

# Sex Offender Civil Commitment Costs: How Much Is Too Much?

by Anthony D. Perillo and Elizabeth L. Jeglic\*

The past two decades have produced an expansion of laws and practices in the United States aimed at protecting communities from sexual violence. Among these efforts, few have elicited as much controversy concerning the demand for resources as sex offender civil commitment (SOCC). Known by various names (e.g., sexually violent predator laws), sex offender civil commitment statutes call for the indefinite detainment of high-risk sex offenders in a civil facility following completion of their prison sentence.

Many states have had similar statutes since the early twentieth century that were either later repealed or continued to exist in name only. Such laws contained outdated language (e.g., “sexual psychopaths”; M. Farkas and A. Stichman, “Sex Offender Laws: Can Treatment, Punishment, Incapacitation, and Public Safety Be Reconciled?,” 27 *Crim. Just. Rev.* 256-262 (2002)), and were not implemented in practice. Only after Washington State enacted the Community Protection Act in 1990, calling for the involuntary commitment of “sexually violent predators,” did modern sex offender civil commitment gain traction. (Washington State Department of Social and Health Services Community Protection Act of 1990; available at <http://www.DSHS.wa.gov/scc/Laws.shtml>.) Today, 21 U.S. jurisdictions (20 states and the federal government) have enacted sex offender civil commitment statutes.

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## Criteria for Involuntary Commitment

Although the language of civil commitment statutes varies across jurisdictions, similar criteria are used in determining who is subject to involuntary commitment as a sexually violent predator, namely:

1. These statutes are geared toward offenders near completion of a prison sentence for a sex crime, with language focusing on sex offenders who (at the time of evaluation) are incarcerated for a sex offense.
2. The offender in question must be determined to suffer a mental abnormality—no specific diagnoses are required, although most evaluations focus on paraphilic diagnoses. (J. Levenson and J. Morin, “Factors Predicting Selection of Sexually Violent Predators for Civil Commitment,” 50 *Int. J. Off. Therapy & Comparative Crim.* 609-629 (2006).)
3. A link must be established between the mental abnormality and the offender’s sexual offending that increases his or her risk of perpetrating a future sex crime.

Under civil commitment law, sex offenders determined to satisfy the three points above may be transferred from prison and detained in a civil facility for treatment until they are determined to no longer pose a significant risk to the community.

## Questions

Several legal questions have arisen with regard to sex offender civil commitment as a practice, such as whether civil commitment is punitive in nature and, thus, unconstitutional under ex post facto and double jeopardy principles. Ultimately, the Supreme Court has upheld the constitutionality of sex offender civil commitment practices. (See *Kansas v. Crane*, 534 U.S. 407 (2002); *Kansas v. Hendricks*, 521 U.S. 346 (1997); *United States v. Comstock*, 551 F.3d 274 (2010).)

**Selection Process.** Others have questioned the processes surrounding the selection of who is committed and, as importantly, who remains committed. Preliminary research suggests those committed or recommended for civil commitment

indeed present as a higher recidivism risk on actuarial risk assessment scales than do sex offenders not recommended for commitment. (K. Lucken and W. Bales, “Florida’s Sexually Violent Predator Program: An Examination of Risk and Civil Commitment Eligibility,” 54 *Crime & Delinq.* 95-127 (2008); C. Mercado, E. Jeglic, K. Markus, and A. Perillo, “Sexually Violent Predator (SVP) Commitment: An Examination of the Characteristics and Recidivism Rates of Committed and Nearly Committed Offenders,” submitted.) Nonetheless, it is unclear whether sex offenders who remain civilly committed are indeed those currently at highest risk to recidivate. Many civilly committed sex offenders are middle-aged or elderly, as several years or decades are likely to pass from their most recent offense through their incarceration and time spent civilly committed. Given the trends of lower recidivism rates among older sex offenders (e.g., R.K. Hanson, “Recidivism and Age: Follow-up Data From 4,673 Sexual Offenders,” 17 *J. Interpers. Viol.* 1046-1062 (2002)), questions remain as to whether civilly committed sex offenders are at an elevated recidivism risk during the time in which they are civilly committed.

