Iowa's Sexually Violent Predator Program

Progress Report 2002

by
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Attorney General of Iowa

in cooperation with
the Iowa Department of Human Services

FY 2002

The likelihood of someone's committing a violent act depends on many different factors. Biological, individual, family, peer, school and community factors may influence the development of an individual potential for violence. Whether the potential becomes manifest as a violent act depends on the interaction between this violence potential and immediate situational factors, such as consumption of alcohol and the presence of a victim.

National Research Council, *Understanding and Preventing Violence* 357 (1993)

The deepest human defeat suffered by human beings is constituted by the difference between what one was capable of becoming and what one has in fact become.

Ashley Montagu

You gain strength, courage, and confidence by every experience in which you really stop to look fear in the face. You must do the thing which you think you cannot do.

Eleanor Roosevelt

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Acknowledgments

Several years of experience with sexually violent predator programs across the country have given us valuable insights into sex offender treatment and sex offenders. We are pleased with the progress we have made in Iowa since the adoption of our law in 1998, and the operation of the program beginning in 1999. Several patients have made considerable progress toward release, and Iowa has enjoyed an excellent participation rate by the patients in the Civil Commitment Unit for Sex Offenders. This year, the General Assembly enacted amendments to the statute, which should help in transitioning patients into the community. If we can reduce the risk that the offenders will victimize others, we can help to avoid the pain of victimization for many Iowans, help the patients in our program lead more productive lives, and make Iowa a safer place to live.

The statutory duties of the Department of Justice and the operation of the program by the Department of Human Services could not occur without the assistance of several other state and local agencies and officials.

We have appreciated the assistance of the Department of Corrections, the Judicial Department, the Department of Public Safety, and county attorneys across the state who have devoted many hours of their time in implementing the Iowa statute.

This third annual progress report updates the progress in implementing the sexually violent predator chapter, and it takes a look toward the future of the program.

Special thanks go to the public employees who have implemented the program. Dr. Jim Gardner has been the guiding force behind the comprehensive treatment program in the Department of Human Services Civil Commitment Unit for Sex Offenders and has contributed to the writing of this progress report. Kip Kautzky, Director of the Department of Corrections, and the departmental and institutional staff have provided countless hours of time and attention in the screening process and in holding respondents prior to trial. Within the Department of Justice, attorneys and staff from several divisions have managed the litigation in the district and appellate courts and provided advice to state agencies. We thank these public employees for their efforts in ensuring that the progress of the program continues on course.

Thomas J. Miller
Attorney General of Iowa

Iowa's Sexually Violent Predator Program
Progress Report 2002

Executive Summary

The Sexually Violent Predator (SVP) program, designed to provide long-term, intensive treatment for high-risk sex offenders, has been in operation for three years. Iowa is fortunate to have all patients in the program participating. Many states have a substantial percentage of patients who refuse to cooperate. Moreover, many of the Iowa patients have made progress and have responded favorably to the therapeutic community in the Civil Commitment Unit for Sex Offenders (CCUSO).

> A "sexually violent predator" is defined as:
> a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.
> Iowa Code § 229A.2(8) (2001).

In developing the civil commitment program, Iowa officials have had a dual focus. First, careful screening of potential patients results in the selection of the highest risk offenders. Second, the development of a high quality treatment program encourages and motivates sex offenders to understand their offending cycles and develop appropriate methods to control their behavior. Unlike many other states, Iowa has strictly limited its criteria for admission to the program and as a result, Iowa's program has seen slow and steady growth, with a manageable number of patients in the program. Despite substantial budget constraints, the Iowa program has been able to accommodate the new patients, has maintained security appropriately, and has focused on the development of a positive, therapeutic environment to enhance treatment. Patients in the program have real hope for changing their behavior, improving their own lives, and avoiding reoffense when they are released from treatment.

Patient Profile 2002

Patient age:
Average age is 44.6
Range in age is 25-59

Victim age:
Average age is 13.6
Range in age is 3-51

Victim characteristics:
135 victims
75% female, 25% male

After three years in operation, only 31 patients were housed in CCUSO at the close of Fiscal Year 2002. During that time period, state agencies considered more than 1,500 cases involving sex offenders who were going to be released from prison. A multi-step review process winnowed those cases to a total of 59 cases in which petitions for civil commitment were filed, 35 of which went to trial. Of those 35 persons who were tried, 31 were civilly committed in the treatment program.

