



**The New York Times** | <http://nyti.ms/1N9XQI9>

---

SundayReview | EDITORIAL

# Sex Offenders Locked Up on a Hunch

By **THE EDITORIAL BOARD** AUG. 15, 2015

The essence of the American criminal justice system is reactive, not predictive: You are punished for the crime you committed. You can't be punished simply because you might commit one someday. You certainly can't be held indefinitely to prevent that possibility.

And yet that is exactly what is happening to about 5,000 people convicted of sex crimes around the country. This population, which nearly doubled in the last decade, has completed prison sentences but remains held in what is deceptively called civil commitment — the practice of keeping someone locked up in an institution for months, years or even decades for the purpose of preventing possible future offenses.

The authorities have the power to detain people with mental illnesses or disorders who cannot function independently, or who pose a danger to themselves or others. But since the early 1990s, this power has been used increasingly to imprison one distinct group: sex offenders.

Federal law and the laws in 20 states and the District of Columbia allow people convicted of violent sex crimes — such as rape or child molestation — to be held in custody indefinitely past the end of their criminal sentences. The Supreme Court has upheld these laws on the grounds that they are not intended to punish or deter crime, but only to hold people until they are no longer a threat. In theory, a civilly committed person gets treatment and is released as soon as possible.

In practice, however, it usually means leaving one prison for another — civil commitment facilities are generally high-security buildings patrolled by armed guards and ringed with barbed wire — from which many are never released.

In a decision in June, a federal judge ruled that Minnesota's civil-commitment law for sex offenders violates the Constitution. Federal District Judge Donovan Frank said the law imposes "a punitive system that segregates and indefinitely detains a class of potentially dangerous individuals without the safeguards of the criminal justice system." For example, local prosecutors — not clinicians or mental health professionals — choose whether to seek continued detention based on a screening test that claims to predict a person's likelihood of committing another sex offense, though there is no clear evidence such tests are accurate.

Yet based largely on those screening tests, more than 700 Minnesotans who have completed their prison sentences are locked up, at an annual cost of more than \$120,000 per person — triple the cost of prison. This civil commitment rate is by far the highest in the country. Some people have been held for more than 20 years. During that time, not one person has been released from the program unconditionally.

A central flaw, Judge Frank said, is that Minnesota does not perform reassessments of risk, so the burden lies with the detainees to prove they no longer pose a danger. On Aug. 12, Judge Frank ordered the state to come up with constitutionally valid reforms by the end of September, or he "may demand a more forceful solution."

Despite the public perception that all sex offenders are recidivists — a belief that drove these laws in the first place — sexual re-offense rates are in fact lower than those for other crimes (though an unknown number of sex crimes go unreported). In addition, while some states' laws make it easier for detainees to earn their way out, 30 states have no civil-commitment laws at all, and there is no evidence that a state's sexual-violence rate is affected by whether it has such a law.

As with California's three-strikes law or harsh mandatory-minimum sentences nationwide, the indefinite detention of sex offenders reflects the politics of fear and overreaction that drive so much of criminal justice policy. That was the case in

Minnesota, which drastically increased the number of people it committed after a recently released sex offender sexually assaulted and murdered a college student named Dru Sjodin in 2003.

Public safety would be better served if resources were directed toward community supervision and other services for those leaving prison, rather than toward skirting the edges of the Constitution to keep them locked away.

*Follow The New York Times Opinion section on Facebook and Twitter, and sign up for the Opinion Today newsletter.*

A version of this editorial appears in print on August 16, 2015, on page SR8 of the New York edition with the headline: Indefinite Imprisonment, on a Hunch.

© 2015 The New York Times Company