Our Culpable Sickness: California's Sexually Violent Predator's Act

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Abstract: California’s Sexually Violent Predator Act (SVPA) incorporates punitive and rehabilitative elements which split control over Sexually Violent Predators between medial and judicial institutions. These institutions struggle to control and define the rehabilitation of individual offenders. As a result, the implementation of the SVPA is fundamentally flawed. This paper argues: 1) sex offenders are treated as both culpable and sick, which impairs their rehabilitation; 2) the SVPA incorporates both determinative and indeterminate incarceration, which runs contrary to the basic foundation of the American legal system; 3) the struggle between medical and judicial elements has played out in the public forum, which has lead to the creation of inappropriate and inhumane policies. As a result of the criminal vs. medical struggle, the SVPA is unable to effectively rehabilitate or reintegrate Sexually Violent Predators back into society and thereby increases the risk of recidivism.

Institutional control over the treatment and rehabilitation of violent sex offenders shifts between the medical and legal community. Following the 1931 premier of the German movie M and continuing until 1965, Americans became increasingly panicked over the apparent rise of violent sexual offenders. Informed by news reports and scholarly articles written by psychiatric and legal scholars, the American public began demanding governmental action. As the
sex offender panic spread, governmental agencies—at the local, state, and federal level—passed statutes transferring control of violent sex offenders from the courts to the medical authorities and also established and funded specialized institutions to rehabilitate sexual offenders.  

In the 1960’s, while most states were delegating control of sex offenders to the medical community, California was shifting toward legal control. California closed its state-run mental hospitals and delegated the mental health and rehabilitative treatment of inmates to the judicial system. Violent sex offenders could obtain therapeutic mental health care in prison while simultaneously serving their punitive sentences. This program was predicted to result in lower recidivism rates and costs; however, its success was questioned in the 1990’s as news report announced the rise in recidivism rates for violent sexual offenders. In what was equivalent to a vote of no confidence in the prison system, California begin shifting control of the state’s most violent, habitual sexual offenders to the medical community.

In 1996, California drafted and passed Welfare and Institution Code sections 6600-6609.3, also known as the Sexually Violent Predator Act (“SVPA”), which split the control of violent sex offenders between the legal and medical communities. The goal of the SVPA was to curb the apparent rise in sex offender recidivism rates through a combination of medical and punitive treatments. The significant feature of the SVPA is that civil commitment does
not substitute for criminal incarceration; rather, commitment is imposed for an indefinite time period after completion of the prison term. Thus, the transition to full medicalization is incomplete because civil commitment is not predicated on any alleged criminal conduct. Instead, public policy justifies civil commitment on either of two competing rationales: 1) for the benefit of the sex offender so they can get rehabilitative mental health treatment, if they are curable; or 2) if they are incurable, for the benefit of the public through removal of potentially dangerous individuals from the general population, thereby preventing future misconduct.  

Splitting power between the medical and legal authorities has resulted in an institutional struggle, where each industry jockeys for control over sex offender rehabilitation. This struggle has detrimental implications for society. For one, sex offenders are defined and treated using both a “criminal,” fault-based label and a “sick,” no-fault label. This fundamental inconsistency impacts the ability of either institution to successfully rehabilitate violent sex offenders. Secondly, the split has eroded the basic foundation of the American legal system by imposing both determinate, punitive incarceration and indeterminate, civil incarceration. Third, the struggle for institutional dominance has played out in the public forum, which impacts social perceptions of sex offenders and indirectly influences how sex offender laws are created. Fourth, due to the power split, the SVPA program has been successful in theory, but not in actual practice.
Consequently, the SVPA has the potential to increase sex offender recidivism rates, which is opposite of its intended goal.

**Medicalization of Sex Offenders**

In general, deviance is an integral part of all societies and serves four major functions: (1) affirming cultural values and norms, (2) clarifying moral boundaries, (3) promoting social unity, and (4) encouraging social change. The underpinning of labeling theory is that deviance is a “socially attributed condition, and ‘deviant’ is an ascribed status.” According to labeling theory, deviance is caused by society negatively labeling a deviant person (or their behavior). The label is then internalized and the deviant person acts according to the label. In terms of criminal deviance—and sexual offenses specifically—it is “not the act, but the definition, that makes something deviant.” Over time, the social understanding of what is and what is not criminally or sexually deviant changes as a result of a continual power struggle between ‘moral entrepreneurs’ who “create deviance by making the rules whose infraction constitutes deviance.”

Societal reactions, and efforts to define and suppress criminalized behavior, are important to social solidarity. Moral panics provide one tool to build social solidarity by delineating hard lines between the moral “us” and “them”. A moral panic is a fundamentally inappropriate social reaction fueled by exaggerated and distorted media attention to relatively few or minor events.
defining characteristic of a moral panic is the perception—often using exaggerated data and statistics—that the threat posed by the deviant group is far greater, in terms of numerical abundance, than is realistic.\textsuperscript{11} The result of a moral panic, however, can be devastating for the deviant group, who are often held socially responsible for the threat they posed and disproportionately punished via public hostility, ostracization, and backlash. \textsuperscript{12}

The “deviant” label can be socially imposed on people whose actions are immoral, criminal, and/or sick. Immorality is a common underlying theme for why certain behaviors are considered criminal or sick. And these labels affect how the person is identified, treated, and punished by society.

The “criminal” label assumes that the actor freely chooses to be immoral/criminal and therefore also has the ability to change their behavior. This justifies using punitive punishments, ranging from incarceration to shaming, to gain conformity with social norms. Although such efforts can gain compliance, they also run the risk of pushing the deviant further into the fringes of social acceptability.\textsuperscript{13} Regardless of the risks, punitive measures are important tools to deter free-agents from engaging in criminal/immoral behavior.

In contrast, the medicalization of deviance takes an act previously defined as immoral or criminal and gives it a medical diagnosis, which eliminates some individual culpability. “The implication is that modern medicine can cure all
problems (including vandalism, alcoholism, homosexuality, dangerous driving, or political deviance) once these are recognized as 'diseases'." 14 Those previously labeled as “criminal” or “immoral” can be relabeled as “sick”, which gives them a socially acceptable excuse for their inappropriate behavior.

Having a medical explanation impacts the role the person plays. Those labeled as “sick” have a conditionally legitimate deviant role, where they are forgiven for reasonable violations of social norms as long as they are attempting to get medical help from health care professionals. 15 In addition, those who are “sick” are not considered to have control over their ailment, and are therefore not free agents deserving of punitive punishments.

Medicalization transforms legal and moral issues into medical matters in an effort to control the definition and treatment of deviance. “The sick role becomes a vehicle by which new forms of deviance can be brought under the medical professional’s domain, treated medically, and redefined socially and morally.” 16 As such, those labeled as “sick” are subject to a range of “treatment” spanning from a reduction of social roles/responsibilities to involuntarily confinement (nursing homes, mental hospitals) depending on whether the sickness is curable.

The transition between the criminal/immoral and the sick label is evident with California’s violent sex offenders. Prior to the enactment of the Sexually
Violent Predator Act in 1996, violent sex offenders were considered “criminal” and treated through punitive prison terms. However, there has been a shift toward medicalization of sexual offenders, which has been spurred by studies linking criminal actions and mental illness. For instance, a 2007 study in the Journal of Clinical Psychiatry found that sexual offenders were six times more likely to have a severe mental illness (schizophrenia, psychoses, or bipolar affective disorder) and some prior psychiatric hospitalization, when compared with the general population.\(^{17}\) Such studies invariably involve the “sick” label, since the measure of the sexual offender/illness is the extent of the diagnosis and treatment. These cyclical findings are “evidence” of the need to further medicalize sexual offenders.