CCUSO
Therapeutic Interaction Model
(MEDICAL)

Modeling appropriate behavior
Empathizing with the patients
Deescalating agitated patients
Instructing patients in alternative behaviors
Confronting patients with firmness and compassion
Accepting and Affirming patients as worthwhile individuals,
Listening actively to understand patients

All 31 patients are cooperating with the treatment program, and the vast majority of them have demonstrated progress in their treatment. At the close of Fiscal Year 2002, one patient is poised for transitional release, and four other patients are preparing to move to the final phase before transitional release. These patients include persons with varied intellectual capacities, offending histories and mental disorders.

The statute requires that an annual evaluation be conducted on each patient to determine if the patient remains at high risk of sexual reoffending, but the CCUSO clinical staff actually evaluate each patient quarterly, assessing progress toward the program's 12 universal goals. In addition, three physiological measures are included in the assessment process to assess treatment progress and these results are included in the patient's quarterly reports, including polygraph exams, penile plethysmographic exams, and an Abel assessment. The patients are apprized of their progress.

Universal Treatment Goals
1. Thoroughly disclose sexual history
2. Insight into risk factors
3. Resolve victimization issues
4. Develop victim empathy
5. Develop solitary & interactive social skills
6. Develop strong cognitive coping skills
7. Modify deviant arousal
8. Complete relapse prevention plan
9. Demonstrate relationship & intimacy skills
10. Modifiy negative self-concept
11. Develop problem-solving skills
12. Demonstrate motivation to change

The program is designed to provide long-term treatment, because the patients have been involved in deviant sexual behaviors for many years before commitment, and efforts to change such long-standing behavior require a long time in intensive treatment. Anecdotal information indicates that the treatment has been received positively by the patients, many of whom express appreciation for the efforts of the staff in providing the guidance needed for the patients to change their deviant behavior.

During Fiscal Year 2002, significant legislative changes set out specific guidelines for a transitional release program. In addition, appellate courts have decided several important issues that affect the civil commitment program, and other noteworthy issues are currently pending in the appellate courts. Two lawsuits regarding pretrial detention conditions were pending at the close of Fiscal Year 2002. Legislative changes that took effect on April 30, 2002, provided greater flexibility in housing persons awaiting trial. During the coming fiscal year, most SVP pretrial detainees will be housed in the prison at Newton, rather in the Iowa Medical and Classification Center at Oakdale.

During Fiscal Year 2003, the CCUSO program will move to the Mental Health Institute in Cherokee, Iowa, where there is more space for appropriate programming. This move should

alleviate potential overcrowding concerns at the current location in the Iowa Medical and Classification Center in Oakdale.

Challenges

A few difficulties have been encountered in Fiscal Year 2002, and some challenges lie ahead.

Pretrial Litigation. Pretrial litigation continues to take much longer than the statutory 90-day limit. Pretrial detention has created some practical problems. During FY 2002, respondents were housed in the Iowa Medical and Classification Center while awaiting trial, because of a legislative change that no longer permitted pretrial detainees to be housed in county jails. The statute did not contemplate the prolonged pretrial litigation which, thusfar, has not declined.

Challenges

- Pretrial delays are lengthy
- Criminal violations by patients
- Mental health issues for patients
- Long-term planning necessary

In addition, pretrial detention costs continue to be a source of frustration, because there is no specific budget item for housing the pretrial detainees. The Department of Corrections has incurred all of the costs of pretrial detention, and in increasingly tighter budget times, this has been a drain on DOC resources. Agencies now screen sex offenders' cases well before the offender's discharge date, but it is not feasible to provide earlier screening. Prison treatment for sex offenders may reduce the risk of reoffending, so it is important for sex offenders to have the opportunity to complete the Sex Offender Treatment Program (SOTP) offered in the prisons. This program is most effective when it is completed shortly before the sex offender is released from prison. The possibility of civil commitment has served as a strong motivator for some sex offenders to take the prison treatment programs more seriously, thereby reducing the risk of reoffense to a level that disqualifies them for civil commitment. Thus, the balance between early screening and completion of SOTP is a serious challenge for decision makers.

