwilling to engage with what is perceived to be a political third rail.

Our ultimate recommendation is to repeal Minnesota's SOCC law, implement procedures to safely sunset the confinement of humans at MSOP, and reinvest MSOP's \$100 million annual budget into community and victim support, holding harm-doers accountable through restorative practices, and sexual violence primary prevention efforts. We make this recommendation in part because experience shows that iterative change is unlikely. But more fundamentally, SOCC is, even in its pristine form, a misallocation of prevention resources and a dangerous endorsement of unequal justice.

Recommendations for Legislative Change:

- **Moratorium & Reinvestment.** The Legislature should halt all new admissions to MSOP and apply a reinvestment formula such that savings from population reductions are reinvested into a comprehensive, evidence-based system of primary,²⁵⁵ secondary,²⁵⁶ and tertiary²⁵⁷ forms of sexual violence prevention.
- **Sunset.** The Legislature should develop an orderly process, designed with input from the governor's office, state agencies, local communities, victim advocates and violence prevention agencies, detainee representatives, and legal and treatment experts, to safely reintegrate existing detainees into the community within a reasonable, but short, timeframe.
 - This process should include discharge planning for all detainees; the identification and creation of appropriate community-based treatment resources; identification and creation of appropriate residential resources, including halfway houses, transitional housing, apartments, etc.; and employment, training, and educational opportunities. Sunsetting MSOP would also require determination of appropriate support for those released to enable successful reintegration and community safety.
- This process will be complicated, and we recognize that a small percentage of those who have been detained at MSOP for decades may need substantial and sophisticated support to safely re-enter a community setting. We are clear, however, that involuntary preventive detention is not the solution, and cannot be a long-term component of any sunset process.
- **Collaborative problem-solving process.** As this report confirms, change has been impeded repeatedly by the toxic politics and fear-driven rhetoric surrounding these issues. For this reason, we suggest that a collaborative problem-solving process be considered to bring together key stakeholders and articulate what we believe to be the silent consensus that SOCC is a broken system whose massive investment should be reallocated to a comprehensive, evidence-based campaign of prevention.

The foundational goal of sunseting MSOP can be supported by several interim harm reduction steps identified below. By removing constitutionally suspect roadblocks in the current discharge process and reducing MSOP's population, these interim recommendations support the fundamental goal of sunseting the use of civil commitment in the shared goal of sexual violence prevention.

Recommendations for Interim Harm Reduction:

MSOP leadership can reduce ongoing harm inside MSOP and bring the functioning of MSOP more closely in compliance with constitutional, statutory, and contemporary treatment standards by:

- Routinely informing all detainees of their right to petition for transfer to a less restrictive environment or discharge and providing information about the process for filing a petition.
- Notifying detainees when their petition for transfer and/or discharge has been received and providing as much information as possible about the timing of all hearings.

- Providing annual review of each detainee's risk level (using the most current and best available empirical-actuarial risk assessment instruments) and need for continued commitment based on current risk. Developing and implementing a policy of supporting the release of low-risk individuals (e.g. elderly, disabled, juvenile only, and those with low risk assessment scores, etc.) without requiring treatment progression. The Executive Director should proactively petition for, and support, the provisional discharge of these individuals.
- Amending MSOP's policies restricting clients' rights to peaceful demonstration, speech, and advocacy regarding legislative and policy changes to MSOP. Further, MSOP should work to open avenues for clients to make their concerns known and communicate with the Legislature.

The Minnesota Legislature can reduce harm within MSOP and move toward the goal of sunseting MSOP by taking the following interim steps:

- reviewing the discharge and step-down petition process and considering how to streamline the process and expedite the consideration of detainee petitions. This should include a review of the utility of the SRB and DHS's control of funding for independent examiners.
- allocating adequate funds to expand Community Preparation Services (CPS) to allow for timely transfer of those detainees approved for such transfer.
- amending the state's statute to require annual review of each detainee's risk level and need for continued commitment.
- amending the state's discharge criteria to require discharge when a detainee no longer meets initial commitment criteria.

