

# 'He was a kid': Former juvenile sex offenders languish in MSOP

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Timothy Coon (inset), now 26, has been at MSOP for seven years, and his family — mother Lucy Coon, grandparents Abby and Ken Dawkins — fears that he may never have a life outside its walls. (Coon family photo: Peter Bartz-Gallagher; Timothy Coon photo: Submitted)

**Timothy Coon could spend his whole life confined to the Minnesota Sex Offender Program for actions he committed as a juvenile. And there are more than 50 others like him inside the walls of MSOP.**

On May 5, 2001, Lucy Coon discovered her 15-year-old son, Timothy, inside the family's van with his 9-year-old sister. His pants were around his knees and he had a visible erection. Under questioning, he admitted that he had been sexually molesting his sister.

Timothy was immediately pulled out of the family home. He was eventually ruled delinquent after being charged with criminal sexual conduct in the juvenile court system and ordered to Mille Lacs Academy for sex offender treatment. He was kicked out of the program after seven months because he lacked motivation, misbehaved and argued with staff.

Over the next three years, Coon cycled through juvenile treatment facilities, making little headway in various programs. His progress was stymied, in part, by symptoms from what was eventually diagnosed as Asperger Syndrome, an autism spectrum disorder characterized by extreme difficulties with social interaction.

One week before his 19th birthday, he was referred by the Anoka County Attorney's Office for civil commitment as mentally ill and dangerous, a sexual psychopathic personality and a sexually dangerous person.

During the civil court hearing to determine whether he would be involuntarily detained, other episodes of Timothy Coon's sexual misconduct were detailed. According to court documents, he admitted molesting both of his younger sisters on multiple occasions going back to when he was just eight years old. In addition, he acknowledged sexual offenses against two younger boys in his neighborhood and a years-long habit of attempting to view children urinating in public bathrooms.

In September 2005, following a two-day trial, Anoka County District Court Judge Edward Bearse ordered that Coon be civilly committed. Judge Bearse was blunt in his assessment of his prospects for being rehabilitated and released. "It would be safe to predict, after evaluating Respondent's history in other treatment programs, that Respondent may not be responsive to treatment," Bearse wrote in his order. "It would also probably be safe to say that Respondent has a very, very minute chance of successfully graduating from the Minnesota Sex Offender's Program, but who knows — anything is possible."

Bearse's order has proven prescient. Seven years later, Coon remains indefinitely detained at the Minnesota Sex Offender Program. He has yet to complete the initial phase of the treatment program and isn't currently participating in therapy.

When her son was first institutionalized at age 15, Lucy Coon viewed it with relief. Dealing with such a severely troubled child had caused tremendous stress. The family had taken extraordinary measures to try to control his behavior, including the installation of motion detectors in the house to help monitor his

movements. Lucy felt like she had neglected her two daughters because of the constant attention Timothy required.

“I was a frantic mother,” Lucy recalled. “Mostly I just wanted help for him ... I wanted something, someone who might be able to diagnose him correctly, to help him correctly. That’s what we were hoping.”

Even Timothy’s commitment to the MSOP was initially viewed with weary resignation. “We were more worried about him hurting himself or somebody else,” Lucy Coon recalls. “What do we do to keep him safe? Because we didn’t want him to go to prison. In the prison system, we knew that he would become a victim ... We didn’t feel we had too much of a choice.”

But seven years later, Lucy and other family members are exasperated by the exceedingly bleak prospect that Timothy, who is now 26 years old, will ever get the opportunity to live a life outside of the prison-like setting of the Minnesota Sex Offender Program. They are convinced that there are less-restrictive settings where he could receive more appropriate treatment and present little threat to public safety. They also worry about how more than a decade of institutionalization has permanently altered him.

“I see discouragement,” said Abby Dawkins, Timothy’s grandmother. “He says, ‘You know, Grandma, there’s a guy up here who sits in a wheelchair and drools all the time, and I feel like that’s what my life is going to be.’ And that’s pretty painful to hear.”

### **Long festering troubles for the MSOP**

Minnesota has the highest per capita rate of civilly committed sex offenders in the country. Currently there are more than 650 individuals indefinitely detained as sexual deviants who cannot control their behavior. The program’s population has more than tripled over the past nine years, since the grisly murder of Dru Sjodin by a convicted sex offender released on parole, and is expected to double again in the next decade. (See [related post](#))

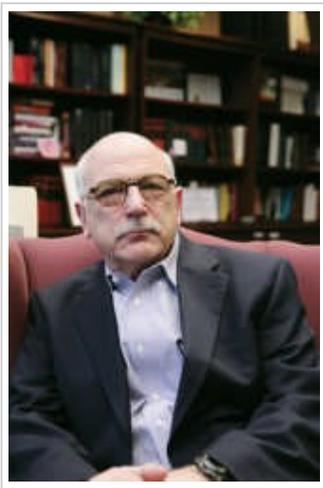
No one was released from the program during the next eight-plus years. It wasn’t until this year that the program provisionally released one offender, a 64-year-old pedophile named Clarence Opheim, back into the community. That lack of success at rehabilitating and releasing MSOP clients has caused increasing concern in recent years that the state is walking a dangerous legal tightrope.