**Sexually Violent Predator Act:** struggle between retribution and rehabilitation

California’s Sexually Violent Predator Act only applies to a subset of sexual offenders known as Sexually Violent Predators (“SVP”). A SVP is an individual who has been “convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.”\(^{18}\) Legally, being labeled an SVP is not dependent on the previous crimes being “predatory acts,” which are statutorily defined as violence against a “stranger, a casual acquaintance, or someone cultivated for the purpose of victimization.”\(^{19}\)
Contrary to public perceptions, the SVPA applies to a very small group of sex offender inmates who have a diagnosable mental disorder that was identified while the inmate was incarcerated.\(^{20}\) The original 1996 version of the SVPA only applied to about 1,000 of the state’s most violent offenders; these individuals were subject to an additional two years of civil commitment following the completion of their prison term.\(^{21}\) The SVPA was amended in 2006 with the passage of victim-impacted Proposition 83 (“Jessica’s Law”), which expanded the definition of SVP and imposed stringent living restrictions, medical confinement and monitoring protocols.\(^{22}\)

**SVPA Purpose: Reduce Recidivism**

The SVPA, and the subsequent amendment, were considered necessary to curb the perceived rise in recidivism rates of violent, mentally ill sex offenders. Generally speaking, most violent criminal offenders suffer from mental illness, which if not properly treated, leads to increased recidivism rates. A 1999 Department of Justice study found that nation-wide about a fourth of all prison inmates do have a diagnosable mental illness.\(^{23}\) Of this, 53% were incarcerated for a violent offense, with 12.4% committing a sexual assault.\(^{24}\) (Appendix A.) Traditionally, prisons were able to treat most typical, non-violent mental illnesses; however, very few institutions had the infrastructure to properly treat uncommon or violent illnesses.\(^{25}\) This is even more pronounced in California, which closed
down all its state mental hospitals in the 1960’s and made all prisons defacto mental health hospitals.²⁶ Studies found that for violent offenders, mental health confinement programs were the most successful at curbing future recidivism; however, about “two-thirds of all inmates receiving therapy/counseling or medications were in facilities that did not specialize in providing mental health services.”²⁷

In general, recidivism rates are higher for the mentally ill, even with proper treatment. Over three-quarters of mentally ill inmates had been sentenced to time in prison or jail or on probation at least once prior to the current sentence.²⁸ Having a mental illness also increases the likelihood of violent reoffending. Of repeat offenders, 53% of mentally ill inmates had a current or past sentence for a violent offense.²⁹

The general trend linking mental illness, violence, and recidivism rates do not hold for Sexually Violent Predators. A Department of Justice Study from 2003 found that, for sexual offenders, there was no relationship between length of sentence and recidivism rate.³⁰ In addition, the sexual recidivism rate for previously convicted sex offenders—not holding for mental illness—was surprisingly low, at only 5.3%.³¹ (Appendix B.) This means that, contrary to popular belief, recidivism rates of violent sex offenders are not elevated to a point where they threaten the public safety.
These findings call into question the very foundation of the SVPA, which was premised on the need to stop the rising recidivism rates of violent sexual offenders. For one, if recidivism rates are not rising, and are in fact shockingly low, then there is no basis for the highly stringent law. Secondly, the low recidivism rates imply that the punitive/rehabilitative measures employed by the judicial system were more than adequate to deter or treat any future reoffending. Consequently, the push toward medicalization—with the involuntary incarceration program—is unnecessary to achieve the public goal of safety. Implicitly, this also undermines the use of the “sick” label for sexual offenders. Even taking into account mental illnesses, their recidivism rates are lower than for other offenders, which indicates that some sexual offenders are able to make a choice about reoffending; thus they are free agents and not “sick.”

Flawed Facts and Public Fear: the passage and amendment of SVPA

Regardless of evidence to the contrary, supporters of the SVPA played on public fears via a nexus of forces—social, political, economic, and medical—which struggled to justify and define the emerging law. In 1990, the first sexually violent predator law was instituted in Washington after Early Shriner, a convicted SVP, was released and reoffended. Since 1990, over seventeen states have instituted stringent sexually violent predator laws to medicalize, monitor, and rehabilitate habitual offenders. (Appendix C.)
California followed suit in 1996, passing the Sexually Violent Predator Act, which established a new category of civil commitment for sex offenders found to pose “extreme danger to society” upon their release from prison. The California Legislature found widespread support for the 1996 Act, by highlighting the need for increased public safety and cost effectiveness. (Appendix D).

The SVPA was a union between victim interest organizations and public safety officers, which emphasized the need for public safety in light of the “rising” recidivism rates. The 1996 law targeted inmates who had an extreme mental illness and a clear record of violent recidivism. Of California’s 80,000 sexual offenders, only 552 met the requirements for the involuntary incarceration program, which was capped at two years of treatment. This indicates that the overwhelming belief was that sexual offenders were “sick” but could be cured and reintegrated into society with a reasonable amount of medicalization.

The subsequent 2006 amendment to the SVPA, known as Jessica’s Law, was a markedly different union between the media, victim advocate organizations, and the medical community. In the media frenzy over the Jessica Lunsford killing in Florida, nearly 41 states—including California—enacted stricter sexually violent predator laws which emphasized medical incarceration and monitoring. Efforts to adopt Jessica’s Laws throughout the United States, and to the federal level, were pushed by news anchors, such as Bill O’Reiley who
tracked and criticized states that did not quickly adopted Jessica’s Laws.\textsuperscript{44} The media portrayed SVPs, such as John Couey, as rational free agents whose criminal/immoral conduct was planned, executed, and hidden.\textsuperscript{45} These portrayals showed the SVP, not as “sick,” but as criminal and/or evil, which incited more public fear.

As with any budding moral panic, the media discourse emphasized that "this kind of thing happens every day." \textsuperscript{46} The media found “evidence” in singular horrific examples and disproportional evidence.\textsuperscript{47} Due to heightened public and media attention, many states quickly passed Jessica’s Law amendments. As a result, the poorly drafted amendments widened the split—and struggle—between medical and judicial control.\textsuperscript{48}

In comparing the originally SVPA to the Jessica’s Law amendment, it is clear that there was a critical shift in the way society viewed violent sex offenders. The conservative definition of a SVP was expanded under Jessica’s Law to include more individuals, many of which lacked evidence of mental illness and/or a violent recidivist record.\textsuperscript{49} The amendment also heightened the medicalization of SVPs. Instead of a reviewable and renewable two year commitment, SVPs were subject to indefinite and involuntary incarceration within state hospitals.\textsuperscript{50} This indicates a change in the “sick” label. Under the 2006 amendment, a SVP was no longer curable and therefore, long term civil
commitment was necessary. However, for the very few who could be “cured” and therefore released, the amendment imposed numerous judicial monitoring and stringent housing restrictions.\textsuperscript{51}

This combination of medical and judicial control has a number of possible implications. For one, it implies an incomplete transition—and continuing power struggle—between the medical and judicial control agents. Both groups are vying to impose their sanctions and “fixes” on SVPs under the guise of increasing public safety. To a large degree, this also lessens agency accountability. If a SVP reoffends, each agency can shift the blame elsewhere while simultaneously highlighting their efforts to keep the public safe. This makes any genuine accountability practically impossible. Another implication is the increased confusion over the SVP label: is the SVP “sick” or “criminal”? Based on the 2006 amendment, it appears that the SVP is both. This enables both the medical and judicial institutions to impose punishment.

