**Inside the Endless Nightmare of Indefinite Detention Under “Civil Commitment”**

After serving their criminal sentence, these men discover their punishment may never be over.

[**SARAH LAZARE**](https://inthesetimes.com/authors/sarah-lazare)AUGUST 19, 2020

VICTOR TORRES/SHUTTERSTOCK



In June 2019, after serving more than 29 years in Illinois prisons, Otis Arrington expected to be released to freedom: He had finished his time, which he describes as difficult and traumatic, and his exit date was pending. But three days before he was slated to get out, Arrington says he was informed that he would, instead, be placed under a new form of confinement — one with no end date, meted out after he had already completed the punishment imposed by the criminal courts.

“I was supposed to get out, and they kidnapped me,” says Arrington, now 62 years old. He is speaking over the phone from the Treatment and Detention Facility in Rushville — a rural area in western Illinois — where he is one of roughly 560 men (or, at least, people who the state has deemed men) who are being held indefinitely under a little-known ​“civil commitment” statute.

Under this legal mechanism, which [exists](https://www.atsa.com/civil-commitment-2#:~:text=Twenty%20states%20(Arizona%2C%20California%2C,laws%20permitting%20the%20civil%20commitment) in at least 20 states and the District of Columbia, individuals convicted of certain sexual offenses (or in [some instances](https://www.ca4.uscourts.gov/opinions/176355.P.pdf) convicted of nothing), and deemed to have a mental disorder and constitute a danger to society, can be involuntarily committed to ​“treatment” facilities after they’ve already served their criminal sentence. While in civil commitment, individuals are supposed to receive mental healthcare and regular examinations, and to be released once it is determined they are no longer dangerous. As the [statute](https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1990&ChapterID=54) that established civil commitment in Illinois in 1998 puts it, individuals are to receive ​“control, care and treatment until such time as the person is no longer a sexually violent person.”

Yet, *In These Times* spoke with people held in civil commitment, rights advocates, scholars and lawyers who say that, instead of receiving effective treatment, people held under civil commitment statutes are subject to prison conditions, inadequate mental healthcare, scientifically dubious evaluations, and homophobic bias; they are deprived of meaningful due process; and they have little hope of getting out anytime soon. Rehabilitation is not the goal, critics charge, but rather, civil commitment is intended to indefinitely detain and punish people whom society has deemed undesirable. This confinement does not rectify the harm individuals have done, and there is no evidence that civil commitment laws reduce sexual violence in society, critics say. Instead, they argue, it unleashes untold new harms: as the site of abuse, trauma and, according to some, sexual violence.

“We served our time, and then they turn our sentence into a life sentence,” says Arrington. ​“There are guys here who have been here over 20 years.” He adds, ​“You would be amazed at how many residents have died here.”

Arrington’s observations are borne out by evidence. According to information obtained through a Freedom Of Information Act request to the Illinois Department of Human Services, which oversees the Rushville facility, 76 people have died while under the custody of the facility since it opened in 2006. That same FOIA data shows that 288 of the people being held there — slightly more than half of the total population — have been held for 10 years or more. Fifty-one people in Rushville have been held in civil commitment for 20 years or more, and 12 have been in civil commitment for 22 or more years, meaning they’ve been in civil commitment since the statute was implemented in 1998.

If the Rushville facility is supposed to treat people until they are no longer ​“sexually violent” and can therefore be released, it appears to be failing on its own terms.

**How civil commitment works**

Stefan Vogler, a postdoctoral scholar at the Northwestern Center for Legal studies who specializes in civil commitment, says that these long stretches of confinement can be attributed to the fact that, once held under the civil commitment statute, individuals find themselves trapped in an opaque system that’s nearly impossible to escape.

In Illinois, individuals convicted of certain sex crimes — generally those that involve contact, a physical victim, or possession of child pornography — are evaluated by the Department of Corrections at the end of their criminal sentence. If the department finds they meet a certain risk threshold, it will refer them to the attorney general or state’s attorney who will then pursue a ​“sexually violent person” (SVP) case against them. The person then must go before a judge, who has the power to determine whether a civil commitment trial is warranted. ​“Pretty much any time they do that, they find probable cause,” says Vogler.