Criminal violations by patients. With a growing number of patients, the program has had to deal with disciplinary issues and, in at several cases, the commission of a criminal offense by a patient. The statute was amended, effective April 30, 2002, to specifically provide procedures to address criminal violations by patients. Similarly, given that some patients will be ready for transitional release in the near future, statutory amendments also address possible reoffense, consistent with the therapeutic community model, to increase the penalty to a life sentence for a person who commits another sexually violent offense after release from CCUSO. The rationale for such a statutory amendment is that a person who has received the most intensive treatment

available, and who nonetheless reoffends, should be punished more severely. The possibility of a life sentence also may serve as a strong motivator to sex offenders who are released to the community to avoid reoffending, and therefore is consistent with the therapeutic community model.

Mental health. The program has encountered both patients and pretrial detainees who suffer from a mental illness that is appropriately treated with prescription medication. Although forced medication is an option under traditional civil commitment, the current statutory scheme does not specifically address the intersection of traditional civil commitment under Chapter 229 with the more specialized civil commitment under Chapter 229A. Appropriate statutory changes were not enacted by the legislature during the last session. These issues should be addressed in the future.

Long-term planning. In the long run, adequate funding continues to be a primary issue. When Iowa enjoys such a high compliance rate in its treatment program, it is essential for the program to receive adequate funding to maintain the quality of programming, and to provide adequate staffing for the safety of patients and staff. While housed within the walls of a maximum security prison, the program has had minimal concerns about security issues. When the program relocates to the Mental Health Institute in Cherokee, DHS will assume responsibility for the physical security of the facility.

Sexually violent predator civil commitment is a hybrid and is unlike general civil commitment actions. Public safety concerns are much greater for SVP commitment patients, who have been found to have committed crimes and to have a high risk of reoffending. In contrast, mental health institutions for traditional civil commitments are statutorily prohibited from employing the security measures that are the hallmark of SVP civil commitment. That is precisely why SVP civil commitments are treated separately from traditional civil commitment actions.

When the CCUSO program moves to the Mental Health Institute in Cherokee, additional staff will be required in order to provide the security that is currently provided within the DOC prison. This is important to protect the safety of patients in CCUSO and at the MHI, as well as staff members, visitors and the general public.

Formal Evaluation of the Program. Many states have developed expertise in the treatment of sexually violent predators, and Iowa officials have contacts around the country to discuss policy and treatment issues. A formal evaluation of the CCUSO program, by a qualified evaluator, would provide a valuable perspective on the strengths and weaknesses of the Iowa program, and could lead to a concrete long-term plan for the program.

Recommendations

Based on the experience in the Sexually Violent Predator program thusfar, there are several

recommendations for future action:

1. Ensure adequate funding and adequate staffing when the program moves from the Iowa Medical & Classification Center at Oakdale to the Mental Health Institute at Cherokee. Plans are underway to remodel the MHI facility at Cherokee to provide a secure facility for the patients in the Civil Commitment Unit for Sex Offenders. Unlike other civil commitment patients, the sexually violent predator civil commitment patients require a "secure" – not merely locked – facility. The CCUSO patients pose a different type of risk to public safety, and the program must receive adequate funding and adequate staffing to ensure the safety of staff, patients, and the general public.

2. Develop transitional release programs that set out achievable expectations for patients, while ensuring public safety. With statutory changes in 2002, a more formal transitional release program is contemplated. The statute allows movement of patients back to a secure facility as necessary, and to allow for gradual release into the community. The program must develop specific standards, consistent with the statute, the Constitution, and the therapeutic community model, so that patients are provided with the necessary support and are aware of the particular guidelines that will help the patients transition into community living without endangering public safety.

Recommendations

- Adequate funding and adequate staffing when the program moves to Cherokee MHI
- Develop transitional release programs that set out achievable expectations for patients, while ensuring public safety
- Conduct a formal evaluation of the treatment program.

3. Conduct a formal evaluation of the treatment program. Iowa has been fortunate to have such a high compliance rate by the patients in CCUSO, and several patients have made considerable progress in the treatment program. A formal evaluation could better assess the strengths and weaknesses, so that appropriate recommendations may be made for long-range plans.

