

**Attention: This is a written testimony for the "MSOP Update" Informational Hearing on August 2, 2021 at 1:00 PM. Please read the body text of this document at the hearing. Thank you.**

---

7/28/2021

Representative Tina Liebling  
477 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155



**Re: Informational Hearing on Minnesota Sex Offender Program (M\$OP)  
August 2, 2021 at 1:00 PM. (In just 97 minutes...)**

---

Dear Representative Tina Liebling:

Normally, Americans accused of a crime are presumed innocent until proven guilty and every element of every offense must be proven beyond a reasonable doubt before anyone is punished for a crime.<sup>1</sup> This is the Presumption of Innocence that protects us all. But Minnesota lawmakers driven by moral panic decided to create the SDP/SPP Act which indefinitely incarcerated hundreds of men and women without honoring the Presumption of Innocence. In fact, 12% of the population has no criminal record at all because as Judge R.A. Randall stated, "...there is no crime involved..."<sup>2</sup> Instead, M\$OP locks up people for what they might do.

OCEAN and the End MSOP Coalition implores State legislators to urge Governor Tim Walz to call a Special Session to repeal the SDP/SPP Act. In the alternative, convince Governor Walz to issue an Executive Order to abolish preventive detention (i.e., "civil commitment") in Minnesota. In addition, come to the Moose Lake facility to learn firsthand what is happening. We encourage you to speak with those within the OCEAN network. Many of them have signed this letter.

For every 1 million people that live in Minnesota, 131 of them are being held in preventive detention until they are dead. Minnesota "commits" more men and women per capita

---

<sup>1</sup> *United States v. Hills*, 75 M.J. 350, 2016 CAAF LEXIS 512 (C.A.A.F. June 27, 2016).

<sup>2</sup> Concurring opinion of R. A. RANDALL, In the Matter of: Gary Alan Mattson, 1995 Minn., C5-95-452, June 20, 1995

**thevoicesofocean.net**  
**Facebook.com/endmsop**

**Attention: This is a written testimony for the "MSOP Update" Informational Hearing on August 2, 2021 at 1:00 PM. Please read the body text of this document at the hearing. Thank you.**

---

than any other state.<sup>3</sup> African Americans and Gay men are twice as likely to get civilly committed in Minnesota. 40% of the detainees say they have experienced racial or religious discrimination at the institution. In the last 4 years, 28 people have died. On average, there is a death every 40-60 days. The death rate is quickly increasing. There were more deaths in the last 5 years, than there were in the first 20. We estimate that within the next 10 years, at least half the population will be in hospice care. Each individual is 6 times more likely to die than to be released. Minnesota has committed about 845 people in 26 years. 14 have been released. But this was not before M\$OP contested the releases. At least half of those releases were juvenile offenders. There are still about 55 juvenile offenders confined. Only 1% of the men believe that participating in treatment will help them get out. 52% of the men have had more than 10 therapists or "too many to remember". Some have had upwards of 60 therapists while in the Moose Lake-M\$OP institution. This system is not only immoral and illegal – it is unsustainable.

The system is a massive waste of taxpayer money. The same year that Minnesota cut its funding for sexual violence prevention programs by \$3.6 million per year, it spent \$26 million of taxpayer money to detain 235 people to preventive detention facilities,<sup>4</sup> even though preventive detention does nothing to lower crime rates.<sup>5</sup> The men and women detained are billed for their indeterminate confinement but the taxpayer pay the bill. At \$143,445 a year, housing one person in preventive detention costs taxpayers three times the cost of a prison inmate.<sup>6</sup> This amounts to more than \$106 million a year that taxpayers are responsible for.

