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[Treatment for rapists,  
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- [Jim Doyle, Chronicle Staff Writer](#)  
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California  
Costs of Sexual Predator  
Program

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**Atascadero, San Luis Obispo Coun -- First of Two Parts.**

California, in a program whose effectiveness is being questioned, spends more than \$75 million a year to lock up hundreds of child molesters and rapists in a maximum-security hospital here after their prison terms have ended.

The cost -- about \$400 a day per person -- pays for housing, health care, administrative and court-related costs of 535 ex-convicts who are incarcerated at Atascadero State Hospital in the Sexually Violent Predator Program. The price tag is about five times the daily cost of keeping an inmate in state prison.

Controversy has surrounded the program since it became law in 1996 because it extends the incarceration time for criminals after their prison terms have ended and because of debate over whether child molesters and rapists can learn to manage, if not be cured of, their predatory urges.

In Northern California, three high-profile inmates who chose to spend years in the hospital's treatment sessions -- serial rapist Patrick Ghilotti, child molester Brian DeVries and rapist Cary Verse -- were released within the past year amid public outcry and local law enforcement opposition.

And in a federal court in Los Angeles, a class-action lawsuit is attacking California's implementation of the predator law on the grounds, among other things, that it illegally extends the offenders' incarceration.

A four-month Chronicle examination of the predator program found that:

-- Within the Atascadero population, Ghilotti, DeVries and Verse were among the very few in the program who elected to receive treatment. Fully 80 percent of the sex offenders sent to Atascadero never participated in treatment sessions, which cannot be forced. Many inmates say they distrust the treatment process, fearing that what they say will be used against them in future legal proceedings.

-- Because of court backlogs and extensive litigation surrounding individual cases, about 70 men have been hospitalized at Atascadero for three years or longer without being given a trial before a judge or jury to test whether their extended incarceration was valid. Three men have been held there for eight years without trial.

-- Since 1996, more than 2,200 ex-convicts identified as candidates for the program have been dropped off the list by state-hired psychologists, district attorneys, judges or juries. Released offenders often receive no court-ordered tracking such as electronic monitoring, if their parole expired during their extended incarceration at Atascadero.

-- A review of 121 of the men who were either evaluated for the program and rejected, or accepted into the program and later released, found that about 11 percent committed new sex crimes. Several were convicted of violent sexual assaults, including rape at knifepoint. Another 16 percent committed other felonies, ranging from assault with a deadly weapon to failure to register as sex offenders. About 6 percent were re-imprisoned for violating parole. Records indicated that two-thirds of the 121 released men did not re-offend.

-- Thirty-four men in the cases reviewed were committed to the

program after civil trials but won release after their initial two-year commitments because psychologists, prosecutors, judges or juries found they were not sufficiently dangerous or an appellate court overturned their commitment. Most did not participate in the treatment program, which takes at least three years, and none finished it. Under Megan's Law, they must register as sex offenders, but not all complied.

Under the Sexually Violent Predator Law, the state Department of Mental Health identifies inmates who might be kept as predators after their prison terms end. To extend inmates' incarceration, two psychiatrists or psychologists must determine they are a danger, a district attorney must decide to begin legal proceedings, a judge must find there is probable cause to hold them, and then a judge or jury must decide after a civil trial they are so dangerous they should be kept in a state hospital for two years. At the end of that time, the law allows committed predators to be kept for another two years by going through the same legal process, but those recommitment trials are often delayed.

To be classified as a sexually violent predator, a person must have "been convicted of a sexually violent offense against two or more victims and (have) 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." Some critics express dissatisfaction with the implementation of predator law, which was enacted following the kidnapping, sexual assault and murder of 12-year-old Polly Klaas of Petaluma in 1993. Prosecutors say some violent sex offenders have been released only to re-offend, while some mental health experts insist more focus should be placed on treatment.

Stephen W. Mayberg, head of the state Department of Mental Health, defends the program, saying the department "has done everything in its power to assure the community of public safety. Predicting human behavior is difficult at best. Each year we learn more about what works and what doesn't. For us the challenge is to balance public safety, treatment and civil rights."

The population of convicted sex offenders in California is huge: More than 17,000 are in state prisons, and more than 67,000 have served their time and live in communities outside prison walls. But California is one of few states whose prisons offer no significant sex offender treatment programs.

California's handling of its sexually violent predators is facing a challenge by a major Los Angeles law firm, Latham & Watkins, which argues in its lawsuit that sex offenders' constitutional rights are being violated in part by subjecting them to conditions that are often worse than state prison.