Iowa's

Sexually Violent Predator Program

Progress Report

FY 2002

I. Overview

The Sexually Violent Predator statute, Iowa Code chapter 229A, took effect in 1998. Since then, 31 patients entered the treatment program by the close of FY 2002.

A. Introduction

The Civil Commitment Unit for Sex Offenders has grown steadily during Fiscal Year 2002. On July 1, 2000, there were 12 patients in the program. On June 30, 2001, there were 17 patients. On June 30, 2002, there were 31 patients in the program, and 13 cases pending and scheduled for trial by late fall 2002. The review of cases being processed for filing is ongoing.

The growth of the program has been steady, and generally has increased at a regular pace of about one per month. This gradual growth allows the program to accommodate new patients with relative ease.

Screening Process
FY 2002

Notice by Agency
⇓ 517 cases
MDT
⇓ 85cases
PRC
⇓ 55 cases
Petition &
Probable Cause
⇓ 17 cases
Trial
11 cases

Many of the major legal issues have been resolved. The statute has been held to be facially valid on several grounds. Standards for the admission of evidence have been established with respect to most issues, and procedural issues have been addressed.

At the close of FY 2002, two major issues were submitted for consideration by

the Iowa Court of Appeals. One involves the use of actuarial risk assessments by experts. The other involves the application of a recent United States Supreme Court case addressing substantive due process.

The Iowa Department of Justice and the Iowa Department of Human Services have cooperated to provide this comprehensive overview of the implementation and development of the Iowa program and the plans for the future.

B. Case Processing

Since its inception in 1998, the standards for filing Sexually Violent Predator civil commitment actions has been refined with experience in the administration of the program. A multi-level screening process is set out in the statute. Department of Corrections officials initially review the cases of all sex offenders who will be released and make referrals and recommendations to a Prosecutor Review Committee, which further screens the cases and makes recommendations to the Attorney General. The attorney general may dismiss a case after filing a petition if the State's expert concludes that the person does not qualify as a high-risk offender after evaluating the respondent in person.

More than 1,500 cases have been reviewed by the Department of Corrections between Fiscal Year 1999 and Fiscal Year 2002. Those 1,500 cases have been winnowed to only 59 cases referred to the Attorney General. Of those, 35 cases have been taken to trial, and 31 persons have been committed to the Civil Commitment Unit for Sex Offenders program.

From July 1, 2001 to June 30, 2002, the Department of Corrections reviewed 517 cases and referred 48 cases to the MDT. During FY 2002, the MDT reviewed 85 cases and recommended 55 cases for consideration to the PRC. During FY 2002, the PRC considered 47 cases, recommending 17 cases to the Attorney General. Of the 17 petitions filed by the Attorney General in FY 2002, one case was dismissed after a full evaluation by experts retained by the State. At the close of FY 2002, a total of 35 respondents completed the civil commitment trial process, with 31 patients civilly committed to the Civil Commitment Unit for Sex Offenders (CCUSO), the comprehensive treatment program operated by the Department of Human Services. In Fiscal Year 2002, 11 civil commitment trials were held and four patients were committed after stipulating to the record necessary for commitment.

The 31 patients in the program are male, with an average age of 44.6 and a range of 25 to 59 years old. Each patient has faced criminal charges that have involved an average of four victims, with a range from 2 to 10 reported victims. The 31 patients in the CCUSO program account for 135 victims, 75% of whom were female victims. The CCUSO patients' victims have ranged in age from 3 to 51, with an average age of 13.6. Many were very young victims.

Patient Profile
2002

Patient age:
- Average age is 44.6
- Range in age is 25-59

Victim age:
- Average age is 13.6
- Range in age is 3-51

Victim characteristics:
- 135 victims
- 75% female, 25% male

Most common offenses:
- Lascivious Acts with a Child
- Sexual Abuse (Rape)

Only 29 victims were adults, and of the 106 minor victims, 62 were under age 13.