The right to be free from confinement is "of the very essence of a scheme of ordered liberty."<sup>7</sup> In our American society, "...liberty is the norm, and detention prior to trial or

---

<sup>3</sup> James R. Nobles, Evaluation Report, Civil Commitment of Sex Offenders, Mar. 2011, (651) 296-4708, p. 7

<sup>4</sup> Tamara Rice Lave, "Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process? An Empirical Inquiry," University of Miami School of Law, 2013, p. 36. n. 96

<sup>5</sup> Daniel Montaldi, "A Study of the Efficacy of the Sexually Violent Predator Act in Florida," William Mitchell Law Review, (2015) Vol. 43:1 p. p.74

<sup>6</sup> "This Judge Believes Even Sex Offenders Have Rights," Rosario, Ruben. *Pioneer Press*, Ruben Rosario or see "DHS Legislative Report, Minnesota Sex Offender Program: Annual Performance Report (2020)" Jan. 20, 2021, p. 14

<sup>7</sup> *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)

Attention: This is a written testimony for the "MSOP Update" Informational Hearing on August 2, 2021 at 1:00 PM. Please read the body text of this document at the hearing. Thank you.

without trial is the carefully limited exception."<sup>8</sup> These are the tenets that form the basis of other rights deemed fundamental in this country like the right to earn a living and to have children. Liberty also prevents this nation from devolving into despotism and tyranny. The government must tread lightly when it intrudes on that freedom, enacting safeguards to prevent it from overreaching.

When it comes to the SDP/SPP Act, lawmakers have failed to protect Minnesotans. James Berg, the MSOP Deputy Director admitted that the "program" cannot be completed.<sup>9</sup> Almost 90 men have died trying anyway. Rather than carefully developing a sexual civil commitment scheme to confine only "a small segment of particularly dangerous individuals,"<sup>10</sup> Minnesota enacted the broadest preventive detention scheme in the country. Just eight days before the state's primaries, the Governor called for a Special Session in 1994. In just 97 minutes the legislature passed the SDP/SPP Act. Notably, the bill's drafters told their colleagues not to talk about the Linehan case, warning that: "Whatever we say on the floor will be used against us . . . . It's going to be used to challenge the bill."<sup>11</sup> They knew what they were doing was wrong.

In addition, professionals have been sounding the alarm ever since: Judge R. A. Randall said it plainly:

...it is preventive detention...[it] bears an eerie resemblance to the old Stalinist Russia winter resort for political dissidents at the gulag archipelago... and the Japanese Relocation Act... during World War II. At least it was honest, not disguised as "remedial treatment." It was acknowledged to be pure preventive detention... of a singled out class of people, not for what they had done, but for what they might do...<sup>12</sup>

Minnesota Supreme Court Justice Sandra Gardebring pointed out the blatant contradiction

<sup>8</sup> *United States v. Salerno*, 481 U.S. 739, 755 (1987)

<sup>9</sup> *Karsjens v Jesson*, 0:11-cv-03659-DWF-JJK T.T., Vol. XX p.4633 v.3-8

<sup>10</sup> *Kansas v. Hendricks*, 521 U.S. 346, 369 (1997),

<sup>11</sup> *In re Linehan*, 557 N.W.2d 171, 198 (Minn. 1996) (Tomjanovich, J., dissenting). *Id. at 12*

<sup>12</sup> *In re Mattson*, 1995 WL 365374, at \*4-5 (Randall, J., concurring specially); quoted by *Joelson v. O'Keefe*, 594 N.W.2d 905, 913-18 (Minn. App. May 18, 1999) (Randall, J., concurring specially) (comparing "preventive detention" of civil commitment to "the old Stalinist Russian winter resort for political dissidents at the gulag archipelago"), review denied (Minn. Jul. 28, 1999).

Attention: This is a written testimony for the "MSOP Update" Informational Hearing on August 2, 2021 at 1:00 PM. Please read the body text of this document at the hearing. Thank you.

so-called, "civil commitment" creates:

...To allow the state to first choose the criminal sanction, which requires a finding of a specific state of mind, and when that sanction is completed, to choose another sanction which requires a finding of the opposite state of mind, is a mockery of justice.<sup>13</sup>

Even the American Psychiatric Association made it clear: "[civil commitment is] ...an unacceptable misuse of psychiatry."<sup>14</sup> And more recently, United States Court Judge Donovan Frank spoke out by stating: "...Minnesota's civil commitment statutory scheme is unconstitutional both on its face and as applied."<sup>15</sup> And "...the civil commitment system is unconstitutionally punitive in nature."<sup>16</sup>