“As a feminist, I'm someone who has a history of being committed to ending gender and sexual violence. What pushes me to continue this work is that the current regime of more punishment of people with convictions is not the path." —Erica Meiners, professor

Once probable cause is determined, that person is sent to Rushville where they wait for their SVP trial — something that is supposed to happen quickly but can often take years. While awaiting trial, individuals are given the opportunity to receive treatment, but according to scholars and lawyers interviewed by *In These Times*, the things people say in treatment are not considered confidential and can be used in their SVP trial.

Arrington says he does not know who recommended him for commitment, and his efforts to find out have been fruitless. Held in Rushville since June 21, 2019, he has not had an SVP trial, nor does he have a trial date, and he said his motions to dismiss civil commitment, filed without legal counsel, have been dismissed. As he awaits trial, he says, he spends most of his time ​“in my cell, on the wing, in this so-called yard they have, which is more of a patio.” He explains, ​“I’m not receiving any treatment while awaiting trial. I don’t go to any of the groups. I’m just stuck here.” According to Arrington, his entire unit is in quarantine due to the coronavirus pandemic.

“This is punishment after the punishment,” says Arrington, adding: ​“It’s worse than prison, because you don’t have an out-date and don’t have a sentence.”

Arrington’s odds of getting out may not improve much once he has an SVP trial. The state of Illinois must prove ​“beyond a reasonable doubt that the offender has a mental abnormality that predisposes him to sexual violence, and that he is substantially probable to recommit a sex crime if released from detention,” Vogler explains.

Scholars and lawyers describe an environment that is stacked against the defendant, in which it is almost impossible to win one’s freedom. Sara Garber, a lawyer with experience litigating SVP cases in Illinois, tells *In These Times*, ​“The system is designed so that nearly everyone who is evaluated is found by the state’s experts to be SVP, and it is rare that one prevails at trial before a judge or jury, unless the state’s experts deem the person to not be SVP.”

Garber adds, ​“The entire SVP process is based on the false premise that we can predict someone’s propensity for future criminal conduct based on their alleged past behavior and, even worse, that we as a society are comfortable punishing someone for a future crime they have not and may never commit.”

If that individual is found to be an SVP, which, according to Vogler, is ​“the usual outcome,” then they will be held in Rushville until they are deemed less of a risk. But ​“they don’t receive any meaningful treatment,” says Vogler, which is why many spend decades — or even life — in the facility.

Trevor Hoppe is an assistant professor of sociology at University of North Carolina — Greensboro and author of *Punishing Disease: HIV and the Criminalization of Sickness* who is working on a new book examining sex offender civil commitment statutes in the United States. He says, ​“The idea is to put these people away and never let them out. That’s how many proponents of these laws will talk about them. There are due process mechanisms to try to get release, but once you are committed, it’s really hard to get out.”

And, indeed, early proponents of the Act in Illinois described it as a mechanism to lock people away from society. In 1997, former Gov. Jim Edgar [said](https://www.chicagotribune.com/news/ct-xpm-1997-07-01-9707010160-story.html) at a news conference before signing the bill, ​“Sexual predators are among the most dangerous criminals and this legislation will help protect the community from these ticking time bombs.”

Under the U.S. legal system, people are not supposed to be prosecuted twice for the same crime — what’s referred to as ​“double jeopardy.” However, according to Vogler, this standard is violated when it comes to civil commitment. ​“After the individual serves a sentence, he is tried again essentially for the same crime,” Vogler explains. ​“The Supreme Court has decided that’s okay because they’re not being tried criminally twice, but they’re being tried in a civil setting. This is despite the fact much higher consequences are attached to this civil suit than a normal civil suit. Usually, when we’re talking about civil law, we’re talking about suing someone for damages. Usually those aren’t life imprisonment decisions.”

