Civil Commitment Pretends Prisoners Are Patients

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By Jacob Sullum . . .

“It was my understanding that I was to do the treatment, then be released,” says Mike Whipple, who recently participated in a 14-day hunger strike at the Minnesota Sex Offender Program’s facility in Moose Lake. “Twelve years later, I’m still here, doing the same thing, over and over and over.”

So far the civil commitment program has incarcerated Whipple three times longer than the prison sentence he served. The hunger strike, which involved a dozen of the program’s 737 “clients,” ended last week after state officials promised meetings where protesters could air their complaint that there is no “clear pathway” to release from their indefinite confinement. But those meetings surely will not resolve the fundamental problem with programs like this, which evade constitutional constraints by pretending that prisoners are patients.

Twenty states, the District of Columbia, and the federal government have laws that authorize civil commitment of sex offenders who would otherwise be released after serving their prison terms. The Supreme Court upheld the practice in 1997, saying it was appropriate for people who "suffer from a volitional impairment rendering them dangerous beyond their control."

That logic is puzzling. The state punishes people who commit sex crimes based on the assumption that they could and should have controlled themselves. But when it is time for them to be released after completing the punishment prescribed by law, the state says that was not actually true; now they must be locked up precisely because they can't control themselves.

If the government decided to retroactively increase an offender's penalty, it would be clearly unconstitutional, amounting to double jeopardy or an ex post facto law. The trick is to cast continued confinement as treatment rather than punishment.

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