CCUSO patients have faced a variety of criminal charges, but the most commonly charged crimes have Lascivious Acts with a Child and Sexual Abuse (or Rape). Patients or others also report many additional victims for which the patient was not convicted, and often was not charged with a crime. Seventeen patients were diagnosed with pedophilia; 20 patients were diagnosed with antisocial personality disorder, and ten patients were diagnosed with paraphilia. Other diagnoses include other personality disorders, sexual disorder, fetishism, exhibitionism, and schizophrenia. The cases have arisen from counties of all sizes, with no particular geographic concentration.

Transitional Release Requirements

1) No longer high risk
2) Insights into offending
3) Accepts responsibility
4) Relapse prevention plan
5) No discipline reports for 6 months
6) Escape unlikely
7) Unlikely to sexually reoffend
8) Placement in best interests of the patient
9) Willing to abide by rules

The comprehensive treatment program consists of a five-phase treatment program with several treatment modalities that can be adapted to the individual needs of each patient. The treatment program can be completed in three to five years, if the patient is cooperative and motivated to change. Iowa enjoys a high compliance rate, with all of the patients involved and making progress in the treatment program.

One patient is making sufficient progress in the program that it appears that he may be considered for a transitional release program during the next fiscal year. Three other patients are in Phase III, which means they may be ready for transitional release within the next two years. In order to be considered for transitional release, a patient must have no disciplinary reports for at least 6 months, and must have made sufficient progress in the treatment program to have progressed to the transitional release phase.

Effective April 30, 2002, the legislature amended the statute to provide for more specific provisions regarding transitional release. According to the amended statute, a patient may be considered for transitional release only if all the following conditions are met:

(1) The committed person's mental abnormality is no longer such that the person is a high risk to reoffend.

(2) The committed person has achieved and demonstrated significant insights into the person's sex offending cycle.

(3) The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

(4) A detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person's mental abnormality and sex offending history.

(5) No major discipline reports have been issued for the committed person for a period of six months.

(6) The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.

(7) The committed person is not likely to commit acts constituting sexually violent offenses while in the program.

(8) The placement is in the best interest of

the committed person.

(9) The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

The statute also provides specific procedures to address violations of transitional release, and allows officials to return the person to a secure facility if transitional release requirements are violated.

II. Treatment Program

The CCUSO program continues to receive favorable reviews from experts who have examined the program. The patients have expressed their appreciation for the therapeutic community approach, which gives them hope for release into the community when they have developed the personal skills to avoid further sex offending.

CCUSO
Therapeutic Interaction Model
(MEDICAL)

Modeling appropriate behavior
Empathizing with the patients
Deescalating agitated patients
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Accepting and Affirming patients as worthwhile individuals,
Listening actively to understand patients

Patients regularly participate in group sessions to examine their behavior, discuss their feelings, and make plans for change. Anecdotally, several patients have made remarkable progress within the treatment program. Nine of the patients have been diagnosed with borderline function, and these patients' progress also has been positive.

As of July 1, 2002, one patient had progressed to Phase IV (the phase just before transitional release) and four patients had progressed to Phase III, which means that they are making considerable progress toward release. There were 16 patients assessed at Level 4, which provides them with all privileges in the program. Eleven patients were at Level 3, which means that their behavior was close to where they needed to be in order to get all privileges within the program.

The patients reported that they had hope of making progress and being released from the program. Most patients participated in group programming and had developed skills in sharing feelings, listening to others, and demonstrating empathy. Many of the patients have developed behaviors to mask their pain and loneliness, and are working to learn how to express their feelings and to work through their hostilities in a positive way.

A number of patients have shown slow progress, but there are other patients who had shown little progress in previous years who made breakthroughs during the past year and now are making progress toward release. Although not all patients have made progress in the past year, all of the patients want to participate in the programming and most of the patients are able to control their behavior sufficiently that they can fully participate.

III. Legal Issues

Several legal issues have been decided by the Iowa Supreme Court and the United States Supreme Court during FY 2002. Several major legal issues remain to be resolved and are currently pending in the Iowa Supreme Court and

the United States Supreme Court.

The United States Supreme Court decided *Kansas v. Crane*, 534 U.S. 407, 122 S. Ct. 867, 151 L. Ed. 2d 856 (2002), in January 2002. The Court held that substantive due process requires an inquiry into whether the civil commitment laws are adequately distinguishing between high-risk sex offenders and the "typical" criminal recidivist.