Franklin Zimring, a criminal law professor at the UC Berkeley's Boalt Hall, said the issues involved in the incarceration of sexually violent offenders are central to how the society defines itself.

"The true measure of the quality of the justice system is how those who are most detested are treated," said Zimring, adding that the system's failure to provide offenders with a prompt trial "seems to me to be a scandal. But it's the kind of scandal that has very few political costs. No one is going to be successful running for office in this state about the rights of sex offenders."

Experts also question whether California relies too heavily on the expensive, extended hospital incarceration of ex-inmates it identifies as sexually violent predators, while neglecting thousands of other rapists and child molesters who are not identified as predators but could be treated while in prison.

California focuses on only "a tiny point of the pyramid of sex offenders at an enormous cost," said Eric Janus, a professor at William Mitchell College of Law in St. Paul, Minn., and a national expert on sexual predator laws. "We delude ourselves if we think we are locking up all the recidivists. ... (We're) going to miss most of the people who are going to commit more sex crimes."

Barbara Schwartz, who has overseen sex offender treatment programs in several states, said: "It's really a very reckless public policy. You're still committing only a very small percentage of sex

offenders, and the ability to identify those who should be committed is questionable."

Schwartz, former clinical director of the Massachusetts Treatment Center for Sexually Dangerous Persons, recommends that treatment be made available to every sex offender in prison, and those released from prison be placed on lifetime parole with electronic monitoring, outpatient therapy and polygraph testing.

Since its program began, California has spent more than \$400 million in state and local funds to confine predators after prison. Juries have classified 471 men and one woman (a child molester housed separately at Patton State Hospital in San Bernardino County) as sexually violent predators. In addition to the 535 men housed at Atascadero as predators or candidates for the program, scores of other candidates are locked up at county jails statewide under the predator law, raising the program's cost. The average waiting time for an inmate's trial under the program is three years.

Few crimes upset the public more than those involving sexually violent attacks, and public sentiment typically favors lengthy prison terms for such violators -- driven by fear the criminals will re-offend upon release. Studies show that recidivism rates for sex offenders are lower than those for the general prison population, but defenders of California's predator law insist that the program was created to target those most likely to re-offend.

In 1995, the predator law sailed through the state Legislature. Similar laws have been passed in 15 other states in the past decade, inspiring a legal and philosophical debate over how to protect public safety while preserving individual rights.

California's new law replaced a system that released sexually violent predators once they had completed their prison terms. "We felt that this (predator law) was the best way to protect society," said James E. Rogan, a Republican ex-prosecutor who co-wrote the law as an Assembly member from Los Angeles County.

Karen Guidotti, a San Mateo County deputy district attorney who

heads her office's sex-crimes unit, said, "Everybody can agree that (predators') past behavior has shown that they're going to re-offend. I do think it's an expensive program, but it's worth it because the trauma to the victims and their families is horrific."

Attorneys for sex offenders say the predator law was an act of political vengeance against those imprisoned before California's "get-tough" sentencing laws of the mid-1990s. "The intent is to lock these guys up. It's pure and simple," said Sacramento attorney Michael Aye, who has represented sex offenders in the predator program.

Aye insists that many offenders committed their sex crimes decades ago and pose little risk of re-offending. Other defense attorneys say many child molesters committed acts such as touching a child rather than violently attacking them.

Prosecutors say the predators are special offenders.

"They are world-class psychopaths in their ability to manipulate, seduce and con," said prosecutor Stephen E. Taylor of San Joaquin County. "Most guys at 40 are just interested in getting some sleep. These guys are out at 2 a.m. climbing into somebody's window, raping them, and asking them to fix their breakfast."

He cites the case of a predator who wrote love letters to his victims and collected strands of their hair. In one instance, Taylor said, this predator seemed "to think he's going to put a wedding dress on this girl -- and she's 5. ... We're not just putting someone in the nuthouse because they raped somebody or touched a kid. Our people have something extra -- that inability to control their behavior."

The predator population at Atascadero includes truck drivers, military vets, laborers, career criminals, teachers, baby sitters and a missionary. More than half are pedophiles, a third are rapists, and the rest have engaged in both activities. Some are in their 60s, 70s and 80s in declining health. Some use canes, wheelchairs or walkers. One patient in a wheelchair recently fell over and broke a rib. Health care for these seniors, along with county court costs, adds to the

program's expense, said Deputy Mental Health Director John Rodriguez.