**SVPA: the divide between successful theory and inhumane reality**

Even with these flaws, the SVPA is considered to be theoretically sound. Hypothetically, any legal imperfections are overcome through judicially-mandated procedural safeguards that protect an inmate’s Constitutional rights in addition to highly medicalized treatment that allows only the curable SVPs to be rehabilitated and reintegrated into society.
Procedurally, to be subjected to SVPA, two licensed psychiatrists and/or psychologists must unanimously agree that the inmate has a diagnosed mental disorder or abnormality such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody.\textsuperscript{52} The risk assessment is based primarily on therapeutic tools and not on statistical models. It is within the discretion of the local District Attorney to file a petition with the local Superior Court to obtain SVP status. The court then holds a civil SVP hearing. (Appendix E.)

Since a finding of SVP would result in further involuntary commitment, extra procedural safeguards are utilized. The inmate has the assistance of counsel, a jury is convened, and the District Attorney must prove his petition beyond a reasonable doubt. If the jury finds, beyond a reasonable doubt, that the inmate is a SVP, then upon the completion of the prison sentence, the inmate is automatically transferred to a state mental hospital under the operation of the Department of Mental Health for continuing medical treatment.

Following the 2006 passage of Proposition 83 (“Jessica’s Law”), the civil treatment of the SVP was broken into five phases that require a minimum of five additional years of confinement. The first four phases are inpatient and require the SVP to remain confined to the state mental hospital for a minimum of four years.\textsuperscript{53} During the inpatient incarceration, treatment is cognitive-behavioral with
a “Relapse Prevention” component that requires ongoing assessment of inmate needs and treatment progress. The inpatient component is highly medicalized and focuses on: 1) offense specific treatment which entails identifying risk factors for deviance and practicing coping responses to lessen relapse; 2) therapy and group counseling and, where necessary, “behavioral recondition”; and 3) very limited educational and vocational training.  

No vocational, educational, or trade skills are taught. Under Proposition 83, the involuntary, inpatient civil commitment of each SVP is indeterminate and subject to annual review by the Director of Mental Health.

During the annual review, the SVP has the opportunity to petition the Superior Court for conditional release. Unless the patient waives the petition, and thereby voluntarily submits to another year of treatment, the committing Superior Court must hold a “show cause” hearing to determine if there are sufficient facts for which to hold a hearing on whether the SVP’s condition has “so changed that he would not be a danger to the health and safety of others if discharged.” If there is probable cause for the hearing, then the state has the burden of proving beyond a reasonable doubt that the SVP continues to pose a threat to society. If the state fails to meet its burden, the SVP is unconditionally discharged; however, if the state does meet its burden, then the term of commitment continues to run. The Department of Mental Health also can, at any time during commitment, petition the court for an individual’s release if they are deemed to no longer meet
the SVP criteria (i.e. are “cured”). The DMH rarely finds that a SVP no longer meets the criteria; thus, to gain conditional release or discharge, many SVPs are forced to petition the court and obtain a court order for release.\footnote{58}

The fifth phase is an outpatient program, which is a year-long conditional release phase where the SVP is placed back in the community and supervised by the designated Conditional Release Program under strict terms and conditions. This program is based upon the Containment Model, which holds “patients accountable by the combined use of the patient’s own internal controls, developed during inpatient treatment, and the use of external tools such as polygraph, surveillance, and electronic monitoring.”\footnote{59} The medical community recognizes that there is no “cure” for sexual deviance so the focus is on relapse prevention that identifies high risk situations, thoughts and behaviors that are precursors to sex offending which are specific to that patient and assist him/her to establish alternate thinking and behavioral patterns.\footnote{60} The conditional release phase is subject to annual renewals determined by the Superior Court.\footnote{61} Under the Jessica’s Law amendment, the offender is subject to lifetime Global Positioning System and psychiatric monitoring. In addition, SVP are prohibited from living within 2,000 feet of any school or park, which eliminates their ability to live in many Californian cities.\footnote{62} (Appendix F.)

SVPA in Action: Fundamental Flaws
Although successful in theory, the SVPA is fundamentally flawed in practice. Due to the continuous struggle between criminal and sick labels, SVPs who are conditionally released face numerous challenges—such as homelessness—which increases their risk of recidivism. From the inception of the law in 1996 until 2007, only 11 SVP have been conditionally released; the majority of them have returned to the custody of the DMH.\textsuperscript{63} Although their experiences differ in many respects, each released SVP had to deal with the same underlying social pathologies, which made their ability to succeed in the outpatient program impossible. The following situational summaries illustrate the fundamental flaws in the SVPA:

**Cary Verse:** Cary Verse is a four-time convicted sex offender.\textsuperscript{64} In 1988, at age 17, Verse “pulled a knife on a 14-year-old boy and fondled him.”\textsuperscript{65} Verse was convicted and while serving his sentence in juvenile hall, he escaped with another boy who he later sexually assaulted. Verse was sentenced to a year in jail for the offense. In 1990, while on parole, Verse received a three year jail term for the sexual battery of another 14-year-old boy. Two years later, while on parole, Verse “bound and sexually assaulted a homeless man in San Pablo, CA.”\textsuperscript{66}

Cary Verse was incarcerated when the SVPA passed in 1996. While in prison, Verse was diagnosed with a psychosexual disorder. The DA filed a petition with the Superior Court arguing that Verse’s repeat prison terms
apparently did not rehabilitate him. A jury agreed and, due in part to his recidivist nature, Verse was classified as a Sexually Violent Predator under WIC 6600(1)(a)(1). After completing his sentence in 1998, Verse was transferred to Atascadero State Hospital, “as mandated for released convicts with histories of violent sex crimes.”

In February 2004, six years after serving his prison sentence, Verse was released from Atascadero State Mental Hospital after completing the inpatient phase. As a condition of his monitored outpatient release, Verse could not live within 2000 feet of a school, was tracked 24-hours a day via Global Positioning System, was closely monitored by a psychiatrist, and was under-going chemical castration. Yet, in 2005, Verse violated the terms of his conditional release by driving in a car with a 14-year-old male passenger, whom he did not harm. In January 2006, after numerous court hearings, Verse’s conditional release was revoked and he was returned to Atascadero State Hospital with no date of release.

Ross Wollschlager: Ross Wollschlager, a 44-year-old habitual sex offender, completed California’s Sexually Violent Predator Program at Atascadero State Mental Hospital and was also released. As a teenager in the 1980’s, Wollschlager began entering women’s homes and raping them in the middle of the night. At age 19, Wollschlager was sentenced to eight years and
was paroled after serving half of his sentence. Two years later, after a day of drinking and drug use, Wollschlager entered a stranger's home and fondled a 10-year-old girl while she slept. Wollschlager turned himself in and was convicted of lewd and lascivious acts with a child under 14; he was sentenced to 13 years in prison.