“We in the Legislature, or by us writing law, seem to give someone that’s incarcerated in a civil commitment for sex offender actions an impression that they will get out if they can earn the cure, and we don’t have a track record of letting people out,” said Sen. Warren Limmer, R-Maple Grove, chair of the Judiciary Committee. “If that’s a false impression, a court could come to the conclusion that that’s illegal.”

The troubles attending the MSOP are well documented, most thoroughly in a critical report by the Office

of the Legislative Auditor released in 2011. What's never been explored is the disturbing number of individuals like Timothy Coon who have no adult criminal convictions but are nonetheless being indefinitely detained. Currently there are 52 individuals enrolled in the MSOP who meet this description — roughly 8 percent of its entire population. These individuals are potentially facing a de facto life sentence despite never having been convicted of a crime as an adult.

In June, the U.S. Supreme Court struck down mandatory life sentences without the possibility of parole for juvenile offenders on the grounds that it constituted cruel and unusual punishment. The treatment of juveniles civilly committed as sexual deviants in Minnesota seems to raise similar constitutional and moral concerns.



Eric Janus, dean of the William Mitchell College of Law (Staff photo: Peter Bartz-Gallagher)

“It is an outrage,” said Eric Janus, dean of the William Mitchell College of Law and an expert on the civil commitment of sex offenders. “The problem with it is that we know that civil commitment is, at this stage, tantamount to life imprisonment. So these are people who, based on behavior that they exhibited as adolescents, are most likely going to be locked up for life. And that’s unconscionable.”

### **Treatment program: A history of upheaval**

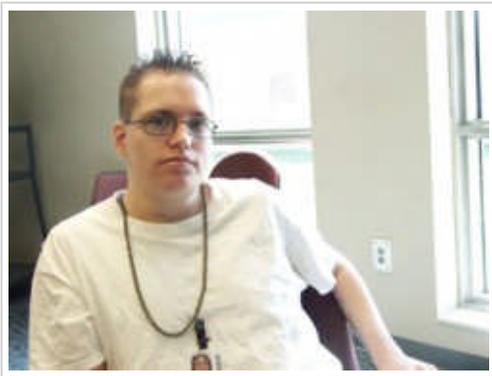
There are four phases in the current treatment scheme at the MSOP. Just over half of the individuals enrolled in the Minnesota Sex Offender Program remain in the first phase, which consists solely of learning the rules of the program and basic treatment concepts. It’s not until the second phase that clients are expected to discuss their history of sexual misconduct and come to understand their patterns of abuse. Both phase one and phase two take place at a facility in Moose Lake, and nearly 80 percent of the total MSOP population are currently in one or the other.

The third stage of treatment, known as MSOP Supervised Integration, takes place at a facility in St. Peter and involves accompanied excursions on and off campus. In the final phase of treatment, known as Community Preparation Services (CPS), clients gradually gain more privileges and live independently — but still within the secure St. Peter Campus. Currently just nine individuals are enrolled in the CPS program. Another 93 clients, including Timothy Coon, are not currently participating in treatment.

Michael Miner, a professor at the University of Minnesota’s Program in Human Sexuality, says part of the problem lies with a history of turbulence within the MSOP. “There has been a great deal of instability in

the leadership of the clinical programs,” Miner said. “Every time there’s been a change in leadership, there’s been a change in the program, and that influences people’s ability to progress.”

This assessment is backed up by the Legislative Auditor’s report. Since 2003 the MSOP has had four different clinical directors and four executive directors. The current clinical director, Jannine Hebert, has been on the job since 2008. The program has also been hampered by insufficient clinical staff to provide adequate treatment. The auditor’s report found that clinicians at the MSOP have up to 25 different clients at a given time. By contrast, clinicians at Wisconsin’s civil commitment program for sex offenders, which routinely releases clients, handle approximately eight clients each.