**Questionable Treatment During Commitment.** Further, because civil commitment is conceptualized as a treatment-centered practice, much concern has arisen over the effectiveness of the treatment implemented within the civil commitment facilities. Outcome data from Minnesota, for example, are often highlighted as a prime example of questionable treatment practices, which resulted in a court order for thorough evaluation and review of the program. These trends have brought into question the proper treatment for sex offenders who are civilly committed, and have caused some to revisit the question of whether civil commitment is indeed more punishment-oriented than treatment-oriented.

## Costs of Sex Offender Civil Commitment

Although the issues above have generated discussion among academics and

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policymakers, most have had little observable effect on sex offender civil commitment practices. As economic concerns increasingly resonate with citizens and policymakers, however, the financial costs of sex offender civil commitment have garnered closer scrutiny. In the past year, media have dedicated increased attention to the nature of sex offender civil commitment, particularly its financial cost during economically tenuous times. These costs tend to fall into three categories: proceedings surrounding selection for commitment, detainment and treatment while committed, and resources dedicated to release and community reintegration. (A. Harris, "Cost and Resource Allocation in the Implementation of SVP Civil Commitment Policies: A Guide for Policymakers," in A. Schlank, ed., *The Sexual Predator Volume III* ch. 5 (2006).)

therapeutic community (as in treatment). Additional court costs, lawyer fees, and forensic evaluator fees increase the financial demand of civil commitment further.

**Financial Demands Will Increase.** In a 2007 congressional report outlining the costs required for sex offender civil commitment, the authors contended that the low release rates of sex offenders from civil commitment will greatly exacerbate financial demands as the civilly committed population increases. (N. James, K. Thomas, and C. Foley, "Civil Commitment of Sexually Dangerous Persons," Congressional Research Service Report for Congress (2007).) The report cited several factors contributing to increased costs. First, as the rate of those committed far exceeds the rate of those released from civil commitment, current facilities are approaching or exceeding maximum capacity. Such trends have prompted the expansion of current facilities and the building of new facilities

As such, cost-benefit analysis of sex offender civil commitment offers a comprehensive evaluation of sex offender civil commitment on three building domains, namely:

1. Whether civil commitment is effective;
2. The extent that its effectiveness is offset by its cost; and
3. The extent that it provides sufficiently additional safety not feasible through other, less-costly interventions (e.g., community and correctional treatment).

Most forensic intervention cost-benefit analyses have compared the financial costs of an intervention and follow-up recidivism rates (resulting in additional court fees, funds required for incarceration, etc.) to a control group (typically a group incarcerated over the same period but which received no intervention). In general, the costs of evidence-based correctional interventions are often offset by reduced recidivism rates that, in the long term, result in less money being spent on each offender. (D. Farrington, A. Petrosino, and B. Welsh, "Systematic Reviews and Cost-Benefit Analyses of Correctional Interventions," 81 *Pris. J.* 339-359 (2001).)

**Costs of Treatment and Incarceration Compared.** In terms of sex offender interventions, Prentky and Burgess compared the effect of treatment in a secure facility while incarcerated to traditional incarceration. (R. Prentky and A. Burgess, "Rehabilitation of Child Molesters: A Cost-Benefit Analysis," 587 *Ann. Am. Acad. of Pol. & Soc. Sci.* 160-177 (1990).) Results revealed that secure treatment cost slightly more annually per person (\$23,166) than did incarceration (\$22,662); however, because people were released from the treatment facility sooner than the untreated incarcerated group, total costs per person were lower for those in secure treatment (\$118,146) relative to those incarcerated (\$158,635). Further, the recidivism rates of the treated group (25%) were significantly lower than that of the untreated group (40%). The compounded legal fees and additional incarceration expenses associated with higher recidivism rates made incarceration substantially more expensive, ultimately costing an estimated \$67,989 more per person than secure treatment. Overall, cost-benefit analysis presented residential treatment as a substantially cheaper and safer alternative to incarceration.