According to Wollschlager, his criminal actions were prompted by psychological disorders, which were exacerbated by alcoholism, drug abuse and "deviant thoughts and fantasies." In 1996, Wollschlager was up for release; however, due to concerns of public safety, he was transferred to Atascadero State Hospital to participate in the new Sexually Violent Predator Program. Under the SVPA, Wollschlager was barred from leaving the hospital for 11 more years while he underwent treatment.

In 2006, Wollschlager petitioned the court for release. After numerous hearings, Wollschlager was released under the orders of Ventura County Judge Rebecca Riley after hearing testimony on his progress toward rehabilitation. This move was met with strong criticism because Wollschlager had completed only “half of a five-phase problem while at Atascadero.”

Wollschlager was released in August of 2006; however, had difficulty finding housing. With the passage of Jessica’s laws, the highly restrictive housing
regulations severely curtailed his options. Wollschlanger was “chased out of seven hotels by a flurry of law enforcement fliers” and has resorted to living in a state-provided tent, a homeless encampment under a bridge.\textsuperscript{78}

Matthew Hedge, is a SVP diagnosed with an anti-social personality disorder and pedophilia. Beginning in 1989, Hedge was convicted of “forcing two sibling boys, ages 7 and 10, to perform oral copulation while they were in his home.”\textsuperscript{79} He was convicted, in a separate incident, of “fondling and touching two girls, ages 13 and 9, using force.”\textsuperscript{80} Hedge also has a history of exposing himself to school children.\textsuperscript{81} Hedge served 8 years and was paroled in May 1997. He violated parole in September 1997 and, since he fit the guidelines of the SVPA, Hedge was rearrested and sent to Atascadero State Hospital in 1998.\textsuperscript{82}

In November 2005, prior to the passage of Jessica’s Law, Hedge became the “first Atascadero patient from San Diego County to complete the SVPA program and win his release.”\textsuperscript{83} That year, Judge David Danielson approved the release of Hedge, who based on risk assessment tests, only had a 26% chance of reoffending.\textsuperscript{84} The state, however, had difficulty in placing Hedge. “After two other sites drew protests from neighbors, [Hedge] was housed in a trailer outside the gates of the Richard J. Donovan Correctional Facility in Otay Mesa.”\textsuperscript{85}
However, Hedge was only on conditional release for two months.86 “Hedge was returned to Atascadero for additional treatment, after state authorities discovered he had spoken to two teenage girls at a treatment center,” which was a violation of the terms of his release.87 “Authorities said [Hedge] didn't commit any crimes during that time, but his behavior – such as speaking to two teenage girls at a treatment center – caused concern.”88 The Department of Mental Health hailed their quick intervention as a sign that the proper safety nets were in place and that SVP would be caught before reoffending.89 Politicians and the public, however, saw Hedge’s return to custody as “proof that Sexually Violent Predators belong in State custody and can never be 'cured'.”90

Prior to Hedge’s release in 2005, only four participants of the SVP program had been conditionally released since the inception of the law in 1996; none had previously been released to San Diego County.91 Yet, immediately following Hedge’s release, the Danielson court also conditionally released Douglas E. Cassidy, AKA Douglas Badger back into the San Diego area.

**Douglas Badger** is a SVP with a history of sexually assaulting young male hitchhikers at gunpoint.92 In November 1975, Badger was sentenced to 1-25 years for sodomy, kidnapping with intent to rape, and crimes against children/lewd lascivious acts.93 He was paroled August 1980 and quickly reoffended. In 1981, Badger was again convicted of kidnapping and forced
copulation and was sentenced to 10 years in state prison.\textsuperscript{94} Badger was paroled for the second time in February 1987 and he reoffended three years later. In September 1991, Badger received another 10 year sentence for multiple counts, including forcible oral copulation in concert, sodomy with force and kidnapping.\textsuperscript{95}

While in prison, Badger was “diagnosed as having a mental illness similar to schizophrenia; he was also diagnosed as an alcoholic and sexual sadist who derives pleasure from torturing and humiliating his victims.”\textsuperscript{96} Due to the violent sexual nature of the crimes, coupled with diagnosed mental illness, Badger fell within the guidelines of the Sexually Violent Predator Act. Following the end of his prison term in 1997, he was committed to Atascadero State Hospital.\textsuperscript{97} Badger successfully completed the inpatient portion of his treatment in 2005.\textsuperscript{98} Almost a year prior to the 2006 passage of Jessica’s Law, the California State Department of Mental Health announced their plans to release Badger from Atascadero to begin his outpatient program near San Diego State University.\textsuperscript{99}

There was strong political and public resistance to Badger’s outpatient release. Politicians, such as Gregory Cox and Diane Jacobs, began a wide-spread campaign to stop Badger’s placement while simultaneously calling for more stringent SVP laws. Politicians used community bulletins and other media outlets to highlight Badger’s criminal history, recidivist tendencies, and upcoming release. (Appendix G.). Politicians called on the public to resist Badger’s
placement through complaints to the Department of Justice. Due to their efforts, “law enforcement received over 60 phone calls and a petition with 248 signatures” during the month of May alone.  

Politicians focused on the danger to the community: Badger was to be released “in the San Diego State University region” which was “an area full of targets” for someone with Badger’s “history,” since he had a tendency to assault young men. The consensus was that Badger, like Hedge, was “the worst type of criminals who we all know will most likely commit another sex offense.” As the public fear rose, politicians took their campaign to Sacramento and began lobbying for stronger SVP laws. According to a news release by Supervisor Gregory Cox, “SVPs are hardwired for violence against the innocent. If State law cannot keep SVPs locked up, then the laws must be changed.”

Due to the political and public hostilities, Badger’s placement was delayed. In 2006, Judge David M. Gill issued a court order for Badger’s transfer to an outpatient program at Richard J. Donovan Correctional Facility in the Otay Mesa area of San Diego County. In his ruling, Judge Gill “publicly lashed out at the political leaders who joined with residents in opposing Badger’s release and placement.” As with Hedges, public outcry severely limited where Badger could be placed and he ended up living in Hedge’s old trailer outside the gates of the Donovan Correctional Facility.
Badger’s release was short-lived. Due to an undisclosed mental ailment, the 63-year old SVP was transferred back to the state hospital after only a year of outpatient treatment. Although Badger did not reoffend, the San Diego district attorney took legal action to keep Badger in the state hospital indefinitely. Badger is currently incarcerated.

Fredrick D. Hoffman was the seventh SVP to be granted conditional release since the inception of the SVPA in 1996. Hoffman served an 11 year prison term for two convictions stemming from the sexual assault of children in 1983 and 1985. “In 1983, Hoffman was convicted of molesting a boy in a bathroom near a playground at Morro Rock. He was rearrested in 1985 for molesting a boy in his San Luis Obispo neighborhood.” Hoffman was paroled and reoffended in 1998 by exposing himself to a child. He was sent to Atascadero State Hospital where he spent another nine years in treatment.