Christopher Lee, now 26, has spent half his life in institutions. He acknowledges that he hasn’t always been a cooperative patient. “I had a lot of problems with managing my emotions,” he said. (Staff photo: Paul Demko)

Christopher Lee remains in phase one of treatment after seven years in the MSOP. Lee has never been convicted of a sex crime as a juvenile or an adult. At the age of 14, he was found delinquent by a juvenile court after being charged with multiple counts of theft and arson and ordered to Bar None Residential Treatment Services in Anoka for therapy. Over the next three years, he bounced between treatment facilities and juvenile detention centers.

As part of his treatment, Lee acknowledged various acts of sexual misconduct, according to court records. He was caught attempting to copy his penis on a copying machine while at a therapy session and sent sexually harassing letters to girls at his school. More seriously, Lee acknowledged molesting his younger step-brother and multiple instances of public exposure. Lee has an extra partial Y chromosome, which often causes hyper-sexuality. He was also born with significant vision loss in his left eye and hearing loss in his left ear, and has a slightly asymmetrical face.

At the age of 17, Lee was provided a chance to prove he could live in society without committing additional crimes. He was ordered to Mapletree, a group home in Maplewood for teenagers who have severe behavioral problems, including many who have committed sex offenses.

“Most of these guys are here for one of two reasons: It’s their last opportunity to avoid a secure corrections placement, or it’s their first opportunity after completing a treatment program to reenter the community,” said Jon Brandt, the director of Mapletree and a licensed social worker. “So we catch kids right on that edge, either on their way deeper into the system or this is their first opportunity to show that they can put together the skills to be successful in the community.”

During his four months at Mapletree, Lee went over that edge. While on a volunteer assignment at the Salvation Army, Lee exposed himself to a four-year-old girl in the toy aisle of the thrift store. He wasn't charged with a crime, but his probation was revoked. He was removed from Mapletree and sent to the juvenile detention center in Red Wing. While there, he had consensual sex with another detainee, a violation of the facility's rules. When Lee was about to age out of the juvenile system, the Dakota County Attorney's Office moved to have him civilly committed to the Minnesota Sex Offender Program.

A pair of mental health experts examined Lee to determine whether he met the criteria. They rendered something of a split decision. Each determined that Lee did not meet the definition of a sexual psychopathic personality, but did qualify as a sexually dangerous person. Based on that assessment, he was ordered into the MSOP.

The evidence used to commit Lee consisted almost entirely of misconduct that he confessed to during various treatment programs. Warren Maas, executive director of Project Pathfinder, one of the largest sex offender treatment programs in the state, points out that it's not uncommon for teenagers to act out sexually in ways that could be construed as criminal behavior. "If we committed every kid that was fairly randy, we would have a pretty full program," Maas said. "So the only distinguishing factor between these guys and a lot of their peers is the fact that at some point they were put in a residential facility that documented what they did."

Dakota County Attorney James Backstrom defends the use of civil commitment against offenders who lack adult criminal convictions, and specifically his office's decision to seek MSOP enrollment for Lee. He points out that the Minnesota Court of Appeals reviewed Lee's case, as it does in all commitment proceedings against sex offenders, and determined that the outcome was legally sound. "As far as I'm concerned, he's been given full due process in this matter and I think he's been appropriately dealt with," Backstrom said.

Lee is now 26 years old and has spent half his life in institutions. He acknowledges that he hasn't always been a cooperative patient. "I had a lot of problems with managing my emotions, staying cool under pressure, and overall just a really negative attitude for a great extent of my stay," Lee said during an interview at the Moose Lake facility. "Recently I've tried to work hard on being able to find positives out of nothing and try to motivate myself to bigger and better things."

But Lee's efforts to advance beyond the initial phase of treatment, as he describes it, have repeatedly been stymied. Initially, treatment staff asked him to work on managing the angry tone in his voice. Then they directed him to improve his social interactions with staff and other clients. Most recently, he was told that he needed to behave more consistently. "It's like they set this expectation of what they want," Lee said, "and when you meet that expectation, they want to add more to it and make it more and more difficult for

people to move.”

Other clients interviewed for this article expressed similar frustrations. Christopher Jackson is a 33-year-old MSOP client who was first institutionalized for violent behavior at the age of nine. He was raped by four older boys while in that first treatment program, according to court records. After his release, he eventually started molesting his younger brother and other kids in his Coon Rapids neighborhood. Jackson has been continuously institutionalized since he was 12 years old, and remains in phase one of the MSOP treatment program.

“I’ve pretty much been in the same loop since I’ve been here,” he said. “They develop a program, you move along in it, [and] once they get a lot of people to move forward, then they redo the program again.”

Lincoln Brown has been in the MSOP for 17 years after initially being institutionalized at age 17, in part for molesting a female relative. He too remains in phase one of the treatment program.

