

Phil Locke,

I read your recent article ***The 'Catch 22' of Parole for the Wrongfully Convicted***, <http://wrongfulconvictionsblog.org/2013/07/19/the-catch-22-of-parole-for-the-wrongfully-convicted/>

It reminded me of two similar points that I have previously made to State lawmakers here in Virginia over the last 4.5 years.

First let me tell you I am a volunteer public advocate attempting to reform the Virginia Sex Offender Registry.

You might be thinking, to make it stricter or harsher, the answer would be no.

I speak publicly against proposed legislation that is based on myth, fear and hate at the yearly General Assembly sessions. Speaking for "good" bills and against "bad" bills, my record for stopping the "bad" bills is pretty darn good for someone without any legal or lobbyist training, not so good with the "good" bills since we have a Republican majority here in VA. But I'll keep plugging away, they won't get rid of me even if some of them really wish they could.

OK, back to the similarity of your article and two issues here in Virginia and across the country.

In Virginia registered Sex Offenders who are under probation supervision or incarceration are mandated by a Department of Corrections policy to submit to regular polygraph testing. They are also mandated to participate in Sex Offender group or individual therapy sessions.

As I'm sure you know the Supreme Court has ruled "There is simply no consensus that polygraph evidence is reliable" and "Unlike other expert witnesses who testify about factual matters outside the jurors' knowledge, such as the analysis of fingerprints, ballistics, or DNA found at a crime scene, a polygraph expert can supply the jury only with another opinion."

Polygraph results are inadmissible in Virginia courts because they are so thoroughly unreliable as to be of no proper evidentiary use whether they favor the accused, implicate the accused or are agreed to by both parties.

It is a pseudo-science purposely shrouded in mystery. We might as well convict, incarcerate and civilly commit based on a coin flip it's just as reliable. Or unreliable however you choose to look at it.

The polygraph is a catch 22, you are damned if you do and you are damned if you don't because the results are as reliable as a Magic 8 Ball and if you refuse the state is going to take control of you. Innocent people will fall victim to the test and guilty people will not be discovered.

But if an RSO (Registered Sex Offender) refuses to submit to the polygraph, refuses to admit to the acts that led to their wrong conviction or refuse to talk about the offense that never happened in therapy they can face revocation of their probation and be sent back to prison.

Also in Virginia there is civil commitment of SVP's (Sexually Violent Predators) after their prison sentence has run its course.

Virginia's civil commitment "treatment" mandates full disclosure or treatment will be hindered, meaning that all RSO's in civil commitment must choose to incriminate themselves to advance through the system to one day be released or refuse to participate and rot at the V.C.B.R. (If you get civilly committed in VA you'll do a minimum of 5 years at the VCBR, Virginia Center for Behavioral Rehabilitation - <http://www.vcbr.dbhds.virginia.gov/> - but probably much longer.)

In Virginia we've had a few recently publicized cases of innocent citizen's being convicted of sexual crimes including false accusations and witness misidentification.

Like Thomas Haynesworth, Marvin Anderson, Bennett Barbour, the Norfolk 4, Edgar Coker Jr. and Jonathan Montgomery (just to name a few).

They committed no crime, but they were convicted by our system. They were/are all listed as Registered Sex Offenders and mandated to abide by all the restrictions and regulations imposed upon sex offenders. If they maintain their innocence, and were subjected to a polygraph then the state would claim they aren't cooperating, they are in denial or they must be hiding additional

crimes that they have not yet been convicted for. But in reality they aren't in denial, they aren't hiding anything because they didn't commit the original crime they were convicted of. The system is wearing two faces; on the one, it will imprison or commit those "found out" by the polygraph; on the other, it refuses to accept lie detector evidence from those claiming to be wrongfully convicted, who have passed polygraph tests with flying colors. Hypocrisy? Yes. The Fifth Amendment to the United States Constitution protects witnesses from being forced to incriminate themselves. To force offenders in DOC facilities or under DOC supervision to submit to a polygraph for 'a fishing expedition' is in my opinion a violation of the Fifth Amendment. As for the civil commitment of SVP's I don't believe the state believes in this "treatment" they just want an excuse to confine as many RSO's for as long as possible after they tapped out the criminal justice systems time constraints. So in addition to parole of the wrongly convicted being a Catch 22 you can add mandated polygraphs and therapy session of RSO's and civil commitment of SVP's.

Sincerely,

Mary Davye Devoy

A volunteer advocate for data-driven reform of Virginia's Sex Offender Registry and Laws since October 2008