**Accusations of negligent treatment**

Once civilly committed to Rushville, individuals must progress through a treatment program, overseen by the private Liberty Healthcare Corporation, in order to be released. In a 2019 – 2020 [internship brochure](http://www.libertyhealthcare.com/upload/112.pdf) for the Rushville facility, the corporation says its mission is to provide ​“state of the art, sex offender specific treatment in a safe, structured residential environment. We focus on the individualized needs of the residents and treat each resident respectfully, professionally and with dignity. We believe that all residents can change. We strive to reduce risk to society by facilitating life-long behavioral change in residents.”

Yet, scholars and residents paint a very different picture. ​“Most of what happens in Rushville is group therapy,” says Vogler. ​“There are different phases of treatment, and to advance to phases, you have to participate in certain groups. They get little individual attention. You can’t do effective treatment for someone the state has found severely ill by only doing group AA-type treatment.”

"If you want to end sexual violence, you have to end this too. This is a form of sexual violence.” —Emma Williams, advocate

“As part of those treatments,” Vogler continues, ​“they have to talk about their sex lives in extreme detail, from how many sex partners they’ve been with to what types of sexual acts they’ve done to what fantasies they masturbate to to how frequently they masturbate.”

Arrington says he thinks such a treatment program would be actively harmful for him. ​“They have residents running the group,” he says. ​“I can’t do the group treatment. I have PTSD from my time in prison. I can’t deal with that. You’re dealing with guys talking about all the things they’ve done… I can’t deal with hearing that stuff.”

It’s not that Arrington is unwilling to talk about the harm he has caused. He told *In These Times* that he wants to be open about the rape he committed in 1989. ​“I wouldn’t want to try to sugar coat it or nothing,” he says. ​“I broke into my neighbor’s house and assaulted her.” But according to Arrington, group therapy in a prison-like setting, in which anything he discusses can be used against him in a trial, is not going to bring accountability or healing for anyone. ​“I can understand wanting some kind of atonement,” he says. ​“But we served our time.”

Other people held in Rushville seem to share similar concerns about treatment. In the spring of 2019, the civil commitment working group of Black and Pink: Chicago, a prison abolitionist organization, sent a survey to 569 people being held in Rushville — which the organization says was roughly the full population at the time. The group received 204 responses, which it began analyzing that summer. While the organization plans to release a formal report in the coming months, it shared a one-page summary of preliminary findings with *In These Times*. The conclusions are dire.

Residents complained about ​“unqualified therapists,” some of them students, as well as a high turnover problem, and the general lack of a ​“trusting therapeutic relationship” this engenders. They also complained about a climate of favoritism, in which residents are ​“incentivized to kiss ass.” Residents say, ​“Civil commitment is a life sentence, a death sentence; they were sent there to die, believe they will die here.” Respondents expressed concern about ​“homophobia of staff and violation of rights of gay and transgender people.” They described an ​“unfair tier system: no consistency or transparency in application of tier or behavior status systems; difficult to progress, unclear standards for progressive, arbitrary, used for punishment rather than treatment.” It’s a ​“scam,” ​“farce,” ​“indefinite,” ​“endless,” is not about treatment or public safety, and is ​“only open for political or financial reasons,” the document states.

Allegations of profound negligence and mistreatment have also been aired in lawsuits. In May 2015, five men detained at the Rushville facility waged a lawsuit charging that ​“mentally ill residents” of Rushville are grossly neglected, mistreated, mocked, abused and unfairly categorized as ​“uncooperative malingerers.” The suit also claims that these individuals are retaliated against for filing grievances or helping others file grievances, and that they cannot get the ​“sex offender treatment” that they seek.

The lawsuit, which names several defendants, including Liberty Healthcare Corporation and the facility’s director, provides grisly anecdotes. ​“If they try to commit suicide by hanging themselves with a sheet from their beds, they will be written up for destruction of state property,” the lawsuit states. It continues, ​“What limited and erratic care there is, is provided chiefly by medication. A resident with paranoid schizophrenia may see a psychiatrist once a month, to ​‘re-up’ his medication, and a social worker once a month.” The lawsuit charges,“Residents on suicide watch are neglected, abused or both. They can be stripped naked, placed in a cell with no mattress or blankets.”