ENDNOTES

1. The \$100 Million Committee seeks to reassess the role played by sex offense civil commitment in Minnesota and improve Minnesota's use of resources to address and reduce sexual violence. The Committee is composed of detainee representatives, survivors of sexual harm, legal and policy professionals, reentry specialists, families of detained persons, and mental health, human rights, restorative, and racial justice advocates. Committee members include David Boehnke, IWOC Campaign Organizer, Home for Good Coalition, and Co-Chair End Mass Incarceration Table; Elliott Butay, Criminal Justice Coordinator of NAMI Minnesota; Bill Dobbs, J.D., Publisher of the Dobbs Wire; Peter Dross, Vice President of External Relations at the Center for Victims of Torture (CVT); Nikki Engel, Policy and Legal Systems Program Manager at Violence Free Minnesota; Marci Exsted, Center for Social Justice Research Associate at Urban League Twin Cities; Brenda Frye, Founder and CEO of the Institute of Forensic Psychology; John Henderson, Founder of RAIN Homes (Re-entry Assistance to the Incarcerated of North America); Eric Janus, J.D., Director of SOLPRC at Mitchell Hamline School of Law and President and Dean (Emeritus) at Mitchell Hamline School of Law; Michael Miner, Ph.D., L.P., Professor (Emeritus) of Family Medicine and Community Health and former Research Director for the Eli Coleman Institute for Sexual and Gender Health at the University of Minnesota; raj sethuraju, Ph.D., Criminal Justice Co-Chair with the Minnesota NAACP and associate professor at Metro State University's School of Law Enforcement and Criminal Justice.
2. See Sexual Violence Prevention Data, Minn. Dep't of Health (Mar. 23, 2022, 2:26 PM), <https://www.health.state.mn.us/communities/svp/data/index.html>.
3. Ted R. Miller, et al., Costs of Sexual Violence in Minnesota, Minn. Dep't of Health, 4 (July 2007), <https://www.health.state.mn.us/communities/svp/documents/svcosts.pdf>.
4. LaPlant, M., et al., Sexual Violence Data Brief: Hospital-Treated Sexual Violence in Minnesota 2010 to 2014, Minn. Dep't of Health, 1 (2016), <https://www.health.state.mn.us/communities/svp/documents/10.28.2016SexualViolenceDataBrief.pdf>.
5. Wiens T., Et Al., Students Reporting Sexual Violence Victimization on the Minnesota Student Survey, 1992–2016, Minn. Dep't of Health, 1 (September 2019) https://www.health.state.mn.us/communities/svp/documents/MSS_sexualviolencedatabrief2016.pdf.
6. 2022 Minnesota Student Survey Statewide Tables, Minn. Student Surv. Interagency Team: Minn. Dep't of Corrs., Minn. Dep't of Educ., Minn. Dep't of Health, Minn. Dep't of Human Servs., Minn. Dep't of Pub. Safety (December 2022), available at <https://public.education.mn.gov/MDEAnalytics/DataTopic.jsp?TOPICID=11>.
7. Sex Offense Civil Commitment, referred to herein as SOCC, has often been referred to as “sexually violent predator” laws or “SVP laws.” We choose to use the term SOCC in lieu of SVP to avoid the inaccurate implication that a past offense is a permanent behavioral and character trait.
8. See R.K. Hanson, K.M. Babchishin, L.M. Helmus, & D. Thornton, Communicating the Results of Criterion Referenced Prediction Measures: Risk Categories for the Static-99R and Static-2002R Sexual Offender Risk Assessment Tools, 29 Psych. Assessment, 582–97 (2017).
9. See Neil Miller, Sex-Crime Panic: A Journey to the Paranoid Heart of the 1950s (2009); Marie-Amelie George, The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States, 24 J. Hist. Sex., <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SVP-Civil-Commitments-Oct-2020.pdf>.
10. Minnesota Sex Offender Program Statistics, Minn. Dep't. of Hum. Servs. (Sept. 1, 2023), <https://mn.gov/dhs/people-serve/adults/services/sex-offender-treatment/statistics.jsp> (noting that 21 individuals have been fully discharged from MSOP); Joe Barrett, Some Question Laws That Allow Sex Offenders to Be Locked Up After Time Served, WALL ST. J., Sept. 9, 2023 (stating that 94 individuals have died while committed to MSOP).
11. See SOCCPN, Civil Commitment of Sexual Offenders: Introduction and Overview (2015), https://soccpn.org/wp-content/uploads/2016/05/CC_Overview_SOCCPN_2.pdf (listing states that have enacted some form of SOCC statute, discussed further infra at note 131).
12. A prior conviction of a crime is not a statutory requirement for commitment. In fact, a number of detainees at MSOP have never been convicted of a crime.
13. Facilities run by the Minnesota Sex Offender Program in Moose Lake and St. Peter, Minnesota, are highly secured campuses surrounded by razor-wire fences. See, e.g., Larry Oakes, Locked in Limbo, Star Trib. (Minneapolis), June 8, 2008, at A1 (“In most ways the MSOP is indistinguishable from prison, with *cell blocks* and lockdowns for searches.”). Those committed to MSOP facilities are not allowed beyond the secured perimeter. Exceptions apply to those in Community Preparation Services, who are permitted occasional supervised outings beyond St. Peter's campus. See also Monica Davey & Abby Goodnough, Doubts Rise as States Hold Sex Offenders After Prison, N.Y. Times, Mar. 4,

- 2007, at 1.1 (“Most of the centers [in the country] tend to look and feel like prisons, with clanking double doors, guard stations, fluorescent lighting, cinder-block walls, overcrowded conditions and tall fences with razor wire around the perimeters. Bedroom doors are often locked at night, and mail is searched by the staff for pornography or retail catalogs with pictures of women or children. Most states put their centers in isolated areas.”).
14. Sex Offender Treatment: Frequently Asked Questions, Minn. Dep’t of Hum. Servs., <https://mn.gov/dhs/people-we-serve/adults/services/sex-offender-treatment/faqs.jsp>. [hereinafter Frequently Asked Questions].
 15. See *In re Linehan* (Linehan III), 557 N.W.2d 171, 188 (Minn. 1996), cert. granted, judgment vacated sub nom., *Linehan v. Minnesota*, 522 U.S. 1011 (1997).
 16. Minn. Stat. Ann. § 253D.01–.36 (West 2013).
 17. Tamara Rice Lave, *Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws*, 69 La. L. Rev. 549, 571 (2009).
 18. *Id.* at 549–50.
 19. Eric S. Janus, *Minnesota’s Sex Offender Commitment Program: Would an Empirically-Based Prevention Policy Be More Effective?*, 29 Wm. Mitchell L. Rev. 1083, 1088 (2003).
 20. See Eric S. Janus, *Preventing Sexual Violence: Alternatives to Worrying about Recidivism*, 103 Marq. L. Rev. 819, 830 (2020) (noting that the goal of Minnesota’s 1939 Sexual Psychopath Law was not to reduce recidivism, but instead to “identify[] and contain[] would-be criminals before they committed a crime,” quoting Molly Ladd-Taylor, “Ravished by Some Moron”: The Eugenic Origins of the Minnesota Psychopathic Personality Act of 1939, 31 J. Pol’y Hist. 192, 194 (2019)).
 21. Trevor Hoppe, et al., *Civil Commitment of People Convicted of Sex Offenses in the United States*, UCLA Sch. of L.: Williams Inst. 3 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SVP-Civil-Commitments-Oct-2020.pdf> (citing Committee on Psychiatry and Law, *Psychiatry and Sex Psychopath Legislation: The 30s to the 80s*, 840 (1977)), <https://perma.cc/GGN8-ZXHZ>); Marie-Amelie George, *The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States*, 24 J. Hist. Sex., <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SVP-Civil-Commitments-Oct-2020.pdf>.
 22. Hoppe, *supra* note 21, at 4.
 23. *Id.*
 24. *Id.*
 25. Miller, *supra* note 9.
 26. *Id.* at 5.
 27. Janus, *supra* note 19, at 1088–89 (citing Am. Bar Ass’n, *ABA Criminal Justice Mental Health Standards* 460 (1989); Committee on Psychiatry and Law, *Psychiatry and Sex Psychopath Legislation: The 30s to the 80s*, 840 (1977)), <https://perma.cc/GGN8-ZXHZ>)
 28. *Id.* at 1088.
 29. Minn. Stat. § 253B.02, subd. 18b (2010).
 30. *State ex rel. Pearson v. Probate Court of Ramsey County et al.*, 287 N.W. 297, 298 (Minn. 1939), *aff’d*, 309 U.S. 270 (1940).
 31. *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, 1144, 1146 (D. Minn. 2015), *rev’d and remanded sub nom.*, *Karsjens v. Piper* (*Karsjens I*), 845 F.3d 394 (8th Cir. 2017).
 32. *Id.* at 1146.
 33. See Heather Ellis Cucolo & Michael L. Perlin, *They’re Planting Stories in the Press: The Impact of Media Distortions on Sex Offender Law and Policy*, 3 U. Denv. Crim. L. Rev. 185, 191–200 (2013); Bela August Walker, *Essay: Deciphering Risk: Sex Offender Statutes and Moral Panic in A Risk Society*, 40 U. Balt. L. Rev. 183, 1998–99 (2010).
 34. Janus, *supra* note 19, at 1089.
 35. See *In re Linehan* (Linehan I), 518 N.W.2d 609, 610 (Minn. 1994) (quoting *State ex rel. Pearson v. Probate Court of Ramsey Cnty.*, 287 N.W. 297, 302 (Minn. 1939)).
 36. *State ex rel. Pearson v. Probate Ct. of Ramsey County*, 287 N.W.297, 298 (Minn. 1939), *aff’d*, 309 U.S. 270 (1940).
 37. Minn. Stat. Ann. § 253D.02 Subd. 15 (West 2021) (emphasis added).
 38. Minn. Stat. Ann. § 253D.02 Subd. 16 (West 2021) (emphasis added).
 39. *Civil Commitment of Sex Offenders*, Off. of the Legis. Auditor, 23–24 (Mar. 2011), <https://www.auditor.leg.state.mn.us/ped/pedrep/ccso.pdf>.
 40. Lucy Massopust and Raina Borrelli, “A Perfect Storm”: Minnesota’s Sex Offender Program—More Than Twenty Years Without Successful Reintegration, 41 MH L. Rev. 706, 712 (2015).
 41. *Id.* at 711 (citing Governor Tim Pawlenty, *State of Minn., Exec. Order 03-10, Providing Direction to State Agencies in Relation to Persons Civilly Committed Under Minnesota Law as Having Sexual Psychopathic Personalities or as Sexually Dangerous Persons* (July 10, 2003), available at <https://www.leg.mn.gov/archive/execorders/03-10.pdf>).