The Kansas statutory scheme was amended to provide for a much wider range of sex offenders to be considered for civil commitment, and the United States Supreme Court decision was written broadly, in order to address the wide variety of state statutes involving civil commitment. Like many other states, Iowa's civil commitment scheme requires careful screening of potential candidates for civil commitment, so that only the highest-risk offenders are civilly committed. For this reason, Iowa's scheme may survive constitutional challenge based on *Kansas v. Crane* standards.

Primary Issues Pending

(1) Use of actuarial risk assessment instruments to address likelihood of sexual reoffenses

(2) Constitutional requirements to show the person has "serious difficulty in controlling behavior"

(3) Conditions of pretrial confinement

The Iowa Supreme Court has upheld the Iowa statute against a number of other constitutional challenges, including several due process claims, equal protection claims, and void for vagueness claims.

Pending Issues. The appellate courts in Iowa are currently considering two significant issues. First, the courts are examining the implications of the United States Supreme Court decision in *Kansas v. Crane*. The State has responded by pointing out that the statute presented to the United States Supreme Court was significantly different from Iowa's statute. The Iowa law requires proof beyond a reasonable doubt that the person suffers from a mental abnormality that predisposes the person to commit sexually violent offenses, and that the person is more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility. By definition, then, the Iowa statute limits eligibility for the SVP program to high-risk offenders who are unlike typical criminal recidivists.

The second issue pending before the appellate courts is whether the use of actuarial risk assessment is legally permitted. The Attorney General has a contract with four psychological experts who review all cases referred for civil commitment. These experts use a variety of methods for assessing both mental abnormality and risk of reoffense. One method is to rely on actuarial risk assessment to determine whether a person has characteristics that are consistent with the characteristics of high-risk sex offenders. The experts do not rely exclusively on actuarial assessments, but also examine a variety of other factors that bear on the issue of risk of reoffense, including any treatment gain that the person may exhibit in understanding the offending cycle and relapse prevention. The State experts rely on actuarial risk assessment instruments that have a strong statistical basis, and the experts comply with the national standard recommended by the Association for the Treatment of Sexual Abusers.

Pending lawsuits. Two lawsuits against state officials were pending at the close of Fiscal Year 2002. In one lawsuit, a patient sought damages for the conditions of confinement pretrial.

A second lawsuit, brought by the Iowa Civil Liberties Union on behalf of several pretrial detainees, sought declaratory and injunctive relief based on pretrial conditions of confinement. Most, if not all, of the complaints in that lawsuit have been addressed in the new legislation that took effect on April 30, 2002.

IV. Challenges

A few difficulties have been encountered in the past fiscal year, and others are anticipated in the coming years.

Pretrial Delays. Pretrial litigation continues to take longer than expected. Respondents have an interest in pursuing a vigorous defense to the civil commitment process, but very few cases have gone to trial within 90 days, as contemplated by the statute. Nearly all requests for continuances are by the Respondent. The State has requested or acquiesced in continuances on rare occasions.

Pretrial detention has created some practical problems, because by statute, detainees can only be housed in a secure state facility. SVP pretrial detainees are housed as safekeepers with other pretrial detainees in a unit at the Newton Correctional Facility. Such prolonged pretrial litigation was unexpected, and results in much longer pretrial detention. The Iowa Supreme Court has now addressed many of the legal issues raised by civil commitment respondents, which may reduce some pretrial delays in Fiscal Year 2002. Yet many other issues remain. There has been no decrease in pretrial litigation at any time in the past fiscal year.

In addition, the costs of pretrial detention are not a specific budget item for the Department of Corrections, which incurs the costs of pretrial detention.

Earlier screening procedures have now been implemented in an effort to reduce the time spent in pretrial detention. Not all potential candidates can be screened early, and early screening makes it more difficult for potential candidates to complete the Sex Offender Treatment Program (SOTP) offered within the prison system. Completion of SOTP may reduce a sex offender's risk, so it is important to give prison inmates a full opportunity to benefit from prison treatment programs in order to avoid the more costly CCUSO program. Thus, the balance between early screening and completion of SOTP is a serious challenge for decision makers.

