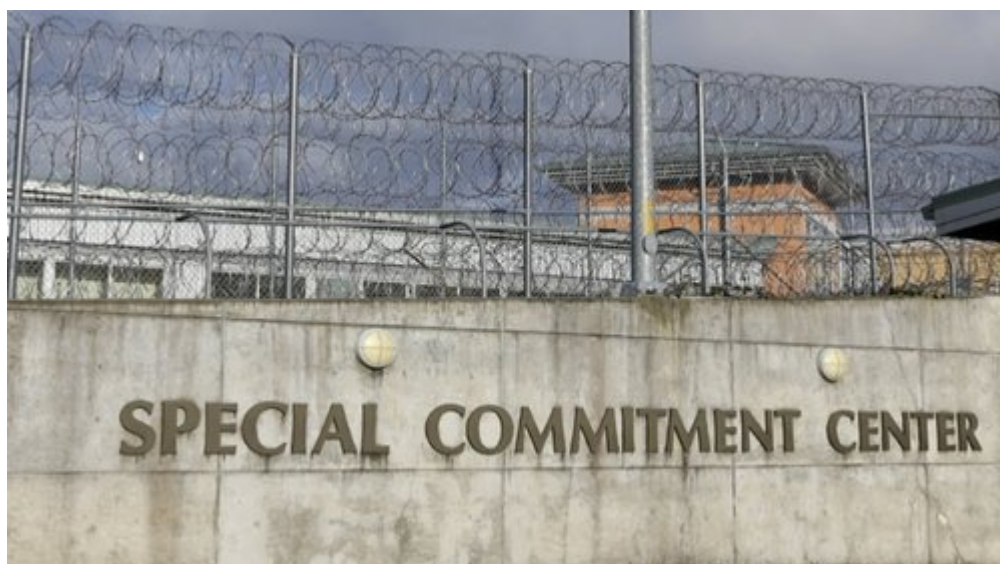


8th Circuit's ruling threatens civil liberties of all Americans

written by NARSOL | January 4, 2017



By Noah Feldman . . . In a major blow to civil liberties, an appeals court has upheld the Minnesota system that civilly commits sex offenders after they've served their prison terms, a confinement from which no one has ever been fully released. [The decision](#), filed Tuesday, used the wrong legal standard, making it too easy for the state to lock people up indefinitely for future dangerousness. Worse, the U.S. Supreme Court might not review the decision, despite its being egregiously wrong, because there is no clear disagreement among the circuit courts.

The [Minnesota Civil Commitment and Treatment of Sex Offenders Act](#), enacted in 1994, says any county attorney can ask a state district court to determine that a person is "sexually dangerous" or has a "sexually psychopathic personality." If the court agrees that the county attorney has demonstrated this by clear and convincing evidence, the person is committed indefinitely, against his or her will, to a "secure treatment facility."

There is no regular review to see whether the person should be released. The only way to get out is for the confined person to ask a review board to determine that he or she is no longer dangerous.

Minnesota maintains three facilities for civilly committed sex offenders. Two are "secured," meaning they are enclosed like prisons. The third, while still mandatory, is outside the fence of one of the other sites.

Since 1994, 714 people have been committed, according to the decision. Amazingly, not a single one has been fully released. Three people have been provisionally discharged from the program. That means the other 711 are still living in state facilities. In essence, Minnesota's civil committal program is a one-way ticket to permanent confinement.

To be clear, this confinement happens only after sex offenders have been convicted of crimes and served their full sentences. The theory isn't that they're being punished or paying their debt to society. It's that they are being confined because they pose a continuing danger to others.

In 1997, the Supreme Court [upheld a Kansas post-conviction civil committal statute](#) that required a finding of future dangerousness. In doing so, the court emphasized that the law required a new hearing every year at which the state had to prove dangerousness beyond a reasonable doubt. It said the confinement therefore wasn't indefinite.

A federal district court thought the Minnesota program was different. In 2015, it held that the program violated the constitutional due process rights of those committed.

The essence of the district court's logic was that if the state is going to confine people against their will, it has an obligation to provide regular evaluation and review. It found that although in theory the law allowed for less restrictive means of keeping an eye on offenders, in fact the system kept

people locked up even if they were no longer dangerous. And it said the treatment program was a mess with no meaningful relationship to eventual release.

The state appealed, and a panel of the U.S. Court of Appeals for the 8th Circuit reversed the district court's judgment. Two of the judges on the panel were George W. Bush appointees. The third was appointed by Bill Clinton. The opinion was written by Judge Bobby Shepherd, one of the Bush appointees.

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