42. *Id.* (citing Warren Wolfe, *Sex Offender Release Rules Are Changed; Pawlenty's Executive Order, in Effect, Will Keep Psychopaths Locked Up*, Chief of Staff Says, *Star Trib.* (Minneapolis), July 11, 2003, at 1B.).
43. *Id.*
44. *Id.* at 712 (quoting *Civil Commitment of Sex Offenders*, supra note 39, at 27).
45. *Id.*
46. *Id.* at 712–13, n.30.
47. Nancy Johnston, Executive Director, Minnesota Sex Offender Program, August 1, 2021 Presentation, available at <https://www.house.mn.gov/comm/docs/efsMvfaoQOu9zIEZiKlSVg.pdf>.
48. Andy Mannix and Brianna Bierschbach, *How one case – and geography – dramatically affected commitments to the Minnesota Sex Offender Program*, *MinnPost* (Aug. 7, 2015), available at <https://www.minnpost.com/politics-policy/2015/08/how-one-case-and-geography-dramatically-affected-commitments-minnesota-sex-o/>.
49. *Id.* (stating “Hennepin and Ramsey, the most populous counties in the state, have committed the most offenders by raw count. But rural counties have committed at a much higher rate relative to population—calculated as commitments per 100,000—according to the Minnesota courts data.”)
50. See Johnston, supra note 47. The client census numbers include clients of provisional discharge.
51. *Criminal Sexual Conduct Sentencing Practices: Criminal Sexual Conduct Offenses Sentenced in 2017*, *Minn. Sentencing Guidelines Comm'n* at 12 (2019).
52. Janus, supra note 20, at 821 (citing *Criminal Sexual Conduct Sentencing Practices: Criminal Sexual Conduct Offenses Sentenced in 2017*, *Minn. Sentencing Guidelines Comm'n* at 12 (2019)).
53. *Id.*; *Minn. Stat.* § 609.3455 (2023).
54. *Humphrey v. Cady*, 405 U.S. 504, 509 (1972); *Foucha v. Louisiana*, 504 U.S. 71, 86 (1992).
55. *Kansas v. Crane*, 534 U.S. 407 (2002); *Kansas v. Hendricks*, 521 U.S. 346, 382 (1997) (Breyer, J., dissenting).
56. *Id.*; see also *Hendricks* at 371 (Kennedy, J., concurring) (noting where the “treatment” component of a SOCC regime is “a sham or mere pretext,” that may indicate the “forbidden purpose of punishment”).
57. *Foucha v. Louisiana*, 504 U.S. 71, 82 (1992); see also Stephen McAllister, *Sex Offenders and Mental Illness: A lesson In Federalism and the Separation of Powers*, 4 *Psychol. pub. Pol'y & L.* 268 (1998).
58. *O'Connor v. Donaldson*, 422 U.S. 563, 570 (1975).
59. *Hendricks*, 521 U.S. 346, 367–68 (1997); see also Eric S. Janus & Wayne A. Logan, *Substantive Due Process and the Involuntary Confinement of Sexually Violent Predators*, 35 *Conn. L. Rev.* 319, 351 (2003).
60. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).
61. “Recidivism” occurs when an individual who was previously convicted of an offense is subsequently convicted of another offense.
62. Janus, supra note 20, at 821.
63. See Ira Mark Ellman & Tara Ellman, Comment, “Frightening and High”: The Supreme Court’s Crucial Mistake About Sex Crime Statistics, 30 *Const. Comment.* 495, 504 (2015); see also Mariel Alper & Matthew R. Durose, *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)*, U.S. Dep’t of Just. 1 (May 2019), <https://bjs.ojp.gov/content/pub/pdf/rsorsp9yfu0514.pdf>.
64. Alper & Durose, supra note 63.
65. G. Duwe., *To what extent does civil commitment reduce sexual recidivism? Estimating the selective incapacitation effects in Minnesota*, *J. Crim. Just.* (2013), <http://dx.doi.org/10.1016/j.jcrimjus.2013.06.009>.
66. Duwe’s study defined “recidivism” as reconviction of a new sex offense. *Id.*
67. *Id.* at 4, 6.
68. *Id.* at 6.
69. *Id.* Note that the number of persons committed during the three-year study period (105) reflects an annual rate of commitment considerably higher than the current rate. When Duwe’s findings are applied to more typical commitment rates, the reduction in recidivism is half of his estimate: 5% of the likely recidivists are committed, and 95% are released to the community.
70. Some may question the significance of these findings, noting that sexual harm often goes unreported. Without a doubt, there is significant evidence showing that a large proportion of sexual offenses are never reported, but this reality does not diminish the value of the studies cited above because underreporting is likely uniform across different offender populations. See Ellman, *When Animus Matters and Underreporting Doesn’t*, 25 (the National Crime Victimization Survey conducted by the Department