Challenges

- Pretrial delays are lengthy
- Criminal violations by patients
- Mental health issues for patients
- Long-term planning necessary

Criminal violations by patients. Iowa has enjoyed an enviable participation rate by its patients in CCUSO. With the number of patients in the program increasing, however, more disciplinary issues have arisen and, in at least one case, the

commission of a criminal offense by a patient.

Mental health. The program has encountered at least one pretrial detainee who suffers from a mental illness that is appropriately treated with prescription medication, but the respondent refused medication. Although forced medication is an option under traditional civil commitment, the current statutory scheme does not specifically address the intersection of traditional civil commitment under Chapter 229 with the more specialized civil commitment under Chapter 229A. Appropriate statutory changes should be made to address these issues.

Long-term planning. In the long run, funding issues must be addressed. The program has continued to grow at a steady rate. Although Iowa is fortunate to have seen slow growth in its program in comparison to the other states, the growing number of patients will require careful planning in order to ensure that Iowa's focus remains on treatment. The experience in other states demonstrates that when growth is too fast or the resources are too scarce, the focus on treatment is lost and the patients in the program are treated more like prisoners than patients.

In addition, better pretrial detention options also should be developed. Pretrial treatment is neither warranted nor constitutionally mandated, given that the pretrial detention is anticipated to be short. Nonetheless, pretrial detention is necessary in many cases, and should be included as a budgeted item for whatever agency is responsible for the detention.

V. Statutory Changes

The Iowa legislature did not address the problems that result from a dual commitment under chapter 229 and chapter 229A. Some of the patients in the Civil Commitment Unit for Sex Offenders suffer from active Axis I mental illnesses that would make a traditional civil commitment under chapter 229 appropriate. The finding of dangerousness and the findings regarding sexual offending make the CCUSO patients inappropriate for mental health institutes. The current statute does not address the interplay between traditional civil commitment and SVP civil commitment, and should be amended.

VI. Recommendations

Based on the experience thusfar, there are several recommendations for future action:

1. Ensure adequate funding and adequate staffing when the program moves from the Iowa Medical & Classification Center at Oakdale to the Mental Health Institute at Cherokee.

The Civil Commitment Unit for Sex Offenders has outgrown its space at the Oakdale facility, and plans are underway to remodel the MHI facility at Cherokee to provide a secure facility for

the patients. Sexually violent predator civil commitment patients, unlike other civil commitment patients, require a "secure" – not merely locked – facility. The CCUSO patients pose a different type of risk to public safety, and it is important that the program receive adequate funding and adequate staffing to ensure the safety of the staff, the patients, and the general public.

Recommendations

- Adequate funding and adequate staffing when the program moves to Cherokee MHI
- Develop transitional release programs that set out achievable expectations for patients, while ensuring public safety
- Conduct a formal evaluation of the treatment program.

high compliance rate by the patients in CCUSO, and several patients have made considerable progress in the treatment program. It would be useful to have a formal evaluation of the program, to assess the strengths and weaknesses, so that appropriate recommendations may be made in order to maintain the health of the program.

2. Develop transitional release programs that set out achievable expectations for patients, while ensuring public safety.

With the adoption of statutory changes in 2002, a more formal transitional release program is contemplated. The statute provides the ability to move patients back to a secure facility as necessary, and to allow for gradual release into the community. The program must develop specific standards, consistent with the statute, the Constitution, and the therapeutic community model, so that patients are provided with the necessary support and are aware of the particular guidelines that will help the patients transition into community living without endangering public safety.

3. Conduct a formal evaluation of the treatment program.

Iowa has been fortunate to have such a

VII. Conclusion

As our knowledge and understanding of sex offending and sex offenders increases, we have the capacity to provide better responses to these crimes that affect many people's lives.

More than any other crime, sex offenses have a profound effect on victims, offenders and the general public.

Many of the patients in the Civil Commitment Unit for Sex Offenders have committed sex crimes against children, especially young children. This devastating crime may affect children's lives for many years. Adult victims of sex offenders also report the ruinous effect of sex offending on their quality of life. Although we provide far more victim services today than we have in the past, public policy demands that we reduce the incidence of sex offenses at the outset.

Several policy matters are of particular importance. First, victim service funding is essential. Victims who have received proper and

adequate support are more likely to recover, and to recover faster, than victims who are not provided with sufficient resources. In difficult economic times, priorities must be set, and victim services should receive a high priority.