In 2006, the Department of Mental Health announced the release of Hoffman; however, due to the combination of Jessica’s law housing restrictions and community protest, the released was delayed for almost a year. On August 31, 2007 a San Luis Obispo judge approved Hoffman’s release and residential placement. Hoffman was released to a trailer near the San Luis Obispo County Sheriff’s Department. Unlike with previous SVPs, the DA and other political groups agreed to Hoffman’s housing arrangements because of concerns for
community safety. Essentially, the San Louis Obispo County Sheriff and DA recognized the increased likelihood of recidivism with SVP who were transient.\textsuperscript{119} As of January 26, 2007, Hoffman is still living at the trailer and has not violated the terms of his conditional release.\textsuperscript{120}

The experiences of the conditionally released SVPs highlight some of the fundamental problems with the SVPA. As illustrated, the indeterminate inpatient program and highly restrictive conditional release program ensure that very few SVP are ever released from civil commitment. From 1996 to 2006, only 7 SVP have \textit{successfully completed the inpatient} SVPA program and have been “conditionally released from the state mental hospitals; 4 more have been ordered released and are pending placement.”\textsuperscript{121} Those who elect to voluntarily receive treatment until the DMH considers them medically “cured” only have only a 1 in 100 chance of ever being released.\textsuperscript{122}

To the contrary, a SVP who \textit{refuses continued treatment} and annually petitions the court for a legal release have a significantly better chance of winning their freedom. From the inception of the SVPA in 1996 until 2006, 54 of the 732 SVPs have been released from Atascadero on legal challenges:

- Twenty-five SVP were released by a judge or jury
- Fourteen SVP were released after a medical determination found that they no longer fit the SVP criteria
• Twelve SVP were released because the local DA withdrew the commitment petition.
• Three SVP were released when charges were dropped, making them ineligible for SVP status.¹²³

As such, a SVP has huge incentives to forgo any medical treatment for their “sickness” and instead, challenging their “criminality” within the court system. (See Appendix E.) This is diverges from the entire goal of the SVPA, which instituted the multi-phased civil commitment program to medically treat the “sick” SVPs and thereby reduce recidivism and increase public safety.

An even more pathological flaw is that the SVPA program fails to give SVPs the tools to successfully reintegrate into society. First, the inpatient program does not provide any vocational or educational training, which makes it very difficult for a SVP to find and retain gainful employment. Thus, in terms of obtaining a future job, SVPs have three strikes against them: 1) serious criminal records, 2) extensive mental health confinement, and 3) a lack of current, marketable skills.

Another SVPA flaw is that the outpatient, conditional release restrictions are so prohibitive that SVP compliance is impossible; thus increasing the risk of SVP recidivism. For one, the SVPs housing options are severely curtailed by the SVPA requirement that no SVP live within 2,000 feet of a school or park. As shown in Appendix F, this bars SVPs from residing in most of California’s major
cities and counties. As a result, most SVPs are unable to utilize state resources, family networks, and other supportive community ties. Instead, SVPs such as Hoffman, Badger and Hedge were forced to accept mediocre housing on police property or continue to be incarcerated.

Another problem with the restrictive living requirements is that there is a high possibility that the SVP will become homeless, which will only increase their risk of reoffending. Wollschlager, for instance, had difficulty finding stable housing in southern California due to the 2,000 foot restriction and community vigilantism; thus, Wollschlager became homeless. Studies have shown that homelessness, especially for the mentally ill, increases the likelihood of reoffending. “During the year preceding their arrest, 30% of mentally ill inmates in jail and 20% of those in State or Federal prison reported a period of homelessness.”124 In addition to increasing recidivism, homelessness makes it increasingly difficult for the State to monitor SVPs like Wollschlager to ensure proper medical and therapeutic treatment. Also, homelessness adds extra stress on the individual SVP, which heightens their potential for recidivism.125

A third flaw of the SVPA is that it enables community fear and vigilantism to effectively stop SVP social reintegration. Due to unrestricted access to registry information,126 Californians have “Internet access to names, addresses, and in some cases, pictures of as many as 55,000 of the most serious
sex offenders. As a result, numerous California communities rallied against the reintegration of Badger, Hedge, and Wollschlager. For both Badger and Hedge, the community uprising—fueled by community groups and politicians—delayed their release. Upon their eventual release, community protests limited their housing options to a trailer on prison property. For both Badger and Hedge, the community resistance limited their integration back into society and likely played a role in their return to DMH custody. For Wollschlager, the community protest and distribution of law enforcement fliers directly resulted in his homelessness. This is problematic since these SVPs were considered “cured” and no longer posed a social threat. Thus, the unrestricted access to SVP information fuels community fears and leads to further ostricization, which contributes to SVP recidivism.

Due to the incompatible combination of therapeutic and punitive controls, many released SVP’s are quickly reinstitutionalized. Verse and Hedge violated the term of their release and were placed back into the civil commitment program. Their violations, however, consisted of very minor things, such as talking to or driving with other people. None of the “offenses” involved violence, sex, or illegal activity. Badger was also recommitted to the DMH custody; however, his was remanded due to a medical—and not a criminal—ailment. These examples show normal, non-threatening daily activities are highly restricted and worthy of
recommitment for a SVP. This calls into question the overall functionality and humanity of the SVPA program.

Questions of Constitutionality

Although the offender remains involuntarily incarcerated following the expiration of the prison term, the civil confinement is not considered unconstitutional because it is rehabilitative and not punitive. The Supreme Court addressed the civil commitment of sexual deviants in Kansas v. Hendricks. 128 Hendricks was a convicted pedophile who was civilly committed under a newly-enacted Kansas law that allowed for involuntary commitment of persons who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence." 129 Hendricks argued that civil commitment violated due process because pedophilia was a "mental abnormality" and not a "mental illness" for due process claims. 130

Justice Thomas, writing for the majority, held that the Kansas law was valid and that involuntary commitment of individuals "who suffer from a volitional impairment rendering them dangerous beyond their control" satisfies the Due Process Clause. 131 As the language of the opinion showed, the Court adopted the medicalization model in upholding involuntary civil commitment laws. In determining the legal definition of a mental illness, the Court utilized
medical definitions, although recognizing that “the legal definitions of "insanity" and "competency" [ . . . ] vary substantially from their psychiatric counterparts.”

The Court also utilized the medical model to explain the inability of SVP to be deterred by rational considerations; thus emphasizing the “sick” role and justifying the largely punitive efforts to control. Thus, in essence, efforts to medically rehabilitate sexual offenders, even by force, were not considered a violation of their due process rights because the offenders were “sick” and because their treatment was not intended to have a punitive effect.

California courts have followed the rational in Hendricks. In Hubbart v. Knapp, the California Court of Appeals held that the civil commitment of individuals under the SVPA did not violate the federal or state constitutions. Hubbart, a “mentally disordered sex offender,” admitted to raping “about” 20 women for which he served over 20 years. While on parole, Hubbart was civilly detained under a parole revocation statute, later deemed illegal, until the passage of SVPA. Hubbart challenged the civil commitment under federal due process and equal protection. To determine the constitutionality of civil commitment, the Court looks at four factors: (1) the private interest which will be affected by the official action; (2) the risk of an erroneous deprivation through the procedures used; (3) the probable value, if any, of additional or substitute
procedural safeguards, and (4) the interest in informing individuals of the action and in allowing them to present their side of the story.\textsuperscript{137}

The court did not find any constitutional violations because SVPA is a civil, not criminal action, and therefore a civil standard must apply.\textsuperscript{138} Thus, the SVP’s strong liberty interest conflict, and is trumped by, the government’s compelling interest in protecting the public from persons who are dangerous to others.\textsuperscript{139} The court held that as long as strong procedural safeguards are maintained (diagnoses from two psychiatrists or psychologists, assistance of counsel, and trial by jury with proof beyond a reasonable doubt), the state is given wide latitude in detaining and civilly incarcerating sexually violent predators.\textsuperscript{140} However, as previously discussed, the procedural safeguards only best in theory and, in practice, can be ineffective and inhumane.