of Justice identified the following reporting rates for rape and sexual assault, 23% in 2016, 40% in 2017, and 25% in 2018 (citing Rachel E. Morgan & Barbara A. Oudekerk, *Criminal Victimization, 2018*, Bureau of Just. Stat. 8 tbl.5 (2019), <https://bjs.ojp.gov/content/pub/pdf/cv18.pdf>; Rachel E. Morgan & Jennifer L. Truman, *Criminal Victimization, 2017*, Bureau of Just. Stat., 7 tbl.6 (2018), <https://bjs.ojp.gov/content/pub/pdf/cv17.pdf>). In other words, there is no reason to believe that reporting rates are lower for those who have a previous conviction for a sex offense versus those who have never been convicted of a sex offense. *Id.* at 25. The constitutionality of SOCC is premised on the idea that certain high-risk individuals pose a much greater threat of sexual offending than everyone else in the general population. If harm-doers from both groups (recidivists and first-time offenders) are uniformly underreported, then the proportionate reduction in harm provided by detention programs like MSOP remains the same. *Id.* at 25.

71. Janus, *supra* note 20, at 832–36 (2020) (citing Brian Collins, Minn. Dep't of Corr., Presentation at the 2017 MnATSA Conference: Residency Restrictions: Sound Public Policy or Tinfoil Hats? (Apr. 21, 2017) (on file with SOLPRC)).
72. See Kelly K. Bonnar-Kidd, *Sexual Offender Laws and Prevention of Sexual Violence or Recidivism*, 100 *Am. J. Pub. Health* 412, 414 (2010); see also Jeffrey C. Sandler, Naomi J. Freeman, & Kelly M. Socia, *Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law*, 14 *Psychol. Pub. Pol'y, & L.* 284, 295 (2008) (showing that, in N.Y., 95% of sex-offense arrestees between 1986 and 2006 were first-time offenders); see also Joshua Vaughn, *Failure to Comply Arrests Reveal Flaws in Sex Offender Registries*, Appeal, (Aug. 1, 2018) (noting that in Pennsylvania, “more than 96 percent of defendants charged with a sex offense in 2016 had no criminal history of sexual violence”).
73. As discussed above, in a typical year, SOCC confines 5% of potential recidivists. 95% of recidivists are released to the community.
74. Brian Collins, Minn. Dep't of Corr., Presentation at the 2017 MnTASA Conference: Residency Restrictions: Sound Public Policy or Tinfoil Hats? (Apr. 21, 2017) (on file with SOLPRC) (citing data from the Minnesota Sentencing Guidelines Commission, 2016).
75. Nicholas Scurich & Richard S. John, *The Dark Figure of Sexual Recidivism*, (Research Paper, UC Irvine School of Law) (2019), <https://ssrn.com/abstract=3328831>.
76. *Id.*
77. *Id.*; Rachel Lovell, Misty Luminais, Daniel J. Flannery, Laura Overman, Duoduo Huang, Tiffany Walker, & Dan R. Clark, *Offending patterns for serial sex offenders identified via the DNA testing of previously unsubmitted sexual assault kits*, 52 *J.Crim. Just.* 68–78 (2017).
78. Tamara Rice Lave & Justin McCrary, *Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process? An Empirical Inquiry*, 78 *Brook. L. Rev.* 4, 1396, 1399 (Summer 2013).
79. *Id.* at 1396.
80. To account for any potential distortions based on underreporting, in addition to tracking sex crimes, researchers also tracked the incidence of gonorrhea (frequently used as a proxy for the incidence of sexual abuse). *Id.* at 1402–03.
81. *Id.* at 1421–22.
82. *Id.*
83. *Id.*
84. Sarah DeGue, Linda Anne Valle, Melissa K. Holt, Greta M. Massetti, Jennifer L. Matjasko & Andra Teten Tharp, *A Systematic Review of Primary Prevention Strategies for Sexual Violence Perpetration*, 19 *Aggression & Violent Behav.* 346, 359 (2014).
85. Frequently Asked Questions, *supra* note 14.
86. See *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, 1151 (D. Minn. 2015), *rev'd and remanded sub nom. Karsjens v. Piper* (Karsjens I), 845 F.3d 394 (8th Cir. 2017); see also *Civil Commitment of Sex Offenders*, *supra* note 39, at 2.
87. *Id.*
88. Public Safety FY 2022-23 Budget Narratives 101, Minn. Dep't of Pub. Safety, 81-86 (January 2021), <https://www.lrl.mn.gov/docs/2021/mandated/210127/public-safety-public-safety.pdf#page=101>.
89. Minn. Stat. § 299A.296 (2021).
90. *Id.*
91. E-mail from Tricia Hummel, Assistant Dir., Minn. Off. of Just. Programs, to E. Levine, Mitchell Hamline Rsch. Assistant (Aug. 23, 2022, 16:16 CDT) (on file with SOLPRC).
92. Minn. Stat. § 611A.212 (2021).
93. *Id.*
94. See E-mail, *supra* note 91.