**Methodologies Used Across Studies Vary.** In a critique of correctional

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A recent report estimated as much as \$450,000 is spent on the proceedings to civilly commit a single sex offender, which includes court expenditures and the hired services of forensic evaluators. (Christine Willmsen, "State Wastes Millions Helping Sex Predators Avoid Lockup," *Seattle Times*, Jan. 22, 2012; available at [http://SeattleTimes.com/html/localnews/2017301107\\_civilcomm22.html](http://SeattleTimes.com/html/localnews/2017301107_civilcomm22.html).) Once committed, daily care costs have been reported to be almost five times that of expenses for traditional incarceration. (Paul McEnroe, "Cost Drives New Plan on Treating Sex Offenders," *Star Tribune*, Jan. 19, 2012; available at <http://www.StarTribune.com/politics/statelocal/137730543.html>.) These recent reports support prior estimates of the costly nature of sex offender civil commitment. Although costs vary across jurisdictions, on the whole, it costs approximately \$100,000 annually to detain one sex offender in a civil commitment facility. (John Q. La Fond, *Preventing Sexual Violence: How Society Should Cope with Sex Offenders* (2005).) As La Fond suggests, civil commitment is inherently more expensive than incarceration or outpatient treatment, because it requires resources assuring that the facility be secure (as in prison) while simultaneously promoting a

in states such as California and Washington. (See La Fond, *supra*.) Additionally, as the civilly committed population ages (with 8.5% of detainees being over age 60 at the time of the report), additional medical care costs will continue to accumulate.

**Reintegration Costs.** Finally, the recurrent evaluations regarding an offender's potential release from commitment will require an increasing number of court, attorney, and evaluator fees, with these costs usually paid by the state. Combined with any fees associated with the development and maintenance of transitional facilities, sex offender civil commitment presents as a heavy financial demand on states that will become increasingly burdensome.

**Cost-Benefit Analysis of Sex Offender Civil Commitment Needed**

The costs of sex offender civil commitment, however immense, may be justified should civil commitment be an effective measure in protecting the community from sexual violence. Particularly at a period when state budgets are becoming increasingly tight, it is important to consider the effectiveness and efficiency of state-funded interventions in order to assess their viability and determine whether funds would be better focused on alternative interventions.

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cost-benefit analyses, McDougall and colleagues noted that very few cost-benefit studies were readily accessible in the published literature. (C. McDougall, M. Cohen, R. Swaray, and A. Perry, "The Costs and Benefits of Sentencing: A Systematic Review," 587 *Ann. Am. Acad. of Pol. & Soc. Sci.* 160-177 (2003).) More concerning was the variation in methodologies used across studies, making it difficult to draw overarching conclusions. McDougall and colleagues note that these studies differed in their use of random selection, inclusion of comparison or control groups, and operationalization of costs and benefits. The latter issue is particularly vital in a cost-benefit context, as selection of items and measures that constitute costs and benefits are the basis for outcomes and ultimate conclusions. Incomplete consideration of the costs and benefits will inevitably lead to an incomplete outlook on the legitimacy of the intervention in question. Beyond direct management costs, other pertinent factors to consider in sex offender intervention analyses include costs related to social service programs (for child victims), police investigatory resources, mental health services for victims and families, and community supervision once offenders are released.

**Intangible Costs.** What makes cost-benefit analyses perpetually complex are the factors not directly connected with financial costs that nonetheless carry significant intangible costs. Not all merits of a forensic intervention's effectiveness can be determined purely by financial expenditures. Abstract principles such as victim suffering, liberty, perceptions of safety, and justice can affect the perceived benefits of an intervention and, in turn, its legitimacy. Acknowledgement of these intangible strengths and consequences of sex offender civil commitment will be key in relaying a comprehensive cost-benefit analysis. It has been argued that only accounting for tangible costs makes results merely a cost comparison rather than a true cost-benefit analysis. (R. Donato and M. Shanahan, "The Economics of Child Sex-Offender Rehabilitation Programs: Beyond Prentky and Burgess," 71 *Am. J. Orthopsychiatry* 131-139 (2001).) Intangible costs, however, must eventually be translated into measurable figures in order to incorporate them into the cost-benefit analysis. How does one compute a cost for victim suffering?