With the passage of stricter SVP laws, the courts have given more discretion to medical institutions to determine the extent of civil confinement. In \textit{People v. Superior Court of Marin County (Ghilotti)},\textsuperscript{141} the court stated that a sexually violent predator may be committed, or recommitted if due to a diagnosed mental disorder, that poses a substantial danger to society; namely, civil incarceration can continue indefinitely as long as there remains a serious and well-founded risk that the individual is likely to engage in acts of sexual violence without the appropriate treatment and custody.\textsuperscript{142} Such determinations indicate a
high level of deference to the opinions of personnel and attending physicians within the state-run mental health facilities.

**Incomplete Medicalization Effects Society and Sexually Violent Predators**

Sexual deviance has undergone partial medicalization; however, there continues to be a power struggle between medical and judicial control agents over the definition and treatment of SVP. The struggle means that SVPs exist in a borderland where dichotomous institutional goals and processes clash: the SVP is “sick” but cannot be “cured” and, although a medical condition does not purport blame, the SVP is continually subject to punitive measures by society and the criminal justice system. The effects of the power split and struggle can be witnessed in all areas of society: legal, political, social, and morally. The individual SVP also suffers, both from the effects of the label, and also from conflicting efforts to control, define, and rehabilitate. As shown with all the SVP examples, the continued struggle for control is becoming a self-fulfilling prophecy as the system, in its current state, is unable to provide the structural support to effectively rehabilitate offenders. The result is an increasing the likelihood of recidivism.

**Power Struggle: implications for the moral foundation of American criminal law**
The struggle to control SVPs have been recognized—and propelled—by the judicial system. The Hendricks Court, like in Hubbart v. Knapp and People v. Superior Court of Marin County (Ghilotti), adopted the medicalization model when holding that the use of past actions to predict, and punish, for future behavior was allowable. This was because civil commitment was not dependent on a “finding of dangerousness, standing alone” but also combined with “proof of some additional factor, such as a mental illness or mental abnormality” indicating that the person is “unable to control their dangerousness.” (emphasis added). Thus, the turnpin is not the past violent record, but the mental illness, which is defined and treated through civil commitment. This gives the medical field incredible discretion, and few limitations, in defining mental illness as it relates to committable offenses. For instance, the Hendricks decision can be extended to involuntary commit offenders—such as drug or alcohol abusers—who have a violent criminal record and mental illness.

The Court decision to commit Hendricks may have furthered a compelling governmental interest, but has strong implications for the moral foundation of American criminal law. As in the subsequent cases of Hubbart and Ghilotti, Hendricks was criminally incarcerated; thus showing that he had engaged in culpable actions that deserved punishment. Yet, based on these same offenses,
the SVPs have been civilly incarcerated due to a finding that they had a mental abnormality that made them “unable to control their dangerousness.”

The “sick” vs. “criminal” label is also played out within the court system. As explored in Adam Falk’s Sex Offenders, Mental Illness and Criminal Responsibility: The Constitutional Boundaries of Civil Commitment after Kansas v. Hendricks, these two findings appear normatively inconsistent.\textsuperscript{145} If a SVP is criminally responsible for their conduct, based on the requisite findings of \textit{mens rea} (intent) and \textit{actus reus} (voluntary act), then they deserve punishment because they could—but chose not to—control their illegal behavior. However, if the SVP was “unable to control their dangerousness”, then they should not be held criminally liable because they lacked the required \textit{mens rea}. Despite this conflict, the Hendricks decision enables the “states to argue, consistent with the Due Process Clause, that an individual possesses the capacity to control his conduct for the purpose of criminal confinement and that the same individual lacks the capacity to control his conduct for the purpose of civil commitment.”\textsuperscript{146}

The California and U.S. Supreme Courts have held that involuntary civil commitment is not punishment, even though it results in incarceration, because it is medical and not based on retribution or deterrence.\textsuperscript{147} In addition, the Hendricks Court reasoned that civil commitment does not deter the mentally ill because their illness “prevents them from exercising adequate control over their
Therefore, civil commitment, although restrictive and involuntary, are not punitive. This line of reasoning is problematic, especially when considering the context of other types of offenders, such as drug abusers.

Overall, courts have read civil commitment laws broadly and thereby empowered the medicalization movement. One problematic effect has been the reduction of civil and constitutional liberties for an undesirable, yet “sick,” subset of society. This reduces the moral underpinning of the American criminal justice system by extending blame and punishment to a group based on past actions and an uncontrollable illness. The effects of this process are evident in the experiences of Hedge, Badger, and Wollschlager. The Court’s reasoning is weak but must be understood within the context of a criminal justice system that is stacked against the accused and biased in favor of the state.

Power Struggle: influencing public fears and development of sex offender laws

The struggle between medicalization and the criminal justice system has been played out, to a large degree, in the public sphere. Political actors and the media influence the language, focus, and creation of public policy. Crime and punishment policies are shaped through political discourse. The process of molding and shaping the issues is influenced and driven by moral entrepreneurs, such as victim advocates like Mark Lunsford and news anchors like Bill O’Reiley, who have access to political power and the media.
As previously discussed, California’s SVPA laws were influenced by public outcry over sex offender recidivism rates. Many commentators have described the frenzied relationship between public outcry and politician action as a moral panic. Evidence of this is seen with the highly restricting housing regulations placed on SVPs, along with public mobilizations and rallies to move convicted sex offenders out of neighborhoods.

Efforts to medicalize SVPs have only fueled the public fear and moral condemnation. In terms of sexual deviants, there are very few violent sex offenders and the “abduction, rape, and killing of children by strangers is very, very rare” yet “such incidents receive a lot of media coverage, leading the public to overestimate how common these cases are.” However, news coverage of each violent sex crime characterizes it as a widespread problem that will continue to grow as long as “sex offenders and predators [are] being released.”

As a result of the distorted perceptions, much of the relevant legislation regarding SVPs have been premised on the belief that sex offenders have a high rate of recidivism. However, as previously discussed, the recidivism rates of sex offenders may actually be lower than the recidivism rates of other offenders.

Public perceptions that SVPs are “sick” and/or “criminal” play into the beliefs about recidivism. Often, SVPs are portrayed as unable to control themselves and preying (hence, the label: Sexually Violent Predator) on strangers and children. This fuels public fears by portraying the SVP as irrational and dangerous, yet
cunning and devious; they are shadowy individuals who are all around but remain well-hidden. The perception of SVPs as cunning predators also instills the overall impression that SVPs know that what they are doing is morally wrong—in that they actively try to hide and not get caught.¹⁵⁷ The interplay between the perception of SVPs as “sick,” but also “criminal,” makes the SVP appear even more dangerous. As a result, this fuels public fears and results in increasingly emotional, yet poorly drafted and unworkable laws.