95. *Id.*; see generally Community Prevention Partnership Programs, Minn. Coalition Against Sexual Assault, <https://mncasa.org/our-work/prevention/cppp/> (last visited Oct. 12, 2022).
96. Legislative Report for Domestic Violence and Sexual Assault Prevention Grant Program, Minn. Dep't of Health 6 (Feb. 2022) <https://www.health.state.mn.us/communities/svp/documents/dvsaprogramlegreport2022.pdf>.
97. *Id.*
98. Zoom Interview by Mitchell Hamline Research Assistant E. Levine with Mary Hopkins, Sexual Violence Prevention Program Director, Minn. Dep't of Health (July 2, 2022).
99. See Minn. Session Law Chapter 41 of HF 2703 Subd. 23.
100. This research looked exclusively into the funding for primary prevention in Minnesota and did not take into consideration Minnesota's contributions to secondary and tertiary forms of sexual violence prevention occurring after a sex crime has taken place, such as victim's services and sex offense treatment for incarcerated persons held by the Department of Corrections.
101. This chart is based on available data, described in the paragraphs above, collected in the Fall of 2022 regarding state and federal funding of primary prevention efforts from 2019 through 2022. The Minnesota Sex Offender Program's total expenditures for 2020 were \$103,244,000. Minnesota Biennial Budget 2022–23—Departmental Earnings, Minn. Mgmt & Budget 290 (Jan. 2021), <https://mn.gov/mmb-stat/documents/budget/operating-budget/gov-rec/jan21/jan21-gov-rec-departmental-earnings-detail.pdf>.
102. See About the Sexual Violence Prevention Program, Minn. Dep't. of Health (2022) <https://www.health.state.mn.us/communities/svp/>.
103. E-mail from Mary Hopkins, Sexual Violence Prevention Program Dir., Minn. Dep't of Health, to E. Levine, Mitchell Hamline Rsch. Assistant (Aug. 25, 2022, 10:25 CDT) (on file with SOLPRC).
104. See Funding by Recipient, Ctrs for Disease Control & Prevention (Mar. 24, 2021), <https://www.cdc.gov/phhsblockgrant/allocation/index.htm>.
105. Janus, *supra* note 20, at 841.
106. Charlene Y. Senn, Misha Eliasziw, Paula C. Barata, Wilfreda E. Thurston, Ian R. Newby-Clark, H. Lorraine Radtke, & Karen L. Hobden, Efficacy of a Sexual Assault Resistance Program for University Women, 372 *New Eng. J. Med.* 2326, 2326–35 (2015).
107. Janus, *supra* note 20, at 841.
108. *Id.* at 832–36 (quoting Charlene Y. Senn, Misha Eliasziw, Paula C. Barata, Wilfreda E. Thurston, Ian R. Newby-Clark, H. Lorraine Radtke, & Karen L. Hobden, Efficacy of a Sexual Assault Resistance Program for University Women, 372 *New Eng. J. Med.* 2326, 2326–35 (2015)).
109. Why Men?, Men as Peacemakers, available at <https://www.menaspeacemakers.org/whymen>.
110. *Id.*
111. *Id.*
112. The Minnesota Sex Offender Program refers to the individuals confined in its facilities as “clients.” This report refers to them as detainees because they are housed in a state-run facility, based on prior misconduct, and without freedom to leave.
113. Minnesota Sex Offender Program Statistics, Minn. Dep't. of Hum. Servs. (June 30, 2022), <https://mn.gov/dhs/people-we-serve/adults/services/sex-offender-treatment/statistics.jsp>.
114. See *Karsjens v. Jesson*, 109 F.Supp.3d 1139 (D. Minn. 2015). That decision was later overturned on appeal in *Karsjens v. Piper* (Karsjens I), 845 F.3d 394 (8th Cir. 2017).
115. Barrett, *supra* note 10.
116. Minnesota Sex Offender Program Statistics, *supra* note 113.
117. See *id.*
118. Minn. Stat. 253D.27 Subd. 2 & 3.
119. Minn. Stat. 253D.27 Subd. 4.
120. Minn. Stat. 253D.28 Subd. 1.
121. Minnesota Sex Offender Program Statistics, *supra* note 113. As of January 12, 2024, MSOP reports that the number has increased to 100. (E-mail from Nancy Johnston, Exec. Dir., Minn. Sex Offender Program to Eric Janus, Dir., SOLPRC (Jan. 12, 2024, 10:18 CDT) (on file with SOLPRC)).
122. *Id.* Some of those initially granted provisional discharge have subsequently been granted full discharge while others have had their provisional discharge status revoked.
123. Johnston, *supra* note 47.
124. Minnesota Sex Offender Program Statistics, *supra* note 113.
125. Eric S. Janus, Closing Pandora's Box: Sexual Predators and the Politics of Sexual Violence, 34 *Seton Hall L. Rev.* 1233, 1238 (2004).
126. *Id.*