One method of calculating intangible costs is to observe trends in the real world

that may offer insight into the monetary value attributed to a given principle. In the case of victim suffering, we have one clear example of monetary calculations aimed to, at least partly, address victim suffering: compensatory damages awarded by courts to victims and families of victims. In a review of compensatory damages stemming from various crimes, Miller, Cohen, and Wiersma concluded that an average of approximately \$89,000 in compensatory damages were issued in cases of child sexual abuse. (T. Miller, M. Cohen, and B. Wiersma, *Victim Costs and Consequences: A New Look* (1996).)

R. Donato and M. Shanahan (2001) re-analyzed the data in the original Prentky and Burgess (1990) study including this figure to account for intangible costs. Secure treatment was even more cost-beneficial when accounting for victim suffering, as lower recidivism rates resulted in fewer victims. The re-analysis indicated savings exceeding \$35,000 per offender when treatment resulted in a 16% decrease in recidivism (a modest estimate, given the 37.5% recidivism reduction rate in the original study). Using a similar methodology, the authors found similar results in Australia, where prison-based treatment for child molesters was more cost effective than traditional incarceration when accounting for management and intervention expenses, reduced recidivism rates, and intangible costs. (M. Shanahan and R. Donato, "Counting the Cost: Estimating the Economic Benefit of Pedophile Treatment Programs," 25 *Child Ab. & Neg.* 541-555 (2001).)

### May Prove Costly to Public Safety

Few sex offenders have been released from civil commitment up to this point in time. Therefore, it is difficult to accurately gauge sex offender civil commitment's effect on public safety and demonstrate the extent to which it is a cost-effective practice. Overall, it is apparent that sex offender civil commitment is a highly costly practice, with financial burdens largely attributable to the structure and organization of commitment. (Harris, *supra*.)

Considering the findings suggesting that secure treatment while incarcerated can ultimately be more cost-beneficial for sex offenders than receiving no treatment, it is conceivable that a cost-benefit analysis of sex offender civil commitment *in its current form* would suggest it is a superfluous and overly punitive practice, costing states additional millions of dollars in facility expenditures and legal fees for a practice

that may offer no additional public safety than evidence-based treatment programs during offenders' incarceration. In fact, sex offender civil commitment may prove costly to public safety if it contributes no additional benefits while diverting resources from effective interventions that reduce sexual violence and reach far more at-risk offenders. (E. Janus, "Sexual Predator Commitment Laws: Lessons for Law and the Behavioral Sciences," 18 *Beh. Sci. & L.* 5-21 (2000).)

On the other hand, it is possible that a careful process of indefinitely detaining particularly high-risk sex offenders for additional secure treatment can ultimately be cost-beneficial by reserving these costs for those at a particularly elevated risk of recidivism in the immediate future. Such findings would be contingent on the following three important factors:

1. The proper selection of offenders for commitment;
2. The timely identification of committed offenders who later pose a significantly reduced risk to recidivate (which is unlikely to be occurring presently—see Farkas and Stichman, *supra*); and
3. The proper community transition planning to best assure released offenders reintegrate into the community as pro-social, law-abiding citizens.

In any event, as it becomes increasingly possible to conduct thorough outcome research on sex offender civil commitment, it is important that researchers examine the effect of civil commitment on public safety and, as a result, the effect this highly expensive practice has on sexual violence relative to other empirically supported, less-expensive interventions.

Lastly, it is important to note that many states with civil commitment have implemented different practices that significantly affect both their costs and their effectiveness (e.g., privatization in Florida, community-based commitment in Texas). Should multiple states invest in cost-benefit analysis for their civil commitment programs, comparisons of annual costs, release rates, and recidivism rates can be made across various programs. Awareness of these trends across multiple states would assist policymakers, treatment providers, and commitment administrators in determining what strategies surrounding sex offender treatment and civil commitment would improve efficiency and enhance public safety. ■



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