Politicians respond to public outcry and media reports by passing voter-friendly, but poorly drafted, ineffective, and inadequate “moral outrage” laws. Often, politicians recognize that the current sex offender laws are flawed; however, there are problems designing new laws that more accurately address the problem. Instead, the politicians “cite each news story about a kidnapped child or Web predator as proof that more laws are needed, as if sex crimes would cease if only the penalties were harsher, or enough people were monitored. Yet the fact that rare crimes continue to be committed does not necessarily imply that current laws against those crimes are inadequate.”¹⁵⁸

Impact of the Institutional Struggle on Individual Sexually Violent Predators

The continuous institutional struggle for control over SVPs is detrimental to the identities and successful reintegration of individual offenders. The combination of structural and social forces surrounding the SVPA program raise
the likelihood that the SVP will: 1) have an incongruent self identity that waivers between “sick” and “criminal”; 2) be unable to successfully complete the inpatient SVPA program; and 3) upon unlikely completion, be more prone to reoffend during the outpatient conditional release program due to social ostracization and punitive judicial measures, such as continuous monitoring.

As previously discussed, the SVPA relies on an incompatible definition of a sexual offender as one who is simultaneously “sick” and “criminal.” Utilizing the SVPA labels, a sex offender adopts both a “criminal”, fault-based label and a “sick,” no-fault label. This, however, impacts the offender identity. If the sexual offender is “sick,” then based on the medicalization model, the offender has no control over their conduct. As such, the offender must adopt a “sick role” and seek treatment and reintegration, if curable. Under the medicalization model, the “sick” offender is not blamed for their condition, since it was beyond their control.

However, the SVPA also has elements of the “criminal” label, which leads to confusion over the identity of an offender. Under the “criminal” label, offenders who rationally choose to engage in immoral behavior are faulted by society and punitive measures are employed to get them into compliance with social standards. The SVPA has some fault-based aspects, such as GPS monitoring, where the SVP is seen as able to make a rational choice to act, so
deterrence is employed to stop any reoffending. Under the “criminal” label, individuals are socially faulted and punished for their behavior.

Having both a no-fault and a fault-based identity leaves the SVP in a borderland where everything, including treatment and punishment, are fundamentally linked to whether the SVP is “sick” or “criminal.” As such, the SVP is pulled in numerous directions and subject to a disproportionate amount of both therapeutic and punitive punishments. Under the SVPA, incarceration—whether punitive or civil—still has the same effect, which is the substantial deprivation of individual liberty. In addition, the SVP is treated as “sick” but then socially blamed as if “criminal” which has an impact on their ability to obtain housing, build relationships, obtain a job, and reintegrate into society.

Structurally and procedurally, the SVPA is organized to make it difficult for the individual SVP to ever successfully complete the inpatient program and achieve conditional release. The main problem is that, with the passage of Jessica’s Law, the inpatient civil incarceration program is of indeterminate length and subject to very few objective or outside checks. Consequently, as shown with Verse and Wollschlager, the civil commitment program could take over a decade to successfully complete. All the while, the SVP does not receive job or educational training, which indicates that the SVPA is not really about rehabilitation or reintegration; instead, the SVPA is about keeping SVPs separated from the rest of society. This is further evidenced by the efforts undertaken by
Wollschlager and Hedge, who although deemed rehabilitated, still had to get a court order to move into the outpatient conditional release program.

Even if the SVP successfully completes the inpatient civil commitment program, they are likely to reoffend because of the strict and, often punitive, outpatient conditional release requirements. To begin with, after the 2006 adoption of Jessica’s Laws amendments, the SVPA requires conditional release SVPs to remain 2000 feet from any school, park, or other area where children congregate. This results in huge sections of California—namely, San Francisco, the East Bay, Los Angeles, and San Diego—where SVP are forbidden to live. This, combined with the lack of job training/life skills and the social stigma, results in even fewer opportunities to find gainful employment and adequate housing.

The lack of housing and a viable trade has indirect effects which can lead to increased recidivism. For one, during the inpatient commitment program, the SVP is trained to identify and properly respond to risk factors; however, unemployment and homelessness are not risk factors that the program addresses. Studies have shown that the mentally ill are over twice as likely to be homeless. And such hardship leads to increased stress, which exacerbates many types of mental illness and can result in the SVP violating the term of conditional release.

The outpatient program also requires lifetime GPS monitoring and further medicalization/monitoring by a physiatrist. The interplay between punitive monitoring and medicalization strengthen the “sick” vs. “criminal” confusion. If
the SVP was “sick” then the GPS monitoring would not be necessary because the continuous physiatrist monitoring would be sufficient to identify any problem signs. Instead, the GPS monitoring is more of a criminal deterrent so before the SVP acts, they will consider the fact that the Law is watching.

These structural requirements can also impact the SVP in negative ways. For one, constant monitoring can exacerbate already paranoid mindsets. In addition, the SVP is never really free. Although they have been “cured” or “rehabilitated” the constant monitoring and tracking implies that they have not really been cured and still pose a threat to the community. This is further evidenced by the current trend toward “housing” released SVPs on police or prison property so they can be continually monitored. This again highlights the problems of the SVPA’s duel therapeutic/punitive program.

The effects of the “sick” vs. “criminal” model also impact how the SVP is reintegrated back into society. As previously discussed, the interplay between the public perception of SVPs as “sick” but also “criminal” makes them appear even more dangerous. As a result, the SVP is stigmatized and not reintegrated into society. As discussed in Crime, Shame and Reintegration the stigmatization with no reintegration, creates a class of outcasts without societal bonds. This in turn increases the likelihood of reoffending.

Conclusion
The Sexually Violent Predator Act splits control over Sexually Violent Predators between medical and judicial institutions. As a result, the institutions struggle for public recognition and authority over the rehabilitation of individual SVPs. The continuing struggle and power split has resulted in incompatible and inhumane policies. This impairs the ability of SVPA to successfully treat, rehabilitate, and reintegrate SVPs into society.

Contrary to its initial goal, the current SVPA has the potential to increase SVP recidivism; however, there are some viable options to repair the SVPA. Many of the fundamental problems with the SVPA could be overcome with consistent, independent program monitoring. For instance, the lack of accountability and risk of indeterminate civil incarceration would benefit from an outside, independent check on the mental health program. An unaffiliated collective of mental health and judicial agents could provide oversight and balance to the program. This would ensure that rehabilitated SVPs were properly released and that the program was providing more educational and vocational training. In addition, more unaffiliated and methodologically-sound studies are needed to evaluate the success of the inpatient and outpatient programs. There needs to be some assurance that the civil commitment program is working and not just a guise for removing SVPs from society.

Some of the effects of the SVPA could be mitigated through accurate and responsible media reporting. If reports were less emotionally charged, and
integrated the facts, the public would realize that the SVP recidivism rates are low. This would help reduce wide-spread public fears and hopefully lead to more constructive, well-drafted laws. In addition, this would allow SVPs who are conditionally released to be reintegrated into society, as opposed to further relegated to the fringes. In its current state, however, the SVPA is fundamentally flawed and is failing to properly treat, rehabilitate, and release Sexually Violent Predators.

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1 *M* is a 1931 German drama by Fritz Lang, starring Peter Lorre as a psychotic, highly elusive, mental patient who lures school girls with gifts and then violently murders them. The movie chronicles public hysteria over the killings, fueled by psychiatric reports of how easily sexual offenders can hide within society. Although Lang denies it, many believe *M* was based on the true case of serial killer Peter Kürten who conducted similar sadico-sexual crimes and sparked psychiatric and legal efforts to better understand mental illness and crime. Wikipedia, 12/11/2007


3 *Id*.

4 *Id*. 


