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[As courts censure civil detention practices, is it time for professionals to speak up?](#)

*Guest commentary by David S. Prescott, LICSW**

Last week, [a federal judge ruled](#) that Missouri's civil commitment program is unconstitutional, the second such court decision in three months. For readers unfamiliar with the US civil commitment laws (AKA "SVP" laws), the short version is that 20 states and the federal government have laws that allow states to indefinitely confine sex offenders who are assessed as having a mental diagnosis that predisposes them to commit future sexual violence. There are controversies at every possible turn in these laws, their processes, and subsequent programs, and the US Supreme Court decisions allowing civil commitment have passed by as little as one vote. Because the author was an expert witness in [the Missouri case](#), this essay looks more at the big-picture issues rather than at that specific case. What seems clear is that there is an evolving consensus in the courts that civil commitment as it is being practiced in many places is unconstitutional and that governments and programs must work together closely to rein in widespread abuses.



David S. Prescott. Photo by J. Lloyd.

As in [the Minnesota case](#) decided this June, the Missouri case involved a treatment program in operation for many years (roughly 15 in Missouri's case and 20 in Minnesota's) from which few have been released and no one has ever been fully discharged. On one hand it is clear that some people who are civilly committed are truly dangerous; I have worked with men who openly vow to re-offend. On the other hand, no bona fide form of treatment takes a minimum of 15 years to complete. Add to this a political climate that is at best un conducive to genuine rehabilitation, and the die for these court decisions was cast long, long ago.



Prison researcher [Grant Duwe](#)

What are the implications for civil commitment?

For all of our profession's advances in assessment and treatment, we seem to be producing no improved outcomes whatsoever in the civil commitment arena. A study that has not garnered the amount of discussion that it deserves is [Grant Duwe's 2014 research](#) finding that only 28% of a sample of civilly committed offenders would likely have re-offended again in their lifetimes, raising questions as to whether states have cast their [nets too wide](#). In a nation in which "[Blackstone's Formulation](#)" -- "It is better that ten guilty persons escape than that one innocent suffer" -- is taught in schools as a fundamental principle of justice, the practice of holding thousands of people indefinitely beyond the expiration of their criminal sentences ought to give anyone pause. In fact, the principle behind Blackstone's Formulation goes back to antiquity. For example, in the Bible, Genesis 18:23-24 quotes Abraham as asking: "Will you sweep away the righteous with the wicked? What if there are fifty righteous people in the city? Will you really sweep it away and not spare the place for the sake of the fifty righteous people in it?"

Closer to street level, two cases among many made prominent headlines in Minnesota last year. The first was that of a young man who had sexually abused others at an early age. From a [media account](#):

The four court-appointed experts argued that T's early sexual offenses as a juvenile were influenced by his own sexual victimization, and that his behavior was likely exacerbated by his attention deficit hyperactivity disorder (ADHD) and untreated trauma. The experts also noted that most juveniles who act out sexually do not continue to offend as adults. "There is little evidence to suggest that T is a dangerous sexual offender who poses a significant risk to public safety," the experts wrote.

Another case involved the only woman civilly committed as a sex offender in that state. From a different [news report](#):

B's case has proven to be even more vexing for the state...[I]t's clear officials had little idea what to do or how to treat her.... She suffered a traumatic upbringing: abused by her father, brother and two of her uncles starting as early as 5 years old and continuing through young adulthood. She had a child at 14, and as an adult, sexually abused two boys. [One] of the court-appointed experts ... characterized B's offenses as "reactive" to her trauma as a child. As an adult, B is "flirtatious" and "forward" and easily stimulated in discussions of sexual activities. All of which means that treating her in an all-male program, with group therapy sessions, might have actually made things worse.

Despite expert consensus that continued civil confinement was not likely to be helpful in either case, neither T nor B were released. This represents a trend. Similar cases (such as this other [juvenile-only offender](#) or this [65-year-old man](#) who reports being shuffled among no less than 24 therapists in more than two decades of commitment) have been reported in the media, and yet the status quo continues.

Clearly, these cases involve people who are difficult to treat. For a sense of scale, though, the woman described above was civilly committed during Bill Clinton's first year in office, 22 years ago; others have been committed for even longer. One commentator described the lack of outcry as having the same emotional valence as fishermen noting that they sometimes catch dolphins in their tuna nets. At what point is remaining silent about the judicial findings, and the many task force reports and outside evaluations they rest on, no longer acceptable?



Missouri's Sex Offender Rehabilitation and Treatment Services (SORTS). Photo credit: Jesse Bogan, St. Louis Post-Dispatch

Sadly, the people working at the front lines are often directed by policy and supervisors not to openly discuss these issues. In my experience, some people care more deeply than others about balancing the rights and welfare of the community with the principle of beneficence toward clients in treatment. There is no question that there are good people at the front lines trying to do the right thing and wrestling with deeply personal questions about the way forward. Still, given that two exercises of civil commitment statutes have been deemed unconstitutional -- and in the eyes of many that is another way of saying fundamentally un-American -- questions emerge for all practitioners:

At what point do professionals in these settings openly acknowledge to them/ourselves that we are participating in systems that are openly unconstitutional and therefore unlawful according to the standards of much of the Western world? Even beyond American law, consider the case of [Shawn Sullivan](#), who fled the US and was on Interpol's most-wanted list. One of the UK's highest courts denied a U.S. extradition request on the basis that Minnesota's program to commit sex offenders indefinitely to treatment violates European human rights law. From the article:

Lord Justice Alan Moses said returning Sullivan for trial with the possibility of later being placed in the sex offender system would be a "flagrant denial of his rights" under European law.

With that in mind, professionals might also want to ask at what point we are violating [basic human rights](#) when we render "treatment" that no one can ever complete.

Meanwhile, even in states such as Wisconsin, New York and Texas, where some committed sex offenders have successfully completed treatment and been released into the community, the constitutionality of civil commitment is threatened by broad residency restrictions and policies that severely restrict where these residents can live once discharged.

As a profession, we have the research, the tools, and the templates to provide prompt and adequate treatment and to reduce the harm of sexual abuse, and yet we find ourselves in political climates where we cannot use them. At what point do we as individual professionals, or as professional organizations, take a stand against practices that are clearly not working to anyone's long-term benefit? One need only look at the recent scandal of the [American Psychological Association and its involvement with torture](#) to see how collective inaction can ultimately bring disgrace to a profession.

Personally, my belief is that we all need to talk about these issues much more than we do. Legal action and journal articles are one matter, public dialog is something else. Critical self-examination takes courage. Perhaps it starts with all of us when we say to ourselves: All sexual abuse is unacceptable, but I will not violate the rights of others in the name of reducing harm. It is time to take a stand for the rights of *all* human beings.

**[David Prescott](#) is Director of Professional Development for [a youth services organization in New England](#), and is a widely published [author](#) and lecturer on sex offender treatment, motivational interviewing, adolescent offenders and related topics. He was an expert witness in the Missouri class action case decided Sept. 11 by U.S. District Court Judge Audrey Fleissig, *Van Orden v. Schafer* (the full text of which is available [HERE](#)). More information is available at [his website](#). An [earlier version](#) of this essay appeared at the blogspot of *Sexual Abuse: A Journal of Research and Treatment*.*

Britain balks at extradition in Minnesota sex case

State sex offender program seen as rights violation.

By IAN EVANS Special to the | JUNE 20, 2012 -- 11:12PM



The case of Shawn Sullivan garnered international headlines