

The hidden truth that could end civil commitment

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By [Steve Yoder](#) . . . In late 2006, a public defender went before a Napa County judge to argue for his client's freedom. Rex McCurdy, a 49-year-old man, had been detained for seven years at Atascadero State Hospital under a 1995 [California law](#) authorizing "civil commitment" of people who have been convicted of sex offenses, a practice that keeps them confined long after they have completed their sentences.

In 1983, McCurdy had pleaded guilty to a rape, for which he served two years in state prison. In 1990, he was convicted of a burglary and served another six years. In 1998, McCurdy says he was brought in on a parole violation for living too close to a school, contrary to his conditions of release. Prosecutors used that violation and the two prior convictions to get McCurdy classified as a "sexually violent predator" (SVP), he says. That designation let them civilly commit him to Atascadero, much the way people with mental health issues can be locked up when they are deemed a threat to themselves or others.

Seven years after McCurdy was committed, his lawyer, Jim McEntee, was trying to persuade a judge that his client was a low risk to reoffend. If he failed, McCurdy would be confined at the hospital indefinitely. Fortunately, the lawyer had heard of evidence that might tip the scales: a study done at Atascadero itself that could help his client.

McEntee called as a witness Jesus Padilla, one of Atascadero's psychologists. Padilla was four years into a study of ex-offenders classified as SVPs who had been released on technical grounds. Padilla had tracked them to find out their recidivism rates, which he presumed would be high.

What he discovered would undermine the basic premise of civilly committing people with sex crime records. 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. 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.

The recidivism rate that Padilla found for SVPs did not square with the 1995 law that created the program, which had called the people it targeted a "small but extremely dangerous [group of] sexually violent predators." In short, the study called into question the legitimacy of the entire \$270-million-a-year civil commitment program.

Shortly after his testimony, Padilla's study was abruptly terminated. His records were confiscated, his hard copies were shredded, and he was forbidden to talk about his work. At first he pushed back and even tried to continue on his own. But as he explained in 2009, "It's too hard to fight the system, you know." In 2013, Padilla died of stomach cancer,

his research unfinished. The whole incident might have been forgotten, if not for the work of law professors Tamara Rice Lave and Franklin Zimring, who excavated Padilla's work in a 2018 *American Criminal Law Review* [article](#) and brought to light the ways in which the state tried to ensure that knowledge of it would die with him.

[Read Steve's complete piece here at reason.](#)