“It’s a vacuum,” Brown said. “It’s like a black hole. It’s a box for people, and no one’s gotten out of it, and I feel that every day that I’m here.” Brown acknowledges that part of the reason that he’s failed to advance in treatment is that he resists complying with treatment decrees that he often finds bewildering. “I tell them I hate what you’re doing,” Brown said. “I hate that this has gone on so long and not one person has really been supported by you, if you’re a therapist, to be set free. How is that true? How is that possible?”

Brandt has kept in touch with Christopher Lee during the decade since he was removed from Mapletree for exposing himself, and he recently attended Lee’s annual review at the Moose Lake facility. “I would describe him as trying to make the best of the circumstance that he’s in, but he’s profoundly discouraged,” said Brandt. “He recognizes the craziness of therapeutic goals that you can never complete, but you have to talk about them every week and keep working toward them as if there is some measurable process happening, when there isn’t.”

Brandt has worked with dozens of juvenile sex offenders in the 21 years that he’s run Mapletree. He finds it ludicrous that Lee remains in the first phase of treatment, where he’s not even expected to discuss his history of sexual misbehavior. “These are things that Chris was doing for years before he came to Mapletree,” Brandt said. “And suggesting that he can’t start talking about his sexual history because he hasn’t, in six years, demonstrated sufficient capacity to talk about his feelings — it doesn’t pass the laugh test.”

### **Supreme Court rulings on juvenile offenders**

Civil commitment programs for sex offenders have been repeatedly upheld by the courts as constitutional. In a pair of landmark U.S. Supreme Court cases more than a decade ago, such programs were deemed not

to constitute double jeopardy or to violate individuals' due-process rights. That's principally because the programs are deemed therapeutic in nature and therefore are not subject to the legal safeguards of the criminal justice system. The involuntary detainees at facilities in Moose Lake and St. Peter, in other words, are patients, not prisoners.

But in recent years, there have also been a series of rulings by the U.S. Supreme Court delineating the view that juvenile offenders must be treated differently from their adult counterparts. That's in large part because juvenile offenders are subject to changes in brain chemistry that can dramatically affect their decision-making and propensity toward impulsive behavior.

In 2005, the country's top court prohibited the death penalty for juvenile offenders as cruel and unusual punishment. "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character," Justice Anthony Kennedy wrote in the majority opinion. "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Earlier this year, citing similar reasoning, the court further established a ban on mandatory life without parole sentences for juvenile offenders.

While those cases aren't legally pertinent to the Minnesota Sex Offender Program, since it's outside the purview of criminal courts, many experts in civil commitment say the underlying argument is the same. "At a policy, ethical, moral level, yes, it is relevant to raise it," said William Mitchell's Eric Janus. "At a legal level, probably not. And here's the reason: The question before the Supreme Court is whether life without parole is cruel and unusual punishment. If civil commitment is punishment, then it's illegal. It doesn't need to be cruel and unusual to be illegal. [But] the lifelong aspect of it is not, per se, improper. What's improper is that the whole system is corrupt and broken and isn't working the way it should."

Tamara Rice Lave, a law professor at the University of Miami who has written extensively about sex offender civil commitment programs, reaches a similar conclusion. "The reason why the court made the decision it made is because of social science data," Lave said. "It seems really weird to think, okay, social science data drove the court to say that murderers can't get life without possibility of parole. That same social science data should certainly be used with kids who commit a sex crime. Impulsivity is driving people who kill and people who have sex. It's the same juvenile brain that's not in great development. It's weird to think that you can then commit somebody indefinitely and not pay any attention to the brain science stuff."

Well-established research shows that brain development continues at least into a person's mid-20s. The

last part of the brain to reach maturity is the frontal lobe, which is responsible for functions like impulse control and moral reasoning. Those are the very traits that tend to be deficient in juveniles who engage in sexual misconduct.

“That’s where all of the executive functioning resides,” said Michael Miner of the University of Minnesota’s Program in Human Sexuality. “Our ability to delay gratification — the whole idea of impulsivity, the ability to not act impulsively — this is the part of the brain that’s involved in all of that.”

That continuing development explains the often bewildering — and in some cases criminal — behavior exhibited by teenagers. “That’s why adolescence is a time where there’s more delinquent behavior, there’s more risk-taking behavior,” Miner said. “We adults look at what our adolescent children do and shake our heads and wonder where their brains are at.”

Robert Longo, a licensed clinical counselor who has worked extensively with juvenile sex offenders, explains the relevance of brain development in similar terms. “You don’t want to be comparing adults to juvenile sex offenders, because it’s apples to oranges,” Longo said. “Kids are kids. The research shows they’re still developing and that they don’t necessarily engage in these behaviors because they have a pedophilic or a paraphilic disorder.”