Second, adequate staffing is essential for the protection of patients, staff, visitors and the general public.

Finally, adequate financial support for treatment services in the Civil Commitment Unit for Sex Offenders is essential. Iowa has an enviable reputation for excellence in its sex offender civil commitment program. The decision by the United States Supreme Court illustrates that the focus on treatment of high-risk sex offenders is not merely good policy, but a constitutional requirement. Effective treatment programs are expensive, but the failure to address the risk of reoffense is even more costly.

Summary of the
SVP Amendment 2002

Iowa's Sexually Violent Predator law was amended in several ways in 2002.

- Several patients have progressed to the point that they may qualify for transitional release. The statute did not provide any procedures for transitional release, short of a stipulated agreement between the patient and the State. The 2002 amendment sets out the standards for a transitional release program, including: reduced risk of reoffense, insights into offending cycle, acceptance of responsibility and understanding of victim impact, development of a detailed relapse prevention plan, no major disciplinary reports for six months, low likelihood of escape or reoffense, placement in the best interest of the patient, and demonstration of a willingness to agree with and abide by the rules of the transitional release program. The person in a transitional release program must be subject to public notification. It is not necessary to segregate patients in the transitional release program from others, so the transitional release program could be contracted with existing sex offender programs operated through the Department of Corrections or District Correctional Services.

- Additions to legislative findings reflect specific interests that courts should balance in interpreting the statute: the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full meaningful participation of sexually violent predators in treatment programs.

- Definitions were amended or added to address both the transitional release changes, and the status of pretrial detainees as "safekeepers" within the Department of Corrections.

- Procedural issues were addressed, such as the inapplicability of the rules of procedure in the probable cause hearing.

- Several incidents of assaultive behavior have demonstrated that patients must be held responsible for their violent actions in the treatment program. A patient's criminal activity poses a danger to other patients, and interferes with treatment for the offending patient and for all other patients. It is imperative that the civil commitment action be suspended during the pendency of criminal charges and any resulting sentence. Pretrial detainees who are violent also pose an additional risk. No disciplinary processes are available for pretrial detainees, so it is important to suspend the civil commitment process while the criminal actions are resolved.

- Consistent with the therapeutic approach, the patients who are released face serious consequences if they commit any further sexually violent offenses.

- A new provision makes it clear that a transport order is required for all transportation except medical treatment. Because this is a civil matter, the respondent does not have a constitutional right to be present at proceedings. The statute provides that the respondent has a right to be present at trial, but not at other proceedings.

- A respondent may appear by telephone or electronic means at proceedings other than trial.

- The statutory amendment clarifies that when a respondent waives speedy trial and later re-demands speedy trial, the 90-day time limit begins anew. This principle is consistent with speedy trial demands in criminal cases.

- The Rules of Civil Procedure and Rules of Evidence apply in SVP actions.

- If the judge or jury determine that the respondent is not a sexually violent predator, the respondent is released and must comply with all registration requirements in chapter 692A regarding sex offender registry. If the jury verdict is not unanimous, the 90-day time limit is triggered, although it can be waived.

- There is now a rebuttable presumption that civil commitment should continue, once a patient is committed. This is logical because the determination of civil commitment was made by a beyond-a-reasonable-doubt standard, and the statute itself contemplates a long-term treatment program. The amendment sets out a clear standard for rebutting the presumption when "facts exist to warrant a hearing to determine whether the person no longer suffers from a mental abnormality that makes the person likely to engage in predatory acts constituting sexually violent offenses if not confined in a secure facility, or the committed person is suitable for placement in a transitional release program."

- The initial annual review may be conducted on the basis of records alone, without the presence of the patient. Litigation often is anti-therapeutic and the treatment is designed to be long-term, so presence of the patient at the annual review initial determination is not necessary as a policy matter. If the court finds that facts warrant a hearing, the patient is entitled to be present at that final hearing.

- The amendment allows a court to issue a civil protective order for a victim of the pretrial detainee or patient's prior crime.

- The amendment makes it clear that a person subject to chapter 229A is not eligible for bail if the person is charged with a criminal offense, or appeals from a conviction for a criminal offense.