



Civil Commitment of Sex Offenders

Major Findings:

- The number of civilly committed sex offenders in the Minnesota Sex Offender Program (MSOP) nearly quadrupled during the last decade and is expected to nearly double over the next ten years.
- Minnesota is one of 20 states with civil commitment programs for sex offenders and, in 2010, had the highest number of civilly committed sex offenders per capita.
- MSOP's annual cost is \$120,000 per offender, or about three times the cost of incarceration in Minnesota, but close to the average for other secure treatment facilities for civilly committed sex offenders.
- The number of court commitments as a percentage of referrals from the Department of Corrections varies significantly across the state. Our statistical analysis suggests that some sex offenders being committed may have a lower risk of recidivism than others who are being released from prison.
- Minnesota lacks reasonable alternatives to commitment at a high security facility. Lower-cost alternatives may be appropriate for some sex offenders being considered for commitment or already residing at MSOP facilities.
- No sex offender has been discharged from MSOP since it was created in 1994. Without releases, Minnesota is

susceptible to lawsuits challenging the adequacy of the treatment program.

- MSOP's treatment program has experienced frequent leadership changes and significant staff vacancies, and it has struggled to maintain the type of therapeutic environment necessary for treating high-risk sex offenders.
- Current MSOP management has worked to address security problems and clinical deficiencies, but it still needs to increase the number of treatment hours provided, improve the therapeutic environment, and establish clearer guidelines for judging treatment progress.

To control accelerating costs, Minnesota could develop lower-cost facilities to house some civilly committed sex offenders and create an enhanced stay of commitment option for others.

Key Recommendations:

- The Legislature should require MSOP to develop a plan for lower-cost alternative facilities to be used by certain sex offenders. The plan should also outline the changes needed to implement a stay of commitment option.
- The Legislature should consider a variety of other options for reducing the costs of civil commitment, including changes in the commitment process, commitment standards, and financing of commitment costs, as well as changes in sentencing policy.
- The Department of Human Services should require MSOP to provide more treatment hours per week than are currently provided.

Among the 20 states with civil commitment programs, Minnesota has the highest number of civilly committed sex offenders per capita.

Report Summary

Minnesota and 19 other states have laws allowing the courts to civilly commit dangerous sex offenders following their release from prison. In Minnesota, the Department of Corrections screens offenders scheduled for release and refers those who may be appropriate for civil commitment to county attorneys. County attorneys decide whether to file a petition for commitment with the district courts, which make the final determination on commitments. Committed sex offenders are sent to the Minnesota Sex Offender Program (MSOP), which has facilities in Moose Lake and St. Peter.

Civilly committed sex offenders retain certain civil rights, including the right to treatment. Without an adequate treatment program, Minnesota could face a legal challenge.

Minnesota’s population of civilly committed sex offenders has grown significantly in the last decade and is the highest in the nation on a per capita basis.

The total number of civilly committed sex offenders in MSOP has grown from less than 30 in 1990 to 149 in 2000 and 575 in mid-2010. The 2010 figure does not include another 55 or so civilly committed sex offenders who were temporarily transferred to correctional facilities.

In 2010, Minnesota had the third highest population of civilly committed sex offenders—after California and Florida—and has the highest number in the nation on a per capita basis. It is unclear exactly why Minnesota has so many civilly committed sex offenders compared with other states. Minnesota has a lower overall incarceration rate than most states, but there are no data available to determine if Minnesota has a lower rate for sex offenders. Another possible explanation is that Minnesota’s laws facilitate the civil commitment of sex offenders. Unlike most states, Minnesota does not allow jury trials for civil commitment. Minnesota also

allows hearsay evidence and requires the commitment standard to be met with “clear and convincing evidence” rather than proven “beyond a reasonable doubt.” Minnesota also considers offenses involving emotional harm to victims, rather than just physical harm or violence.

The largest increases in commitments, however, occurred after the Department of Corrections (DOC) changed its referral practices. From 1991 to 2003, DOC referred about 26 offenders per year to county attorneys. Following a November 2003 rape and murder by a sex offender recently released from prison, DOC began referring all offenders who might meet the legal standard for commitment. With that change in policy, the number of annual DOC referrals after 2003 grew to about six times its previous rate.

The costs of civil commitment in MSOP are high relative to incarceration and other alternatives.

The annual cost per resident in MSOP is \$120,000. This cost is at least three times the cost of incarcerating an inmate at a Minnesota correctional facility. Although treatment costs play a role, the primary reason why costs are higher at MSOP facilities is security, which is the biggest spending component at both MSOP facilities and Minnesota’s prisons. Overall staffing per resident is about three times higher at MSOP facilities than at Minnesota’s prisons. This difference largely reflects differences in the mission and average size of the two types of facilities.

The annual cost of civil commitment programs in other states with secure facilities like MSOP ranges from about \$36,000 to \$180,000 per year. Minnesota’s annual cost was the fifth highest of 12 states that responded to a recent survey.

The civil commitment program in Texas, which does not rely on the same type of facilities, has an annual cost of only about \$27,000 per offender. Texas houses its committed offenders in four halfway houses specifically for this

There is considerable variation in commitment practices, particularly among prosecutors.

population and provides outpatient treatment. In addition, the Texas program provides close supervision and monitoring and restricts the ability of residents to travel outside the halfway houses. If offenders violate the terms of their commitment, they may receive lengthy prison sentences.