127. *Call v. Gomez*, 535 N.W.2d 312, 319 n.5 (Minn. 1995) see also *In re Linehan (Linehan III)*, 557 N.W.2d 171, 188 (Minn. 1996), cert. granted, judgment vacated sub nom., *Linehan v. Minnesota*, 522 U.S. 1011 (1997).
128. *Id.* at 1238 n.21 (citing an e-mail from Anita Schlank, Ph.D., then Clinical Dir. Of Minn. Sex Offender Program to Eric S. Janus (Aug. 19, 2002)).
129. Information provided by MSOP's Records and Information Services Department to Ruby Brewer on October 2, 2023.
130. Rev'd and remanded sub nom., *Karsjens v. Piper (Karsjens I)*, 845 F.3d 394 (8th Cir. 2017).
131. Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin all have civil commitment laws for those convicted of sex offenses. (See SOCCPN, *Civil Commitment of Sexual Offenders: Introduction and Overview (2015)*, https://soccpn.org/wp-content/uploads/2016/05/CC_Overview_SOCCPN_2.pdf).
132. Jennifer E. Schneider, Rebecca Jackson, Gina Ambroziak, Deidre D'Orazio, Naomi Freeman, Jannine Hébert, Tim Thornton, SOCCPN Annual Survey of Sex Offense Civil Commitment Programs 2023 (Sept. 26, 2023) (PowerPoint presentation on file with SOLPRC).
133. *Id.*
134. *Id.*
135. "The[] review consists of three stages. At the first stage, a computer program developed by the DOC eliminates offenders from consideration based on their criminal history and other factors. . . . At the second stage, the three-person screening committee reviews the files of offenders. . . . The third stage of review consists of a more detailed review of offenders, including interviews and the development of a report on each offender. At this stage of review, independent legal counsel under contract to DOC reviews the psychologist's report on each offender to see if the offender meets the legal standard for referral to a county attorney. In addition, the Commissioner of the Department of Corrections reviews the reports on those offenders who are assigned a risk level of three but are not Recommended for referral by the screening committee or legal counsel." *Civil Commitment of Sex Offenders*, supra note 39, at 27–28.
136. *Id.*
137. Minn. Stat. § 253D.07 (2021).
138. See definitions *infra* notes 143 & 144.
139. Hoppe, *supra* note 21, at 7.
140. *Civil Commitment of Sex Offenders*, *supra* note 39, at 29.
141. Lave & McCrary, *supra* note 78, at 1395.
142. *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association*, Am. Psychiatric Ass'n 173 (1999).
143. Minn. Stat. 253D.02 Subd. 16 defining "Sexually Dangerous Person."
144. Minn. Stat. 253D.02 Subd. 15 defining "Sexual Psychopathic Personality."
145. *Id.*
146. *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (citing *Kansas v. Hendricks*, 521 U.S. 346, 360, 372–73 (1997)).
147. Using DSM-5, this diagnosis is now called "Other Specified Paraphilic Disorder."
148. Megan Testa & Sara G. West, *Civil Commitment in the United States*, 7(10) *Psychiatry (Edgemont)* 30–40 (2010).
149. SOCCPN, *Controversial Issues with Sexually Violent Predator (SVP) Laws: A Guide for Professionals 1-2 (2015)*, https://soccpn.org/wp-content/uploads/2016/05/controversial_issues_SOCCPN.pdf.
150. *Id.* at 2.
151. *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (citing *Kansas v. Hendricks*, 521 U.S. 346, 360, 372–73 (1997)).
152. Paul Bryant, Alec Buchanan, and Howard Zonana, *Ethical Issues in the Treatment of Sex Offenders*, in *Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues* 678–79 (Fabian M. Saleh, John M. Bradford, Daniel J. Brodsky, Eds. 2d ed. 2021) (citing A. Buchanan *Descriptive Diagnosis, personality disorder and detention*, 16 *J Forensic Psychiatry & Psych.* 538–51 (2005)).
153. *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997).
154. Hoppe, *supra* note 21, at 7.
155. *In re Linehan (Linehan III)*, 557 N.W.2d 171, 180, cert. granted, judgment vacated sub nom., *Linehan v. Minnesota*, 522 U.S. 1011 (1997).
156. See, e.g., *In re Schultz*, No. CX-99-1296, 1999 WL 1100941, at *5 (Minn. Ct. App. Nov. 30, 1999); *In re Martinelli*, No. C6-98-569, 1998 WL 613845, at *6 (Minn. Ct. App. Sept. 15, 1998); *Matter of Clements*, 440 N.W.2d 133, 135–36 (Minn. Ct. App. 1989) (all characterizing questions about expert's testimony as determinative of "weight" and "credibility," not admissibility).

157. For additional discussion of this issue, see Brief of Legal and Risk Assessment Experts Eric S. Janus and L. Maaik Helmus as Amici Curiae in support of Appellee, *Rick v. Harpstead*, Appellate Court File No. 23-2359 (8th Cir.).
158. *Rick v. Harpstead*, No. 23-2359 (8th Cir.).
159. Appellee's Brief, *Rick v. Harpstead*, No. 23-2359 (8th Cir.).
160. *Id.*
161. *Rick v. Harpstead*, No. 19-CV-2827, 2023 WL 4109140 (D. Minn. 2023).
162. See *In re Civil Commitment of Cook*, No. 27-MH-PR-21-1180 (Fourth Judicial District, Probate/Mental Health Division 2023); Kim Hyatt, Judge to rule if Edina man convicted of Wisconsin sex assaults should be civilly committed, *Star Trib.*, May 26, 2023, <https://www.startribune.com/judge-to-rule-if-27-year-old-edina-sex-offender-should-be-civilly-committed/600278031/> (last visited October 9, 2023).
163. The fact that progress in treatment, adherence with parole requirements, and having a detailed plan for continued treatment, supervision, and reintegration have little effect on commitment decisions may have a chilling effect on Minnesota's community-based treatment and management systems for individuals who have committed sexual offenses.
164. Individuals with ratings on actuarial risk assessment instruments indicating moderate and even low risk have been civilly committed. See, e.g., *In re Lueck*, No. A10-18, 2010 WL 3744394, at *3 (Minn. Ct. App. Sept. 28, 2010) (approving commitment of individual with re-offense risk of 19% on the STATIC-99 risk assessment tool); *In re Civil Commitment of Cermak*, No. A09-1080, 2009 WL 3736196, at *2 (Minn. Ct. App. Nov. 10, 2009) (approving commitment of person with score of 9 on MnSOST-R); *In re Commitment of Garza*, No. A08-0288, 2008 WL 2889700, at *4 (Minn. Ct. App. Jul. 29, 2008) (approving commitment of person with MnSOST-R score of 2); *Holden*, 2001 WL 683004, at *4 (approving commitment of person whose MnSOST-R score indicated a "low" risk of re-offense).
165. See SOCCPN, *supra* note 11.
166. Minn. Stat. § 253D.27, Subd. 2 (2021).
167. *Id.*
168. Data on Petitions Filed Annually from 2012– 2022, Data Request Response from MSOP to SOLPRC (June 10, 2022) (on file with SOLPRC).
169. According to MSOP administrators, 77 individuals residing at St. Peter currently participate in an alternative program of treatment for those with compromised cognitive function.
170. E-mail from Tiffany Minkel, Member of OCEAN, to M. Ranum (Oct. 13, 2022, 10:06 CDT) (on file with SOLPRC).
171. MSOP administrators point out that the petition process is discussed in treatment groups and discussed in presentations hosted by the MSOP Reintegration Department. Clients can meet personally with Client Resource Coordinators and read a policy describing the process on the client network. (E-mail from Nancy Johnston, Exec. Dir., Minn. Sex Offender Program to Eric Janus, Dir., SOLPRC (Jan. 12, 2024, 10:18 CDT) (on file with SOLPRC)). Despite these resources, some detainees report being unaware of the process.
172. Minnesota Legislative Reference Library, Information on Minnesota State Agencies, Boards, Task Forces, and Commissions: Special Review Board (May 24, 2021), <https://www.lrl.mn.gov/agencies/detail?AgencyID=1041>.
173. Minn. Stat. § 253D.27, Subd. 3 (2021).
174. Minn. Stat. § 253D.29, subd. 1.
175. Minn. Stat. § 253D.30 Subd. 1(b).
176. See *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, 1165 (D. Minn. 2015), *rev'd and remanded sub nom., Karsjens v. Piper* (*Karsjens I*), 845 F.3d 394 (8th Cir. 2017) ("The MSOP will only support a petition for a reduction in custody if the petitioning individual fully completes the treatment program. Commissioner Jesson credibly testified that the MSOP will only support individuals for discharge if they had been successful in finishing treatment and defined 'successful' to mean 'finished.' Johnston credibly testified that the MSOP's practice is that committed individuals must be in Phase III for the MSOP to support their petition.").
177. *Id.*
178. Minn. Stat. § 253D.31.
179. *Id.*
180. Minn. Stat. § 253D.28, Subd. 2(c).
181. Minn. Stat. § 253D.27, Subd. 4 (2021).
182. See Brief of Legal and Treatment Experts Michael H. Miner and Eric S. Janus as Amici Curiae in Support of Appellants at 13 n.30, *McDeid v. Johnston*, Nos. A21-0042, A21-0043, (Minn. Dec. 22, 2021) (compiling data from the Minnesota Appellate Courts Case Management System, at <https://macsnc.courts.state.mn.us/ctrack/search/publicCaseSearch.do>).