In response to questions from Capitol Report, MSOP executive clinical director Jannine Hebert offered a detailed written response about the challenges of dealing with younger sex offenders. “Not unlike other groups of clients at MSOP, the young adult sexual offenders are a heterogeneous group with individual needs and treatment plans,” Hebert wrote. “As a group, they have a higher frequency of developmentally traumatic experiences. Many, if not all, have a history that is replete with abuse (physical, sexual and emotional), neglect, higher levels of criminality than their peers, violence and substance abuse within their family, and hostile and insecure childhood environments.

“These experiences shape a person’s schemas, mental health and perspectives of others and their environments. It is not uncommon that these young adult offenders demonstrate problems controlling their impulses and anger, problems of low self-esteem, high rates of anxiety, less emotional bonding with peers, underdeveloped and ineffective social skills, and social isolation. Due to past behaviors, many of these clients have spent their formative years in and out of placements through corrections or human services. This has led to underdeveloped social skills and a sense of institutionalization.”

MSOP enrollees interviewed for this story insist that they have changed — mentally and emotionally — in the years since they engaged in juvenile sexual misconduct. “I’ve learned to take responsibility for my crimes,” said Christopher Jackson. “I did hurt my brother. I did hurt the people in the neighborhood. I didn’t have no permission to do what I did. I manipulated people into doing what I wanted. I’ve been able to be accountable for that.”

Lincoln Brown similarly expresses remorse for his sexual misconduct. “I feel shame for the things that I’ve done,” Brown said. “I try to understand what is it that the people I hurt feel. Those are very important things to me. I could go on and on about why that is, but I just don’t want to do them again. I want my freedom. I just want to live a good life. That’s really it. I want to live a good life, and I don’t want for others to be afraid of me.”

Lave sees a couple of avenues for possible legal challenges on behalf of individuals committed despite having no adult criminal record. She believes clients could challenge the criteria by which they were deemed dangerous, given the lack of reliable research showing whether juvenile sex offenders are likely to commit sex crimes as adults. Lave also sees room for a challenge on due process grounds, since juvenile offenders aren’t given the same legal protections as adult offenders.

“So these people were tried in one system that has one set of goals, and then that conviction holds over to have ramifications in a completely different system,” Lave said. “It’s troublesome because you’d think that if that’s what’s going to happen, that arguably they should be getting one heck of a lot more process rights.”

Prosecutors typically have a different viewpoint on whether the recent Supreme Court rulings are in any way relevant to the MSOP population. “I don’t disagree with the Supreme Court at all,” said Hennepin County Attorney Mike Freeman. “Kids deserve special hearings. For the very few, small, worst of the worst, I don’t think ... how we’ve handled juveniles violates that Supreme Court language or spirit, because they do get reviewed. If they were in there forever and ever without review, that’s different.”

Dakota County’s Backstrom is slightly less categorical in his take on whether the Supreme Court rulings should be considered in discussing civil commitment of individuals with no adult criminal record. “They do not impact the civil commitment process in any respect at this point,” Backstrom said. “No such challenges have been ruled upon by the United States Supreme Court. Is it an area where there is potential future litigation? I suspect that may well be the case.”

### **Dealing with Asperger Syndrome**

Like many civilly committed sex offenders, Timothy Coon has unique psychological challenges — most notably Asperger Syndrome — that make his progress in the program as currently configured highly unlikely. A frequent characteristic of Asperger Syndrome is impulsive behavior, and it’s not particularly unusual for that to manifest itself in sexual conduct.

Another frequent characteristic of Asperger Syndrome is socially inappropriate behavior and a lack of empathy for others. Family members say Timothy repeatedly sabotaged any chance of success in treatment programs through various acts of misbehavior since he was first institutionalized at age 15. He

would disrupt group therapy sessions or simply go to sleep.

Robert Longo says Asperger Syndrome can cause serious impediments to engaging in treatment. “That’s another good reason why a kid like that shouldn’t necessarily be sentenced to a commitment, because that can change as he develops, the Asperger’s takes a different turn,” Longo said. “They don’t read people the same way. They may not know that being sexual with somebody is causing that person a problem.”

Coon is highly intelligent. He reads magazines like National Geographic, Popular Mechanics and Scientific American, and thrillers by the likes of Lee Child and Vince Flynn. His grandfather, Ken Dawkins, points out that if you describe to him a problem you’re having with your computer, he can likely tell you how to fix it — even though he’s never owned a computer as an adult.

“My mind, when it comes to information, is like a sponge,” Coon said during an interview at the Moose Lake facility. “I’ve probably got more treatment crammed in my head than some of the people who have been here for 20 years, because I retain the information. The problem is putting it into practice.”