These conditions violate the constitutional prohibition of cruel and unusual punishment, alleges the lawsuit, which was eventually dismissed.

Erica Meiners, professor of women’s and gender studies at Northeastern Illinois University and co-author of the [book](https://www.versobooks.com/books/3176-the-feminist-and-the-sex-offender), *The Feminist and The Sex Offender*, says such complaints are common among people held in civil commitment across the country. ​“Invariably, the people who work at these places, are usually sort of interns. They get practicum students who are trying to get hours toward their psychotherapy degree. They don’t stay long — they stay a year or so. In most of these states, the treatment model is a stage model. You have to pass a polygraph test to move from stage to stage. Then they have to start from square one again, because the psychotherapist left after a year because they got a better job. And then they’re in there for another year.”

“A lot of the people in these institutions have been institutionalized for decades and have endured incredible harm and done harm. These are intense and complex cases,” says Meiners. ​“If we’re saying we’re doing treatment, we need the real thing here, not a wide range of practices that are not necessarily proven to be effective.”

In 1999, a task force of the American Psychiatric Association strongly criticized civil commitment in its publication, ​“[Dangerous Sex Offenders](https://www.amazon.com/Dangerous-Sex-Offenders-Psychiatric-Association/dp/089042280X).” It states, ​“In the opinion of the Task Force, 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. Moreover, by bending civil commitment to serve essentially non-medical purposes, sexual predator commitment statues threaten to undermine the legitimacy of the medical model of commitment.”

The APA concludes, ​“In the opinion of the Task Force, psychiatry must vigorously oppose these statutes in order to preserve the moral authority of the profession and to ensure continuing societal confidence in the medical model of civil commitment.”

Mental Health America, a non-profit that aims to meet the needs of people living with mental illness, expresses similar concerns about civil commitment. ​“They focus on punishment rather than treatment, deal with people who often do not have a treatable mental illness, increase stigma, distort civil commitment, risk the safety of other persons in mental health facilities, divert resources from mental healthcare and inappropriately burden the mental health system with a criminal justice function for which it is not funded or equipped,” the organization’s website [states](https://www.mhanational.org/issues/position-statement-55-confining-sexual-predators-mental-health-system).

**Controversial assessment methods**

Critics point out that the tests and evaluation tools used to assess whether an individual can progress through the treatment program at the Rushville facility are not universally accepted as sound science. Lawyers, scholars and residents confirmed to *In These Times* that people held in Rushville have to take polygraph ​“lie detector” tests, which have been broadly [discredited](https://www.vox.com/2014/8/14/5999119/polygraphs-lie-detectors-do-they-work) as junk science. In a position statement on this test, the American Psychological Association [advises](https://www.apa.org/research/action/polygraph), ​“although the idea of a lie detector may be comforting, the most practical advice is to remain skeptical about any conclusion wrung from a polygraph.”

There is another, more invasive test people held at the Rushville facility must take if they wish to progress, according to lawyers, scholars and residents: The penile plethysmograph. Vogler explains, ​“A blood pressure test or tube is placed on a man’s penis, and then he is either shown pornographic images or presented with audio vignettes of sexual situations, and they gauge his erectile response. This is how they determine if they think someone is sexually dangerous. If someone shows arousal to a scene involving coercion or forced sexual penetration, then they could take that as indication of underlying sexual danger.”

“We served our time, and then they turn our sentence into a life sentence." —Otis Arrington, held in the Rushville facility

In its brochure, the Liberty Healthcare Corporation acknowledges its use of the test, stating, ​“Detection and measurement of deviant sexual arousal is an important index of response to treatment and treatment effectiveness.”