"A lot of these guys have been (incarcerated) for 10 to 20 years, and they have changed," Aye said. "The rapists were driven by social and biological factors that are no longer in existence." Aye argues that, at much less cost, the state should provide community supervision and outpatient treatment programs for them.

Other states have taken different approaches.

Texas conditionally releases its sexually violent offenders without hospitalization, monitors their location with Global Positioning System devices, subjects them to lie-detector and other tests to assess their control of sexual urges, and requires attendance at outpatient treatment sessions that include group and individual therapy. Several other states, including Arizona, Illinois and Minnesota, hospitalize sexually violent criminals when necessary but emphasize community treatment programs.

While defense lawyers say hospital confinement after prison amounts to re-punishment, the U.S. Supreme Court ruled in 1997 that a similar law in Kansas was constitutional, as long as it was applied in a nonpunitive fashion. In 1999, the California Supreme Court upheld the state's predator law, concluding that patients are not held for past crimes but instead for their mental disorders and their propensity to commit future violent crimes.

In California, decisions to extend incarceration turn on the issue of dangerousness: whether there is a "serious and well-founded risk" the inmate will re-offend in a sexually violent manner.

"There have been considerable advances in the prediction of sex offense recidivism in the last 10 years," said R. Karl Hanson, a Canadian government researcher and a leading authority on sexual predators, but the process remains speculative. Certain rapists older than 60 are less likely to rape again. Child molesters tend to continue to offend later in their lives.

"There is no certainty in this business," Hanson said. "Some people who have had terrible histories of offending decide to stop. ... A lot of sex crime, like other crime, is impulsive."

Ted Donaldson, a psychologist in Morro Bay (San Luis Obispo County) who often testifies for the defense in sexual predator cases, said the program "has more politics and more bad psychology than any other program we've ever had. Most of the people being committed don't have a sexual mental disorder" as required under the law. "Most of them do have ugly criminal histories. Juries don't like them."

Marita Mayer, a Contra Costa County deputy public defender, compares the predator law to the 2002 film "Minority Report," in which people were imprisoned for future crimes envisioned by women with a gift for prophecy.

"I don't think anybody can predict the future. It's all kind of voodoo to me," Mayer said. "It's a pre-emptive strike against the sex offenders: to lock up these people before they do it again. We have lowered the standard so much that we are locking up people who probably won't recommit because a few of them might."

Those who have completed Atascadero's treatment program and won their conditional release are among the most reviled social outcasts in California. DeVries, a child molester freed last August, lives in a trailer at Soledad State Prison. Verse, a rapist discharged in February, lives in San Jose while the community of Merced fights his transfer there. Vacaville residents are angry that Ghilotti, a San Rafael rapist with a string of rapes in Marin County in the 1970s and '80s, now lives among them.

Mike Hughes, treatment program manager at Atascadero, said he wishes the public could understand that sex offenders like Ghilotti have made admirable efforts to overcome their sexual urges.

"Only about 20 percent of our patients have chosen to be in the treatment program," Hughes said. "It's hard work, it's long work, it's painful work. And there is no welcoming back into the community."

So many patients don't see the program as the way to get out. They view the court system as the way to get out and, statistically, that's proven to be the case. The guys in treatment are quite courageous."

The treatment program includes group therapy, the viewing of pornography, drugs that decrease sexual urges and repeated masturbation aimed at reducing desire. Defense lawyers often advise their clients to avoid treatment -- where they would have to acknowledge having a problem -- and instead to contest their cases, where they stand a chance of convincing a judge or jury to set them free.

Predators who have completed the treatment program are released under strict supervision. For example, Verse is electronically monitored via global positioning system technology. He must submit to blood and urine testing as well as polygraph tests, check in with his case manager once or twice a week and see a psychologist and a psychiatrist, stay away from schools and take Lupron, a drug that lowers his testosterone level and thus his sexual urges.

Despite all these safeguards, state officials are clearly worried about the potential fallout if a released offender commits another crime. Last year, a judge decided to free DeVries even though former Gov. Gray Davis and Mayberg, the head of Department of Mental Health, opposed his release.

In a February 2003 letter to the court, Mayberg wrote: "I believe that he may be a danger to the health and safety of others while in outpatient treatment. ... Even with the most stringent measures of care and supervision while on outpatient status, it cannot be guaranteed that he will not re-offend. "

Those who handle predator cases are also concerned about the cost to state and local government.