Among Minnesota's judicial districts, commitment rates vary significantly, with the percentage of referred offenders being committed varying from 34 to 67 percent.

Commitment rates in Hennepin and Ramsey counties and northeastern Minnesota are 34 to 36 percent of DOC referrals, while the rates are 43 to 45 percent in the judicial districts immediately north and south of Hennepin and Ramsey counties. Commitment rates in judicial districts throughout the rest of the state vary from 59 to 67 percent.

Statistical analyses we conducted strongly suggest that the probability of being committed is significantly higher in most of the rest of the state than it is in Hennepin and Ramsey counties and northeastern Minnesota. These analyses take into account known differences in the recidivism risk posed by offenders considered for commitment.

The differences in commitment rates appear to be largely the result of differences in the percentage of referred cases for which county attorneys file a petition. The DOC's referral practices are unaffected by geographic difference. In addition, the variation in court commitment practices is more limited than that among prosecutors.

Minnesota lacks reasonable alternatives to commitment at a high security facility.

A major problem with Minnesota's commitment process is that it generally involves a choice between a high security facility and release from prison with no supervision, if the offender has served his entire prison sentence. Minnesota law allows for consideration of a less restrictive alternative, but there

are no alternatives available. Minnesota has one private residential facility for sex offenders, but it will not take any offenders being considered for commitment.

One lower-cost alternative would be to establish group homes or halfway houses for certain civilly committed sex offenders who could be managed in such a setting. Currently, there are low functioning adult offenders at MSOP for whom the impact of the treatment program has probably been maximized. Some of these offenders are probably suitable for a group home setting that lacks the high security of an MSOP facility but retains sufficient supervision and monitoring. In addition, there may be other individuals in MSOP whose risk level has been reduced and may be suitable for a halfway house alternative such as that provided in Texas. Sufficient supervision would be needed, along with appropriate consequences if individuals do not comply with the rules.

Minnesota law currently provides for a stay of commitment option, but it is rarely used since it was designed primarily for populations other than sex offenders. That option would become more viable if the law provided for supervision by MSOP or DOC instead of a social service agency, and if the law was more explicit about the conditions an offender must meet to avoid revocation of a stay.

With the large influx of commitments since 2003, MSOP has struggled to provide adequate treatment and maintain a therapeutic environment, particularly at its Moose Lake facility.

Over the last eight years, MSOP's treatment program has experienced frequent leadership changes and has had a significant number of staff vacancies. In addition, it has been difficult to maintain the therapeutic environment necessary for making progress with high-risk sex offenders.

The problems have been particularly acute at MSOP's Moose Lake facility, which serves clients in the beginning stages of treatment. At one point last

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year, six of the eight clinical supervisor positions were vacant at Moose Lake. In November 2010, MSOP had 17 vacancies for nonsupervisory clinical positions, with 16 of them at Moose Lake.

The lack of adequate numbers of clinical staff has meant the number of hours of treatment provided by MSOP is generally lower than that provided by civil commitment programs in other states. In addition, the number of hours provided by MSOP is less than that provided at Minnesota correctional facilities or the only private residential facility for adult sex offenders in the state.

The treatment environment has also been adversely affected by reductions in security staff and a change in their role. In recent years, the number of security staff was cut significantly, and security counselors were no longer expected to provide therapeutic support to residents. While these changes made some sense, clinical staff have not been available in sufficient numbers to fill the void.

Current management at MSOP has taken steps to address problems at its facilities. For example, despite the reduction in security staffing, MSOP's facilities have become more secure, partly due to the adoption of clear policies for resident and employee behavior. Current

management is also taking steps to fill the vacancies in its treatment program. In addition, it has implemented a treatment program that appears to be consistent with accepted "best practices" in the field. Further work will be needed to make sure the program provides clear guidelines for assessing treatment progress and is implemented consistently by the clinicians who treat offenders.

No civilly committed sex offender has ever been discharged from MSOP, although MSOP is now proposing to provisionally discharge two offenders in the next six months.

Several factors may explain why no MSOP clients have been discharged from the program. First, problems in the treatment program over the last ten years have likely affected the progress of some sex offenders. Second, while a specialized court now determines whether offenders are discharged, the previous administration issued an executive order discouraging any discharges. Finally, Minnesota has a release standard for offenders who are civilly committed that, in practice, is stricter than other states. MSOP does not support any discharges without completion of the treatment program. Most states explicitly allow for discharges if an offender no longer meets the commitment criteria.

Summary of Agency Responses

In a letter dated March 3, 2011, Department of Human Services Commissioner Lucinda Jesson said that the evaluation team provided a "thorough review and analysis of the civil commitment process" and the "report reflects that hard work and objectivity." She said that the department "supports the majority of the recommendations made in the report" and believes that "many of the findings and recommendations are consistent with current objectives and goals to continue to provide sex offender treatment in a safe and secure facility." In a letter dated March 2, 2011, Department of Corrections Commissioner Tom Roy noted that the report found the department's referral policy to be "consistent with state law" and "empirically based." In recognition of the role played by referrals in the commitment process, he expressed willingness to "implement any changes in our procedures as legislatively directed."

The full evaluation report, *Civil Commitment of Sex Offenders*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2011/ccso.htm