For the last year, Coon hasn’t even bothered participating in treatment. “I got sick and tired of the staff who were running the group at the time,” Coon said of why he dropped out of treatment. “I was having a lot of conflicts with them. I decided that I’d rather just stop going than continue the conflicts I was having.”

But he also points to high turnover in the therapeutic staff as part of the problem. “I find it very hard to participate in a group where I don’t know the staff like I probably should,” Coon said. “I have a hard time opening up to people when I can’t trust them. If I can’t trust you, I’m not going to be telling you my intimate details, especially about offenses and stuff like that, because I don’t know if you’re going to use that against me or what.”

Warren Maas has a unique perspective on Coon’s situation. As an attorney he has represented roughly 30 sex offenders facing civil commitment, including Coon. Maas is also a licensed psychologist and has run Project Pathfinder, one of the largest sex offender treatment programs in the state, for the last six years.

“If you’re going to work with someone with Asperger’s, you need a specialized kind of program,” Maas said. He’s not at all surprised at Coon’s lack of success in MSOP’S treatment program. “It saddens me, but it doesn’t surprise me ... He doesn’t have the skills to complete the program. He doesn’t have what he would need to get through a several decades long boot camp. He doesn’t have that.”

### **Predicting recidivism in juveniles**

The field of research relating to juvenile sex offenders, and how likely they are to commit additional

crimes, is itself still coming of age. Only in recent years have researchers and medical professionals spent significant amounts of time studying what causes juveniles to act out sexually — and what kinds of behavior suggest that they are likely to engage in further misconduct as adults.

Robert Longo is an editor of a forthcoming book, “Current Perspectives & Applications in Neurobiology: Working with Young Persons who are Victims and Perpetrators of Sexual Abuse,” that seeks to summarize the current scientific knowledge in this area. One chapter looks at the available data on how likely juveniles who engage in sexual misconduct are to reoffend. A 2006 study of 2,986 adolescents found that adolescents had a 12.5 percent re-offense rate over a 59-month period. But for those individuals who received sex-offender treatment, the re-offense rate dropped to 7.4 percent.

Similarly, a 2012 meta-analysis of studies looking at re-offense rates for more than 6,000 adolescent sex offenders, published in the academic journal *Law and Human Behavior*, found that 10.9 percent committed additional sex crimes during an average follow-up period of six years. “If you look at all these studies combined, the recidivism rates are extremely low,” Longo concluded.

There are also significant questions about the science surrounding predictions of future sexual misconduct. While this is true for all offenders, it’s particularly problematic for juveniles, whose brains are still developing. Mental health experts rely on a series of actuarial tools to augment their clinical assessments in evaluating whether individuals qualify for civil commitment. Take, for instance, this paragraph from the findings of fact in Timothy Coon’s commitment case:

Actuarial assessment of the likelihood that Respondent will re-offend: Respondent’s score on the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) was 7, placing him in the moderate range of recidivism. His test score on the Sex Offender Risk Appraisal (sic) Guide (SORAG) place him in a risk tier of offenders who are charged with a new sexual offense at 58% over a seven year follow-up and 80% over a ten year follow-up. His score on the STATIC-99 was 6, placing him in a risk tier of released offenders who are charged with a new sexual offense 38% over five years, 46% over 10 years, and 52% over a 15 year follow-up. Respondent’s score on the Psychopathic Checklist Revised-2nd Edition (PCLR-2) showed that Respondent scored 21. Typically a cutoff score of 30 or higher is viewed as denoting individuals who fit the categorical definition of “psychopathy.” Respondent cannot presently be determined to fit ‘categorical’ psychopathy.”

While those findings certainly encompass a wide range of tests indicating future dangerousness, many experts question the soundness of these tools. David Burton, a professor at Smith College’s School for Social Work who has written extensively about adolescent sex offenders, says that such tools are accurate about 70 percent of the time. He points out that flipping a coin would provide 50 percent accuracy. “When

you use these tools, all you're adding to the flip of a coin is about 20 percent. That's it. They suck," Burton said. "In the risk-assessment world, this is considered a poor tool. Not useless by any means. It's good for treatment guidance, things like that. But these are considered poor tools, all of them."

The U of M's Michael Miner is less critical of the reliability of such instruments. He points out that research clearly indicates that they are more successful in predicting future dangerousness than clinical assessments. "We know that clinical judgment is notoriously poor and that using actuarial or mathematical or mechanical tools ... improves our ability to predict considerably," Miner said. But that doesn't mean he's entirely comfortable with the system's reliance on these tools for decisions that could result in lifetime detention for individuals whose only criminal offenses occurred when they were juveniles. "Their predictive validity is somewhere between modest and moderate," Miner said. "So it's not great, but it's not horrible. And we're making these very serious decisions based on them. I have concerns about that."