True civil commitment is only legitimate if there is a "...medical justification..."<sup>17</sup> or "mental disorder component."<sup>18</sup> Officials of the so-called, "civil commitment" system in Minnesota admit that the vast majority of the people confined are not mentally ill.<sup>19</sup> Even the Executive Clinical Director of the M\$OP, Jannine Hébert, confessed: "...we made a conscious decision to move away from that medical model approach..."<sup>20</sup> This is illegal. In 2012, the Minnesota Legislature claimed to renumber the statute, but made substantive changes to it; removing all language that would require a medical justification for treatment. This was done because the administrators of the M\$OP knew then that very few, if any, patients actually suffered from Mental Health disorders.

The harm to the residents and their families has been great. Most damning of course is that this was all uncalled for. Residents are not allowed to attend funerals of loved-ones. They are not allowed to pursue secondary education. They are not learning how to live in

<sup>13</sup> *In re Linehan* 518 N.W.2d 609, 616 (Minn. 1994).

<sup>14</sup> American Psychiatric Association, *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association* (1994) p. 174

<sup>15</sup> *Karsjens v. Jesson* 109 F.Supp.3d 1139, 1173 (D. Minn. 2015)

<sup>16</sup> *Karsjens v. Piper*, 336 F.Supp.3d 974, 990 (D. Minn. 2018); also see *Kansas v. Hendricks*, 521 U.S. 346, 368-69 (1997).

<sup>17</sup> *Foucha v Louisiana* (1992) p. 83 Justice O'Connor concurring.

<sup>18</sup> *Hince v. O'Keefe*, 632 N.W.2d 577, 583 (Minn. 2001).

<sup>19</sup> Variance Request Application for Rule 9515.3030, Subp. 2

<sup>20</sup> *Karsjens v Jesson*, Case No. 11-CV-3659 (DWF/JJK), March 4, 2015, pp. 4001, 4002, 3882 – 3884.


Attention: This is a written testimony for the "MSOP Update" Informational Hearing on August 2, 2021 at 1:00 PM. Please read the body text of this document at the hearing. Thank you.

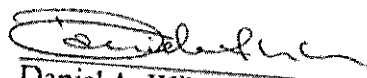
society. Many have been locked up in the MSOP since childhood, and no one is asking where the hundreds of millions of taxpayers dollars annually are going because it's not going into the alleged comprehensive services or reintegration opportunities.

OCEAN and the End MSOP Coalition implores you, Representative Liebling, to urge Governor Tim Walz to call a Special Session to repeal the SDP/SPP Act. In the alternative, convince Governor Walz to issue an Executive Order to abolish preventive detention (i.e., "civil commitment") in Minnesota. In addition, come to the Moose Lake facility to learn firsthand what is happening. We encourage you to speak with those within the OCEAN network. Many of them have signed this letter.

Sincerely,

  
Russell J. Hatton, OCEAN Co-founder

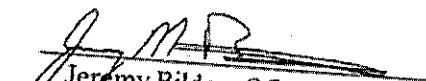
  
Pete Lonergan, OCEAN Legal Advisor

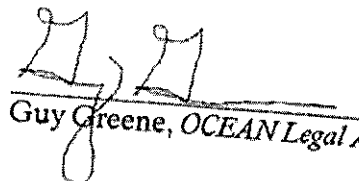
  
Daniel A. Wilson, OCEAN Co-founder

  
Michael Benson, OCEAN Legal Advisor

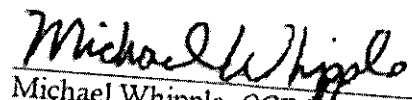
  
Jacob Flom, OCEAN Event Coordinator

  
Brad Stevens, OCEAN Legal Advisor

  
Jeremy Bilder, OCEAN Event Coordinator

  
Guy Greene, OCEAN Legal Advisor

  
Mark Wallace, OCEAN Chief Consultant

  
Michael Whipple, OCEAN Chief Consultant

cc: OCEAN Supporter, Merry Schoon, END MSOP Coalition Member, Ruby Brewer, Representative Tina Liebling

thevoicesofocan.net  
Facebook.com/endmsop