But the penile plethysmograph is a controversial procedure, and numerous experts do not consider it scientifically reliable. For one, it is possible to stifle an erection by focusing one’s mind on other, non-arousing thoughts. In addition, becoming aroused by representations or descriptions of violent acts does not prove that an individual will commit sexual violence in the future. Finally, as psychology professor at Beacon College in Florida, Dr. A.J. Marsden, [told](https://www.vice.com/en_us/article/jmk8w3/the-faulty-test-used-to-punish-sex-offenders) *VICE*, ​“A lot of therapists think [the penile plethysmograph is] not the best measure to prove if they are really attracted to the images they show them.”

According to Vogler, the test ​“reflects a poor understanding of how sexuality and anatomy works. This is not a good test.” He continues, ​“People have brought lawsuits saying this is cruel and unusual punishment and invasion of privacy. Often people freeze at those points in treatment, and they can’t progress and if they can’t progress they can never be released.”

Most U.S. courts do not consider evidence obtained by penile plethysmograph to be admissible to determine guilt or innocence. In 2006, the U.S. Ninth Circuit Court of Appeals ruled that the penile plethysmograph violated the civil liberties of the defendant, a man who was convicted of possessing child pornography. The court stated that it ​“viewed penile plethysmography as an intrusive procedure, both physically and psychologically, likening the procedure to a device from a George Orwell novel,” according to a [summary](http://jaapl.org/content/35/4/536.full) of the case published in the Journal of the American Academy of Psychiatry and the Law.

Yet, within the Rushville facility, such a test could play a role in determining whether someone remains confined, lawyers, scholars and residents confirmed.

These are not the only assessment methods that have garnered criticism. Another evaluation tool — the [Static-99](https://nicic.gov/static-99static-99r)—came up in numerous interviews, with experts expressing concern that homophobia is baked into its methods. The Static-99 and other updated versions of this tool are broadly used in civil commitment cases — including at Rushville — to evaluate the risk posed by people convicted of sex crimes. One of the questions this tool asks is whether the individuals, who the state deems to be men, had a male victim. If so, they are determined to be more dangerous.

According to Vogler, ​“There is bias built into the ​‘objective’ actuarial tool we use to evaluate people.”

Hoppe puts it succinctly: ​“They are assigning a higher risk score to gay men necessarily.”

**Not the right way to address sexual violence**

Civil commitment laws spread throughout the United States during the 1990s-era [panic](https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html) about crime, and the related 1990s and early 2000s expansion of sex offender notification and registry laws. Some vestiges of the tough-on-crime ​‘90s, like the [1994 crime bill](https://www.aclu.org/blog/smart-justice/mass-incarceration/how-1994-crime-bill-fed-mass-incarceration-crisis)and the [1996 Prison Litigation Reform Act](https://theappeal.org/1994-crime-law-biden/), have fallen out of favor in recent years, due to concerns over mass incarceration. Yet, civil commitment laws remain relatively politically unchallenged, in a climate where few want to question laws that target people convicted of sex offenses. ​“There are very few courageous lawmakers who are going to say, ​‘Hey, we need to look at this,’” says Tony Thedford, a lawyer with experience litigating SVP cases in Illinois.

Proponents of civil commitment laws cite the need to protect public safety from dangerous sexual predators. ​“Illinois’ Sexually Violent Persons Act and the evaluation by the IDOC is the closest thing we have to a crystal ball when it comes to determining whether an offender will attack again,” then-Illinois Attorney General Lisa Madigan said in a 2006 [statement](https://illinoisattorneygeneral.gov/pressroom/2006_05/20060523.html) announcing an expansion of the law. ​“This process is designed to identify those offenders for whom it is substantially probable that they will engage in future acts of sexual violence and to keep them out of society for as long as they remain a danger.”

But, according to Meiners, ​“There is no research that shows states with civil commitment have lower incidents of sexual assault than states that don’t have civil commitment.”

Indeed, a [study](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143199) published in *Brooklyn Law Review* in 2013, based on original data ​“gathered directly from states with SVP laws,” found, ​“SVP laws have had no discernible impact on the incidence of sex crimes.” The article concludes, ​“These results imply that states could more effectively reduce sex crimes by allocating these resources elsewhere.”