183. Although there were over 20 Independent Examiners working with CAP in January of 2018, by March of 2023 there were only 4 Independent Examiners working with CAP. Presentation by Judge Jay Quam, Commitment Appeal Panel (CAP) Update, DHS CLE (September 20, 2023).
184. *Id.*
185. In the spring of 2023, DHS raised rates in response to requests from the judiciary. Over the last few months, this increase in pay has resulted in a significant increase in the number of available independent examiners. See *id.*
186. In the Matter of the Civil Commitment of: Al Stone Folsom, No. AP19-9153, at 8 (Commitment Appeal Panel Dec. 2, 2021) (Contempt Order).
187. *Id.*
188. *McDeid v. Johnston*, 984 N.W.2d 864, 870 (Minn. 2023).
189. *Id.* at 875.
190. *Id.* at 874.
191. *Id.* at 878–79.
192. Respondents' Brief, *McDeid v. Johnston*, Minn. A21-0042, A21-0043 (2022).
193. E-mail from Nancy Johnston, Exec. Dir., Minn. Sex Offender Program to Eric Janus, Dir., SOLPRC (Jan. 12, 2024, 10:18 CDT) (on file with SOLPRC).
194. Data on Petitions Filed Annually from 2012 – 2022, Data Request Response from MSOP to SOLPRC (June 10, 2022) (on file with SOLPRC) (showing that a total of 966 petitions were reflected in the data from 2015 to 2021. Out of 966 petitions, MSOP supported only 142 (15%)).
195. Out of the 142 petitions that MSOP supported, CAP granted 129 (91%). *Id.*
196. Out of 966 petitions, MSOP did not support 824. Out of those 824 petitions that MSOP did not support, CAP granted 78 (9%).
197. Civil Commitment of Sex Offenders, *supra* note 39, at 20.
198. Expert Report and Recommendations at 60, *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, No. 0:11-cv-03659-DWF-JJK (D. Minn. 2015), ECF No. 658, <http://stmedia.startribune.com/documents/Expert+panel+report+on+sex+offender+program.pdf>.
199. Minnesota's SOCC discharge standard can be found at Minn. Stat. § 253D.31.
200. Minn. Stat. § 253B.03, subd. 7 (2021).
201. ATSA is an international, multi-disciplinary organization dedicated to preventing sexual abuse by providing treatment to individuals who sexually offend, promoting research that leads to the effective treatment and management of individuals who have sexually offended, and encouraging empirically based public policy and prevention efforts. The 2,800 professional members of ATSA include leading researchers who study sexual abuse and effective treatment interventions, experts in the assessment, treatment, and management of individuals who sexually offend, and victims' advocates.
202. "SOCCPN gathers information from sex offender civil commitment programs in 19 different states . . . and determines generally accepted practices . . . based on the information gathered." See *Howe v. Godinez*, No. 14-CV-844-SMY, 2021 WL 4050852, at *8 (S.D. Ill. Sept. 6, 2021).
203. See ATSA, Civil Commitment: One Approach for Management of Individuals Who Have Sexually Abused 6 (2020), <https://www.atsa.com/policy/CivilCommitmentApproach%20forManagement.pdf>; R. Karl Hanson et al., The Principles of Effective Correctional Treatment Also Apply to Sexual Offenders: A Meta-Analysis, 36 *Crim. Just. & Behav.* 865, 867 (2009).
204. See ATSA & SOCCPN, *infra* note 206; ATSA, *supra* note 203, at 1, 5–7.
205. ATSA, *supra* note 203, at 5–6.
206. ATSA, Civil Commitment: Best Practice Informed Recommendations 3 (Feb. 2021), <https://www.atsa.com/policy/CivilCommitmentSummary.pdf>. ATSA's Best Practice Informed Recommendations "are made through a collaboration between [ATSA] and [SOCCPN]." *Id.*
207. *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, 1156–57 (D. Minn. 2015), *rev'd and remanded sub nom.*, *Karsjens v. Piper* (*Karsjens I*), 845 F.3d 394 (8th Cir. 2017); see also Civil Commitment of Sex Offenders, *supra* note 39, at 71 (finding that "[a] lack of client motivation has been a barrier to progression in treatment" at the MSOP).
208. E-mail from Tiffany Minkel, Member of OCEAN, to M. Ranum (Oct. 13, 2022, 10:06 CDT) (on file with SOLPRC).
209. See Expert Report and Recommendations at 69, *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, No. 0:11-cv-03659-DWF-JJK (D. Minn. 2015), ECF No. 658, <http://stmedia.startribune.com/documents/Expert+panel+report+on+sex+offender+program.pdf>.
210. Minn. Sex Offender Program, Policy No. 215-5001, Maintaining a Therapeutic Treatment Environment (2022).

