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**They Served Their Sentences. Now They Want To Know When They Can Go Home.**

Programs that keep sex offenders indefinitely confined face new challenges.

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Sold as a means of giving potentially dangerous sex offenders treatment for their conditions while indefinitely confining them, civil commitment programs invite skepticism about their motivation and effectiveness. While courts have signed off on the practice, keeping people locked up after they've served their prison sentences raises sticky legal and ethical questions. Now a lawsuit and a recent hunger strike by Minnesota prisoners offers new opportunities to reconsider and reform the practice.

At the end of February, the United States Court of Appeals for the Eighth Circuit [gave the green light](https://ecf.ca8.uscourts.gov/opndir/21/02/183343P.pdf) to a lawsuit challenging Minnesota's civil commitment program for sex offenders. Importantly, the court allowed the plaintiffs to argue that civil commitment as practiced in the state is punitive in nature—something that's not permitted of a supposedly therapeutic program.

The current case reboots an earlier legal challenge making similar allegations. The first case resulted in a 2015 U.S. District Court [ruling](https://stmedia.startribune.com/documents/MSOP%2BRuling.pdf) that "Minnesota's civil commitment scheme is a punitive system that segregates and indefinitely detains a class of potentially dangerous individuals without the safeguards of the criminal justice system." While that ruling was reversed on appeal, the new decision revives hope that such arguments will prevail, and that such programs will be found unconstitutional.

That's possible because the over 730 Minnesota prisoners subject to commitment have already served prison sentences for their crimes. They continue to be held under a state [law providing](https://www.revisor.mn.gov/statutes/cite/253D) for the confinement of "a sexually dangerous person or a person with a sexual psychopathic personality … to a secure treatment facility unless the person establishes by clear and convincing evidence that a less restrictive treatment program is available." They can be held until they convince authorities "that 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."

Civil commitment has its roots in 1990s [concerns that some sexual offenders are especially dangerous](https://williamsinstitute.law.ucla.edu/publications/civil-commitment-us/) and prone, because of mental illness, to reoffend if released. The practice spread to 20 states, the federal government, and the District of Columbia, involving, at this time, roughly 6,300 inmates. Despite the potential for sentences without end, the U.S. Supreme Court [signed off on civil commitment in 1997](https://caselaw.findlaw.com/us-supreme-court/521/346.html) on the grounds that it is permissible to continue to confine a person with a "mental abnormality" or "personality disorder" and that it is "not punishment".

So, the basis for civil commitment is *treatment* of people who are ill, not extra punishment of people who have already served their sentences. Except that treatment facilities are awfully punitive, as the judge behind the 2015 decision ruled. News stories in Minnesota and elsewhere refer to "[prisonlike treatment centers](https://www.startribune.com/sex-offenders-at-moose-lake-protest-harsh-conditions-after-deaths-from-covid-19/600012091/?refresh=true)" and "[prison by any other name](https://www.texasobserver.org/a-prison-by-any-other-name/)." The conditions, rules, and guards are entirely recognizable to anybody familiar with the corrections system, though the terminology is a bit fuzzier.

"'FYI, we don't have inmates here,' a faceless voice over an intercom told me," [relates](https://www.texasobserver.org/a-prison-by-any-other-name/) *Texas Observer* reporter Michael Barajas of his 2018 visit to a facility in his state. "'We have residents.' When I started taking photographs, a Correct Care guard ordered me to leave the parking lot."

The prison-like conditions prompt prison-like responses, including a [two-week hunger strike](https://www.startribune.com/sex-offenders-at-moose-lake-facility-launch-hunger-strike/600015408/) earlier this year by inmates at the Moose Lake, Minnesota, treatment facility. The strike came to an end when officials agreed to meet with them to discuss their concerns.

"The purpose of the meetings will be to discuss the strikers' primary complaint: They have no 'clear pathway' for release from the program and its prisonlike treatment centers in Moose Lake and St. Peter," [reported](https://www.startribune.com/sex-offenders-at-moose-lake-end-14-day-hunger-strike-after-reaching-deal-with-state-officials/600019058/?refresh=true) the *Minneapolis Star-Tribune*.

The strikers pointed out that only 13 offenders have been fully released over the program's 27-year history. They're also concerned about close quarters and minimal sanitary provisions in pandemic-era "treatment centers," risking the conversion of indefinite confinement into death sentences.

The sketchy history of civil commitment for sex offenders inspires skepticism among many of those who are supposed to provide the treatment supposedly at its heart. In 1997, the American Psychiatric Association [formally urged](https://psychnews.org/pnews/98-08-21/civil.html) "that psychiatrists vigorously oppose sexual predator laws."

"We were concerned that psychiatry was being used to preventively detain a class of people for whom confinement rather than treatment was the real goal," Paul Appelbaum, chair of the APA's Council on Psychiatry and Law, [commented](https://psychnews.org/pnews/98-08-21/civil.html) at the time. "This struck many people as a misuse of psychiatry."

Those concerns have yet to fade.

"The use of civil commitment for postprison confinement of sex offenders represents a quintessential example of a poorly conceived scheme designed to unify concepts from the fields of law and medicine," argued Corey Rayburn Yung of the University of Kansas School of Law in a 2013 *AMA Journal of Ethics* [article](https://journalofethics.ama-assn.org/article/civil-commitment-sex-offenders/2013-10). "Legislators supporting such programs attempted to utilize the authority of mental health professionals to lend credence to legal regimes on shaky doctrinal ground. The result has been a set of programs that fail from both a medical and legal standpoint."

Nor is it clear that civil commitment addresses a real problem—though it's difficult to be certain because relevant research was suppressed. In the mid-2000s, Dr. Jesus Padilla, a clinical psychologist at California' Atascadero State Hospital, found that sex offenders have a *low* rate of recidivism.

"In his sworn testimony before the judge and an October 10, 2006, memo, Padilla explained that of the 93 ex-offenders he and a colleague had tracked, just six had been rearrested for an alleged sexual crime after about five years in the community," Steven Yoder [wrote](https://reason.com/2020/03/01/the-truth-could-set-them-free/) for *Reason* last year. "That amounts to an astonishingly low rearrest rate of 6.5 percent. By comparison, a 2018 study by the federal Bureau of Justice Statistics found that 49 percent of all state prisoners were arrested again for the same type of offense within five years of their release."

Faced with evidence that civil commitment of sex offenders is based on faulty assumptions, the state of California promptly shut down Padilla's study and destroyed his data. Law professors Tamara Rice Lave, of the University of Miami, and Franklin Zimring, of the University California of Berkeley School of Law, are trying to resurrect the research.

"The Padilla study demonstrates why states should be required at the very least to prove recidivism danger at regular intervals, as California used to do," they wrote in a 2018 *American Criminal Law Review* [article](https://mitchellhamline.edu/sex-offense-litigation-policy/2018/06/29/assessing-the-real-risk-of-sexually-violent-predators-doctor-padillas-dangerous-data-law-review/). "Putting the burden on the committed person to prove he is no longer dangerous is not a legitimate alternative."

Reviving research into the scientific justifications for civil commitment programs couldn't be timelier as prisoners in Minnesota argue that, instead of the promised treatment, those programs constitute nothing more than prison without end.