Hoppe puts it this way: ​“These programs don’t make us safer in reality. Many would say it makes them feel safer. We’re not really tackling the problem, just making a lot of people’s lives insufferable.”

What’s more, critics charge that civil commitment sends the false message that the key to stopping sexual violence is protecting members of the public from dangerous strangers. [According to](https://www.rainn.org/statistics/perpetrators-sexual-violence#:~:text=In%2011%25%20of%20rape%20and,the%20perpetrator%20used%20a%20weapon.&text=Personal%20weapons%E2%80%94such%20as%20hands,2%20out%20of%203%20cases.&text=90%25%20of%20rapes%20and%20sexual,perpetrated%20by%20two%20or%20more.) the Rape, Abuse & Incest National Network, an anti-sexual violence group, eight out of 10 rapes are ​“committed by someone known to the victim.” Meiners says civil commitment perpetuates the myth that ​”stranger danger” is the bigger threat. ​“It’s overwhelmingly people that we know, people intimate to the family circle,” she says. ​“We shouldn’t be falling for that line.”

People held in civil commitment are ostensibly members of the public, so any claims that the laws protect public safety must take their wellbeing into account. Emma Williams is a volunteer for Black and Pink: Chicago who helped run the survey of residents at the Rushville facility, and she became concerned about civil commitment as a result of her years of supporting sexual assault survivors. ​“A number of people in the system are survivors themselves, particularly of childhood sexual assault,” she says. Williams emphasizes that people in civil commitment say it doesn’t work, they feel judged and have to recount every sexual trauma they’ve suffered since childhood. ​“They’re having to do that in a situation where everything you’re sharing is shared with a prosecutor.”

“If you want to end sexual violence,” argues Williams, ​“you have to end this too. This is a form of sexual violence.”

As long as we focus on things like civil commitment as the solution to sexual assault, we are not pursuing actual solutions, critics charge. ​“As a feminist, I’m someone who has a history of being committed to ending gender and sexual violence,” explains Meiners. ​“What pushes me to continue this work is that the current regime of more punishment of people with convictions is not the path. If we’re committed to ending gender and sexual violence, we have to do that work. This system functions as a resource drain and distraction from the real questions that we as communities, families and society need to be addressing.”

According to Meiners, a ​“paradigm shift” is needed. ​“If we’re thinking about child sexual violence, which drives a lot of anxiety around civil commitment and the push for criminalization, approximately one in five young people lives in poverty across the United States,” she says. ​“We have no meaningful childcare, we have no gender-affirming feminist sex education in public schools. We need shifts that would let families, mothers and caregivers have some social safety net that’s actually meaningful. Those are just some things that are preventative.”

"If the Rushville facility is supposed to treat people until they are no longer 'sexually violent' and can therefore be released, it appears to be failing on its own terms."

Williams, for her part, emphasizes the need for genuine accountability and restitution for harm done. ​“While there are likely some wrongfully convicted people inside, for those who truly did cause harm that they must account for, accountability is something that must happen within their community,” she says. ​“When you remove someone from their community indefinitely, they’re not going to want to change their behavior because they will no longer feel a sense of accountability to that community. It’s a system of punishment and also isolation.”

Amid growing calls to defund the police, and the foray of concepts like prison abolition into mainstream discourse, Meiners says now is an important time to take a long, hard look at the civil commitment system. Yet, even as mass incarceration falls further out of political favor, few politicians are willing to expend their political capital protecting the rights of people convicted of sex crimes. There is little to gain from defending those people whom society has determined to be irredeemable and less than human. The result is that places like the Rushville facility operate with little oversight and protection for those held inside.

​“It’s so depressing here, I’m surprised more people haven’t committed suicide,” says Arrington. ​“I considered that when I first got here.” Desperate for release, Arrington says over the phone he fears he will spend the rest of his life in the Rushville facility.

​“No one,” he says, ​“wants to stand up for people in this kind of program.”



[SARAH LAZARE](https://inthesetimes.com/authors/sarah-lazare) is web editor and reporter for *In These Times*. She tweets at [@sarahlazare](https://twitter.com/sarahlazare).