Warren Maas and other experts point out that the state of recidivism studies is very fluid. "I think that there are a lot of bright people working very hard on doing research," Maas said. "But it's a difficult phenomenon to define. It's a difficult phenomenon to study. I don't think we know as much as we think we know. What does seem to be clear is that offending as an adolescent does not predict offending as an adult very well at all, if you look at the research. Being an offender as an adolescent has very little correlation with being an offender as an adult. That's another reason that this is just a grossly unfair thing."

Another troublesome aspect of these actuarial tools is that they're primarily based on static factors related to previous criminal conduct. Males who have molested children, for instance, are deemed extremely likely to commit additional offenses in the future and therefore score very high on the actuarial tools. No amount of treatment will do anything to change that reality.

For example, in the case of the Static-99 — one of the tools most commonly used to predict whether an individual will re-offend — there are only two variable factors: age and whether a person is single. For an individual entering the MSOP at age 19, it will take many years before age can have any significant positive effect on their scores. It's no coincidence that the one individual provisionally released from the program over the last two decades, Clarence Oheim, was 64 years old. As for domestic living arrangements, confinement in the MSOP obviously prevents that from changing. While such tools aren't explicitly used to determine whether a client is deemed ready for provisional discharge, they undoubtedly color those decisions as part of the client's medical records.

Miner points out that experts in the field — including the developers of the Static-99 test — are working on tools that take into account factors such as progress in sex offender treatment programs. "We're

working on tools that could look at dynamic factors,” Miner said. “But we’re not there yet.”

## Legislative inaction



Senate Judiciary Committee Chairman Warren Limmer (Staff photo: Peter Bartz-Gallagher)

There is little doubt that the MSOP has to change. The program as currently constituted appears legally as well as financially unsustainable. The 2011 report by the Legislative Auditor detailed systemic problems with the program. It found that potential detainees are subjected to disparate treatment across the state, that the treatment program is wholly inadequate, and that less-restrictive and cheaper alternatives to civil commitment need to be developed. A class-action lawsuit challenging the terms of confinement for all 668 clients is currently pending in federal court. That case has already resulted in an order for the state to create a task force to look at ways of reforming the program. (See [related post](#))

But it’s equally evident that, amid all the legal and political machinations that have engulfed the program in the past decade, there has been no one crafting policy or advocating for the interests of the 8 percent of the MSOP population that is confined on the basis of offenses they committed as juveniles. The 2011 legislative auditor’s report is the most exhaustive investigation of the program to date, but it is mute on the subject of former juvenile offenders caught in the system.

“We were certainly aware of it,” Legislative Auditor James Nobles said of MSOP clients without any adult criminal convictions. “We didn’t take a position [in the OLA report], largely because I think it’s ultimately up to the courts to decide, as it is with all of the people who are in the program.”

Sen. Warren Limmer, the chairman of the Senate Judiciary Committee and an advocate of reforms at MSOP, said the plight of former juvenile offenders in the system has been on legislative radar — though it has yet to yield any action. “We knew that there were people like that in the system,” he said, “and we were trying to get a handle on, where do we go from here? If they were juveniles, why wasn’t a juvenile system working? Will it ever work? Are these people beyond treatment help? Those are the questions that we were beginning to [raise]. But we didn’t come to a full range of answers, because this whole system is so complex and deep.”

Even some of the prosecutors responsible for seeking indefinite detainment for individuals acknowledge that the existing system is broken. “We need some kind of system to protect people from themselves and from others,” said Hennepin County’s Mike Freeman. “Having said that, I think, and I think the majority

of folks who work in this area, even from the prosecutor's side ... believe that the process is sending too many people to that program since Rodriguez, and I have been urging some changes. And I've been at the Legislature, so I've been public about this."

DHS Deputy Commissioner Anne Barry expects the 2011 legislative auditor's report to serve as a blueprint for the court-ordered MSOP task force when it begins deliberations this month. "I think one of the first things on the first agenda should be the auditor's report," Barry said. "It serves as a really exceptional road map for us. We don't need to recreate a lot of the findings and recommendations that came out of that report."

Legislative leaders have also recognized that changes need to be made. Last year Limmer, along with his House counterpart, Rep. Tony Cornish, who chairs that chamber's Public Safety and Crime Prevention Committee, and Senate HHS Committee Chairman David Hann, spent months studying ways to overhaul the state's sex offender policies. They gathered input from prosecutors, treatment professionals, defense attorneys, MSOP officials and others with a stake in the state's sex offender policies. Out of that process, they created a piece of draft legislation that envisaged a significant overhaul of the existing system.