"It's endless litigation," said Taylor, the San Joaquin County prosecutor who has tried sexual predator cases since 1998. "It's fantastically expensive. We cannot survive as a state if we continue to pay more than \$100, 000 for a prison bed. And they shouldn't get

recommitment trials every two years. I think we've prevented new Polly Klaas cases, but now we need to make adjustments and get the budget back in whack."

Gov. Arnold Schwarzenegger has sought to reduce the program's cost, proposing "indefinite commitments" for predators with no legal right to a trial every two years. But the fate of that proposal in the Legislature is uncertain.

The state is building a maximum-security hospital at Coalinga (Fresno County) for an estimated \$400 million. Mental health officials plan to transfer male predators to the 1,500-bed hospital as early as fall 2005 and expect the predator population to reach 1,000 by the year 2012. Those who refuse to participate in treatment sessions would be housed in separate units with less psychiatric staffing.

Dr. Fred Berlin, director of the National Institute for the Study, Treatment and Prevention of Sexual Trauma at Johns Hopkins University, is one of many experts who believe that prison presents an opportunity for California to offer treatment programs that hold some hope of reducing the number of new sex crimes and the irreparable damage they inflict on victims.

"There are less costly ways of helping these guys become safer citizens," he said. "There is too little emphasis in the prisons on lowering the recidivism rate of sex offenders. Wardens are mainly focused on security. Basically, we've lost all that prison time by not having treatment time."

### Definition

A sexually violent predator is defined by law as "a person who has been convicted of a sexually violent offense against two 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." The law defines "substantial sexual conduct" with a child younger than 14 as a violent crime.

## The series

This predator series is part of an ongoing Chronicle examination of California state mental hospitals.

**TODAY:** The first of a two-part series outlines the controversy swirling around the state's Sexually Violent Predator Law and the debate about the process through which the state decides whether a sex offender should be confined for two more years after his or her prison term ends. The story also reveals largely unknown aspects of the program -- including the fact it keeps many offenders behind bars for several years without a trial by a judge or jury.

**TOMORROW:** The story details the cases of several high-risk sex offenders who were rejected for California's sexually violent predator program but went on to commit new, violent sex crimes. It also tells how most sex offenders are less likely to reoffend than the general prison population -- but that statistic does little to dispel angry public opposition when sexual predators are released into their communities.

## Selecting California's sexually violent predators

Prisoners and parolees are referred by state prison officials to the Department of Mental Health as candidates for extended incarceration at a state hospital and treatment as sexually violent predators. State law defines a sexually violent predator as "a person who has been convicted of a sexually violent offense against two 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." The law defines "substantial sexual conduct" with a child under 14 as a violent crime.

## **PRISONERS AND PAROLEES**

5,491 sexual offenders

Referred by California Department of Corrections and the Board of Prison Terms as candidates for the sexually violent predator program

since 1996.

2,394 do not qualify

Department of Mental Health finds they don't fit the criteria under the law.

## **REVIEW AND PSYCHOLOGICAL EVALUATION**

3,029 Selected by the state Department of Mental Health for evaluation for the program by psychiatrists and psychologists.

1,209\* Found by psychologists to be dangerous and likely to reoffend. Almost all these cases are referred to district attorneys.

1,788 not likely to reoffend

Rejected by state psychologists who say they don't meet the legal definition of predator.

178 district attorney declines

Sex offenders the district attorney declines to file against as predators.

## **LEGAL REVIEW AND COURT DECISION**

1,006 Sex offenders for whom the district attorney files court petition to keep them locked up as sexually violent predators.

775 Judge finds there is probable cause to hold the sex offenders for civil trials to decide if they should receive a two-year commitment.

472 Committed for two-year terms as sexually violent predators via jury or judge trial.

148 judge declines

Sex offenders whom a judge finds there is not probable cause to hold for trial.

113 rejected at trial

Judge or jury finds they are no longer sufficiently dangerous to be committed to the program.

## **SEXUALLY VIOLENT PREDATOR PROGRAM**

3 Graduates released

- Brian DeVries, Aug. 2003

- Cary Verse, Feb. 2004

- Patrick Ghilotti, May 2004

Supervised release from state hospital treatment program

34 Released after two-year commitment as sexually violent predators  
- most without treatment

12 because one or more mental health experts found they were no longer likely to reoffend.

11 because the district attorney did not file a petition to keep them in the program.

7 because a jury did not find they should be recommitted.

4 because of a court ruling rejecting their confinement.

Sources: Department of Mental Health; prosecutors and defense attorneys \*These figures contain a small number of cases that were suspended due to legal and administrative reasons.

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Page A - 1

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