



Our Deeply Flawed Civil Commitment System



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Response Essays

June 3, 2015

The inherent problems in sexual offender civil commitment should concern all citizens. **Mr. Baughman's article addresses a number of concerns worthy of exploration.** There is no question that some sex offenders are truly dangerous and that the public is understandably concerned. As currently practiced, however, civil commitment rarely delivers on erstwhile promises of either public safety or rehabilitation. This is despite the often well-intentioned staff members of these facilities. The author's position is that if society is to employ civil commitment, we need to do so in accordance with the highest scientific standards and free of political pressure. We are not there yet.

Mr. Baughman makes some important points, although there is more to the discussion. What else do we know?

First, research has illustrated how states can often overuse civil commitment. For example, a 2013 study employing an actuarial risk assessment measure by Grant Duwe of the Minnesota Department of Corrections found that only a minority of civilly committed sex offenders would be re-arrested for a sex crime were they living in the community. These findings are even more noteworthy in light of findings by Karl Hanson and his colleagues that the known rate of sexual re-offense decreased to 4.2% for those high-risk offenders who remained in the community for 10 years. In other words, a key approach to balancing the rights of the individual and

community safety may actually lie in helping society's most feared members to live safely in the community.

Second, the civil commitment of young people out of juvenile facilities may be more problematic than Mr. Baughman's article states. While the science of risk assessment remains controversial for adults who have sexually abused, there are no scientifically supported means for accurately assessing the lifetime risk of adolescents. This leaves judges and juries having to make life-altering decisions based on invalid factors, such as personal judgments. In fact, studies of the small minority of adolescents known to re-offend have found that risk is much greater while they are still in adolescence. The shopworn axiom that "once a sex offender, always a sex offender" not only unsupported by research, it would take considerable evidence to conclude that it is true. Ultimately, what often goes forgotten is that teenagers – including their sexual interests and propensity to crime – are subject to change without notice. Indeed, throughout history and around the world, adults have a difficult time understanding and predicting the behavior of young people.

Third, civil commitment is far too often a binary proposition. That is, presumably high-risk offenders are either committed or not to an institution that, in essence, walks like a prison and talks like a prison. To the author's knowledge, only one state employs civil commitment has a community-based treatment option for rehabilitation. This is in sharp contrast to what many who work in these institutions already know: that a significant portion of the people in their charge could easily be managed in the community.

Fourth, it is time to confront some grim realities. The number of releases from many institutions is unacceptably low for laws that purport to be rehabilitative in nature. At this writing, federal class-action lawsuits in both Missouri and Minnesota are awaiting disposition. Among other problems, there have been only a very small handful of releases from both of these programs across 15 and 20 years of operation respectively. Other states, such as Texas and Kansas, have recently been in the media spotlight for having no one complete treatment after many years in existence. In defense of anxious program administrators (I have been one), it is certainly the case that many residents frequently behave in extreme defiance of program rules, including perpetrating violence against others. At the same time, however, it can be easy to forget that the nature of institutional living can also set the stage for much of the problematic behavior observed. This fact received attention from the expert panel Mr. Baughman references in the

recent Minnesota case. Ultimately, I am aware of no form of psychological treatment that takes a minimum of 15 years to complete; clearly, other factors are impinging on the purported goal of rehabilitation.

In states where residents do re-enter the community, there are often few “least restrictive alternatives.” In other words, those inside of the institution’s secured perimeter must complete specific tasks whether or not they could participate meaningfully in treatment in a less restrictive setting. In at least one state, people who complete treatment inside the program are discharged directly to the community without realistic supports. Researchers and practitioners have long known that the period of transition from an institution to the community is one in which people are more vulnerable to return to historical behavior. It makes little sense to detain someone in the name of public safety only to return them unsafely to the community.

Ultimately, a key problem in attaining the highest quality of rehabilitative standards lies in the complexities of providing treatment in an environment where hopelessness is the norm. If there is any lesson to learn from civil commitment it is the effect of providing no release date. Civil commitment becomes a paradox when residents in treatment are told that their participation in treatment will determine much of the length of their stay, even as they are aware that they have little influence on administrative decisions and the legal proceedings that will determine their release in those states where people have completed the program.

Ironically, virtually all of the research on how and why human beings change their lives points to a simple fact: People are most likely to change when the decision to do so is made of their own free will.

Our individual rights and societal interests will best be served when our policies are scientifically informed, faithfully implemented, and shown to be effective as applied. Civil commitment of any human being presents numerous ethical and constitutional problems; if we choose to do this, we need to do it right. While it may be too soon to throw the civil commitment baby out with the bath water, it is clear that much more work between stakeholders, including the residents as well as those attempting to provide treatment, needs to occur.