Most notably, Limmer and Cornish looked at implementing indeterminate sentencing for violent sex crimes. Under such a system, serious sex offenders would only be released from prison after being vetted by a panel and deemed fit for release. It would be similar to the old parole board system. Indeterminate sentencing would eventually stem the pipeline of referrals to MSOP and save the state money. That's because it costs roughly three times as much to keep an individual confined at an MSOP facility as it does to keep him in prison.

But even before Limmer and Cornish could offer up a bill, their efforts got sabotaged by politics. In February 2012, after it was announced that 64-year-old convicted pedophile Clarence Opheim would become the first individual to be provisionally discharged from the MSOP, House Speaker Kurt Zellers and Majority Leader Matt Dean seized on the opportunity to smear the administration of Gov. Mark Dayton for being soft on pedophiles.

"Mr. Opheim is responsible for approximately 100 separate sex offenses with almost 30 different victims, with one of those victims as young as eight years old," Zellers and Dean wrote to Dayton at the time. "Releasing a dangerous child sex predator into a densely populated urban area is reckless, and runs counter to your stated goal of making public safety the top priority for state government."

GOP legislative leadership also made it clear to Cornish and Limmer that no significant sex-offender legislation would be moving forward in 2012. The episode was yet another instance in which the chance to score political points trumped credible policy discussions when it comes to the state's sex offender policies.

Limmer doesn't single out individual legislators for criticism, but his assessment of what transpired is withering. "I'm discouraged that the Legislature was so fearful of the issue they didn't want to talk about it in public," Limmer said. "If that's the type of people we have in the Legislature — that they aren't even going to have the mere discussion to solve obvious problems, to avoid a constitutional crisis that a court could declare — then maybe those people should consider a different line of work. We're here to solve problems. We're not here to push things under the rug and hope that the next generation of political people might [show] the leadership that we don't."

Limmer think it's urgent that the Legislature address the MSOP's problems. "The last thing we want is a court, sometime in what I consider the near future, to say the whole program's bad and 50 to 100 residents are immediately released, not to a counselor, not to a halfway house, but directly to the streets of Minnesota," Limmer said. "That is unacceptable."

### **Hope and fear**

Timothy Coon's family members believe that he has changed dramatically in the decade-plus since he was first institutionalized as a dangerous sex offender. The indications are both subtle and substantial. He calls home on family member's birthdays to offer well wishes, something he would never have thought to do in the past. He no longer constantly rails about the injustice of his situation. For the last year he's stopped taking medications for depression and attention deficit disorder without any significant ill effects.

Lucy Coon was particularly struck by a recent conversation in which Timothy expressed apprehension about the pending class-action lawsuit and what would happen if he was suddenly released back into society. He pointed out his lack of experience with even day-to-day tasks like paying bills or renting an apartment. "That was probably the most mature thing I've heard come from his lips," Lucy said, noting that in the past Timothy had unrealistically suggested that he would move to the Cayman Islands if released. "He still has that bluff in him, but I see so much more maturity in him ... That was the first real, true, heartfelt 'I'm scared.'"

Her daughters are now young adults. They've had no relationship with their brother since he was initially taken out of the home at age 15. Clients at the MSOP are prohibited from having any contact with their victims. Lucy doesn't believe they continue to face significant psychological damages as a result of Timothy's abuse. "They are more affected by the fact that they haven't seen him in 11 years," Lucy said. "I think they're more traumatized by the fact that everybody's kept them as far away from him as possible."

Coon's family members don't deny that he still needs treatment. But they believe there is a much less restrictive setting where he could continue to receive therapy and live a more normal life. "In that period of time, we have learned physiologically that there's a whole lot of brain development that goes on," said Abby Dawkins, his grandmother, a licensed social worker. "We didn't know so much about that. I think

the executive function part of his brain has matured. I believe that if he could be tested again, we could see that he has matured ... His brain is a different brain than it was at 15.”

Lucy Coon believes that her son could function well in some kind of group-home environment with a heavily regimented schedule. “I can’t see that the use of barbed wire is necessary,” she said. “It’s hard to know because he’s never been outside of barbed wire for 11 years, and he was a kid. I’ve never seen this young man outside of barbed wire.”

Timothy agrees that he’s changed dramatically in the ensuing years since he was first institutionalized for molesting his sisters. “I’ve matured a lot compared to what I was back then,” Coon said. “I was still the kid who was completely rebellious. I thought that I was untouchable. I did what I wanted, and the heck with the consequences.”

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