6 Emile Durkheim, The Functions of Deviance (1895).

7 P. Conrad and J. Schneider, Deviance and Medicalization: From Badness to Sickness 6 (1980).

8 Id.


11 See E. Goode, note 11 at 31-36.

12 See E. Goode, note 11 at 34.

13 John Braithwaite, Crime, Shame and Reintegration 1, 8 (Cambridge Press, 1989)


16 Id. at 172.

18 Cal. Welf. & Inst. (“WIC”) Code §6600(a) (1)


21 Id.


24 Id. at 4.


class of prison inmates denied adequate mental health care in violation of federal law and 8th Amendment and requiring CDC to compensate.)

27 See supra note 23.

28 See supra note 25.

29 See supra note 25 at 5.

30 Patrick A. Langan et. al., Recidivism of Sex Offenders Released from Prison in 1994, Bureau of Justice Statistics, 10 (Nov. 2003).

31 Id. at 18, 24.


35 Assembly Comm. On Public Safety, AB 888, 5 (hearing Apr. 18, 1995) (Due to determinate sentencing, approximately 250 sexual offenders were paroled monthly.)

37 Senate Comm. On Crim. Pro. AB 888 (hearing July 11, 1995)(citing Justice for Murder Victims, Memory of Victims Everywhere, Doris Tate Crime Victims Bureau, and the Committee on Moral Concerns all signed on as supporters of the Sexually Violent Predators Act civil commitment requirement.)

38 Id. citing support from Attorney General, CA State Sheriffs, Women Prosecutors of CA, CA Correctional Peace Officers Association

39 See supra note 35.

40 See supra note 35.

41 See e.g., Nora V. Demleitner, First Peoples, First Principles: The Sentencing Commission’s Obligation to Reject False Images of Criminal Offenders, 87 Iowa L.R. 563 (2002) (discussing the impact and role of victim-interest groups, media, and myth creation in formulating federal sentencing guidelines for SVP.)

42 See supra note 23.

43 Proposed H.R. 1505 of the 109th Congress.


See, e.g., Eric Janus, *Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventative State* (Cornell Univ. Press, 2006) (examining the role of the legislature, judiciary, victim-advocacy and feminist groups in shaping how SVP are perceived and treated in society.)

See CA Assembly Comm. On Public Safety, AB 321 (hearing Jan. 6, 2006)

See supra note 35.


See supra note 53.


See supra note 35 at 3.

See supra note 35 at 3.

Office of the Attorney General, *Proposition 83 Initiative Statute: Sex Offenders, Sexually Violent Predators: Punishment, Residence Restrictions, and*

59 See supra note 53, at SVP Out Patient Program

60 See supra note 53, at SVP Out Patient Program

61 See supra note 53, at SVP Out Patient Program

62 See supra note 53, at SVP Out Patient Program

63 See supra note 35.

64 California Registered Sex Offenders Registry, available at www.meganslaw.ca.gov (last visited Sept. 25, 2007):

- PC 220 ASSAULT W/INTENT TO COMMIT RAPE, SODOMY, OR ORAL COPULATION
- PC 288a ORAL COPULATION
- PC288a(c) ORAL COPULATION WITH PERSON UNDER 14/ETC OR BY FORCE/ETC
- PC f243.4(a) SEXUAL BATTERY
- PC f289(a) PRIOR CODE-SEXUAL PENETRATION WITH FOREIGN OBJECT BY FORCE

65 Well-Known Bay Area Child Molester Back Behind Bars, NBC.11 News (Nov. 20, 2006).

66 Id.

67 See supra note 66.

68 Bay Area Sex Predator Ordered Back To State Hospital, NBC.11 News (Dec. 1, 2006).
Judge hears dispute over sex offender's medical treatment, Malaia Fraley, Oakland Tribune (Jan 6, 2007).


California Registered Sex Offenders’ Registry, available at www.meganslaw.ca.gov (last visited Sept. 25, 2007):

- PC 261(2) RAPE BY FORCE
- PC 288(b) LEWD OR LASCIVIOUS ACTS WITH CHILD UNDER 14 YEARS W/FORCE

CA: Sex offender is free -- and reduced to a riverbed. Catherine Saillant, LA Times (Sept. 8, 2007).

See supra note 73.

Id.

See supra note 73.

Id.

Id.

Id.

Id.


Id.
81*Sexual Predators To Be Released In San Diego.* LOCAL 8 Exclusive (Mar. 25, 2005).

82 See supra note 80.

83 *Can sex predators be reformed? Rehab program has little participation, few success stories.* Dana Littlefield, San Diego Union-Tribune (May 22, 2006).

84 See supra note 82.

85 See supra note 84.

86 See supra note 84.

87 *Sex predator to live outside Otay prison.* Union-Tribune Staff Writer. (May 25, 2006).

88 See supra note 84.

89 See supra note 84.


91 See supra note 82.

92 See supra note 88.


94 See supra note 80.

96 See supra note 88.

97 See supra note 80.

98 See supra note 94.


100 See supra note 88.

101 See supra note 94.

102 See supra note 91.


104 See supra note 91.

105 See supra note 94.

106 See supra note 91.

107 See supra note 94.

108 See supra note 88.
109 Sexual Predator Badger Returned To State Mental Hospital. 760 KFMB. (Sept. 14, 2007).


111 See supra note 96.

112 Sex predator approved to live near SLO. Topix.com, citing SLO County Website. (Oct 3, 2007).


115 See supra note 115.

116 See supra note 114.

117 See supra note 114.

118 See supra note 114.

119 See supra note 114.

120 See supra note 96.

121 See supra note 35.
122 Id.

123 See supra note 84. See also, supra note 35.

124 See supra note 24.

125 See supra note 79.

126 See e.g., No Easy Answers: Sex Offender Laws in the US. Human Rights Watch Report, Vol.19, No. 4(G) (Sept. 2007)(analyzing the serious human rights violations that stem from the free and unrestricted SVP registries.)

127 Marcus Nieto, Community Treatment and Supervision of Sex Offenders: How It’s Done Across the Country and in California, 26 CA Research Bureau. (Dec. 2004). See also: www.meganslaw.ca.gov


130 Id. at 356.

131 Id. at 357.

132 Id. at 359.

133 Id. at 358.

134 379 F.3d 773 (Cal. 2004).

135 Id. at 776.

136 Id. at 799.

*Hendricks*, 521 U.S. at 358


See supra note 5.

*Hendricks*, 521 U.S. at 362.

Id. at 363.

Id.

See supra note 42 at 569.
Katherine Beckett, Making Crime Pay: Law and Order in Contemporary American Politics 5 (1997) (quoting David Garland, “[I]t is not ‘crime’ or even criminological knowledge about crime which most affects policy decisions, but rather the ways in which ‘the crime problem’ is officially perceived and the political positions to which these perceptions give rise.”)

See e.g., Philip Jenkins, Moral Panic: Changing Conceptions of the Child Molester in Modern America 6-7, 196-206 (1998)


See supra note 46, quoting Mark Lunsford, Jessica Lunsford’s father.


Department of Justice, Sex Offenses and Offenders: an analysis of data on rape and sexual assault, Bureau of Justice Statistics (1997). See also, supra note 30. (according to Recidivism of Sex Offenders Released from Prison in 1994, only five percent of sex offenders released in 1994 were arrested for another sex crime.).

See supra note 45 (article detailing efforts child molester John Couey took to hide his crime and not get detected).

See supra note 154.
159 See supra note 25 at 1.

160 See supra note 13.