211. Email from Eldon Dillingham to Eric Janus, Dr., SOLPRC (Jan. 8, 2024), quoting email from Rochelle Mednansky, SPA-Tech Sepc – Records Production Specialist, MSOP-Moose Lake, (Dec. 19, 2023) (on file with SOLPRC) (confirming block). E-mail from Nancy Johnston, Exec. Dir., Minn. Sex Offender Program to Eric Janus, Dir., SOLPRC (Jan. 12, 2024, 10:18 CDT) (on file with SOLPRC) (declining to respond to a request for reasons for the block).
212. Civil Commitment of Sex Offenders, *supra* note 39, at 47.
213. *Id.* at 3.
214. *Id.* at 47.
215. See discussion *supra* at 45 n.171.
216. *Id.* at 90.
217. Minnesota Sex Offender Civil Commitment Advisory Task Force, Final Report, Minn. Dep't of Human Servs. 1 (Dec. 2013), <https://edocs.dhs.state.mn.us/lfsrver/Public/DHS-6641B-ENG>.
218. See *Karsjens v. Jesson*, 109 F. Supp. 3d 1139 (D. Minn. 2015), *rev'd and remanded sub nom., Karsjens v. Piper* (*Karsjens I*), 845 F.3d 394 (8th Cir. 2017); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (“At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”).
219. *Karsjens v. Harpstead*, No. 22-1459 (8th Cir. 2023).
220. Brief of Plaintiffs-Appellants, *Karsjens v. Harpstead*, No. 22-1459, at 17; *Karsjens v. Lourey* (*Karsjens II*), 988 F.3d 1047, 1051 (8th Cir. 2021).
221. Brief of Plaintiffs-Appellants, *Karsjens v. Harpstead*, No. 22-1459, at 11–13.
222. *Id.* at 13–14.
223. *Id.*
224. On December 6, 2013, the district court appointed four experts, Dr. Naomi Freeman (“Freeman”), Deborah McCulloch (“McCulloch”), Dr. Robin Wilson (“Wilson”), and Dr. Michael Miner (“Miner”), pursuant to Rule 706 of the Federal Rules of Evidence. See Expert Report and Recommendations at 52, *Karsjens v. Jesson*, 109 F. Supp. 3d 1139, No. 0:11-cv-03659-DWF-JJK (D. Minn. 2015), ECF No. 658, <http://stmedia.startribune.com/documents/Expert+panel+report+on+sex+offender+program.pdf>.
225. *Id.*
226. *Id.* at 9.
227. *Id.*
228. *Karsjens v. Harpstead*, No. 22-1459 (8th Cir. 2023).
229. These reports are available at the Minnesota Legislative Reference Library at <https://www.lrl.mn.gov/>.
230. Ketanji Brown Jackson, *Prevention Versus Punishment: Toward a Principled Distinction in the Restraint of Released Sex Offenders*, 109 Harv. L. Rev. 1711 (1996).
231. *Buck v. Bell*, 274 U.S. 200, 207 (1927).
232. Casey C. Sullivan, Esq., 13 Worst Supreme Court Decisions of All Time, FindLaw (October 14, 2015) <https://www.findlaw.com/legalblogs/supreme-court/13-worst-supreme-court-decisions-of-all-time/>.
233. *Buck v. Bell*, 274 U.S. 200, 207 (1927).
234. *Korematsu v. United States*, 323 U.S. 214 (1944).
235. *Trump v. Hawaii*, 585 U.S. 667, 753 (2018) (Sotomayor, J. Dissenting).
236. *Id.* at 710 (majority opinion).
237. History.com Editors, *Japanese Internment Camps*, History.com (October 29, 2009), <https://www.history.com/topics/world-war-ii/japanese-american-relocation>.
238. Hoppe, *supra* note 21, at 15.
239. *Id.* at 18.
240. See Minnesota Population Review (2023) available at <https://worldpopulationreview.com/states/minnesota-population> (listing MN’s African American and American Indian populations as 6.64% and .93% of the state’s population, respectively); Minnesota Sex Offender Program Statistics, *supra* note 113 (listing MSOP’s African American and American Indian populations as 113 (15.12%) and 58 (7.76%) of MSOP’s detainee population, respectively).
241. Hoppe, *supra* note 21, at 15; *Inside Illinois Civil Commitment: Treatment Behind Razor Wire* at 15–16 (2022), available at <https://static1.squarespace.com/static/628f74f56926587029e47eea/t/63913b79ab69af5815e89aad/1670462330297/InsideIllinoisCivilCommitment2022.pdf>.
242. Hoppe, *supra* note 21, at 15.
243. *Id.* at 15.
244. *Id.*
245. *Id.* at 15, 18.
246. *Id.* at 18.

247. Inside Illinois Civil Commitment: Treatment Behind Razor Wire, Civil Commitment Working Grp. at 15–16 (2022), <https://static1.squarespace.com/static/628f74f56926587029e47eea/t/63913b79ab69af5815e89aad/1670462330297/InsideIllinoisCivilCommitment2022.pdf>.
248. LGBT Demographic Data Interactive. UCLA Sch. of L.: Williams Institute (January 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#density>.
249. Sullivan v. Government of the United States, [2012] EWHC (Admin) 1680, [33] (Eng.); Eric Janus, Preventive Detention and the “Psychopath”: U.S. and International Perspectives, in *The Wiley International Handbook on Psychopathic Disorders and the Law* 78 (2d ed. 2020).
250. Chris Serres, Hunger strike takes toll on detainees at Minnesota treatment center for sex offenders, *Star Trib.* (Jul. 12, 2021); Chris Serres, Sex offenders at Moose Lake launch hunger strike, *Star Trib.* (Jan. 26, 2021).
251. Russell Hatton, et al., Barriers to Release and Potential Solutions: Why the Minnesota Sex Offender Program Does Not Work and What Officials Can Do About It, *Ocean* (February 7, 2021) <https://img1.wsimg.com/blobby/go/20cddaef-143b-459c-b0a5-661446bd1281/2-Barrierstoreleaseandpotentialsolutions.pdf>.
252. *Id.*
253. This information was shared by Steve Sandell, former Minnesota House of Representatives, District 53B.
254. See Barrett, *supra* note 10.
255. Primary prevention includes approaches that take place before sexual violence has occurred to prevent sexual harm from occurring in the first place, including community education and support.
256. Secondary prevention includes immediate responses after sexual violence has occurred, including crisis intervention, advocacy, and medical care.
257. Tertiary prevention includes long-term responses after sexual violence has occurred, including long-term treatment, community support, and policies and programs for those who have experienced sexual harm, those who have perpetrated sexual harm, and impacted families.