

Texas Civil Commitment-Outpatient Sexually Violent Predator Treatment Program (OSVPTP) Health & Safety Code, Chapter 841

U.S. History

There have been a number of high profile sexually violent crimes that have occurred throughout the United States. Some of these crimes were committed by individuals who were recently discharged from prison with or without parole or mandatory supervision. These cases were the major catalyst for sexually violent predator legislation. To date, 20 states in the United States have passed sexually violent predator acts.

Texas History

In 1999, Texas Senate Bill 365 expanded the CSOT's duties to include the administration and implementation of the OSVPTP, the first outpatient civil commitment program in the United States.

Purpose

The purpose of OSVPTP is established in Health & Safety Code §841.001, "The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state."

The Texas Sexually Violent Predator Act is a civil commitment statute. The State has the burden to prove beyond a reasonable doubt that the person is a sexually violent predator with a behavioral abnormality. Typically, civil law only requires preponderance of the evidence. This language is used to narrowly confine the class of sexually violent predators being committed. These sex offenders are committed not convicted of being a sexually violent predator to the outpatient treatment program. Civil commitment is different than a criminal charge in that a criminal sentence has a definitive timeframe.

The Process

Prior to the civil commitment, Texas Department of Criminal Justice (TDCJ) identifies all sex offenders who have more than one predatory sexually violent offense.

Sexually violent offenses are defined as:

- Indecency with a Child by Contact
- Sexual Assault regardless of the age of the victim
- Aggravated Sexual Assault regardless of the age of the victim
- Aggravated Kidnapping with the Intent
- Burglary of a Habitation with the Intent
- Sexually Motivated Capital Murder
- Sexually Motivated Murder
- Any attempt, conspiracy, or solicitation of the above

Predatory act is defined as an act directed toward individuals, including family members for the primary purpose of victimization.

Those cases are reviewed by a multidisciplinary team, which consists of representatives from the CSOT, TDCJ, TDCJ-Victim Services, DSHS Mental Health Division, and the Department of Public Safety. The multidisciplinary team refers sex offenders who meet the eligibility criteria for a behavioral abnormality assessment. The multidisciplinary team:

1. assesses whether the person is a repeat sexually violent offender;
2. determines whether the person is likely to commit a sexually violent offense after release or discharge; and
3. recommends the person for an assessment for a behavioral abnormality.

Multidisciplinary Team Statistics

Sex offenders referred for a behavioral abnormality assessment (average of 35 cases per month reviewed):

FY 06	115
FY 07	102
FY 08	100
Total	317

TDCJ contracts with an expert to conduct the initial assessment, which includes a clinical interview, psychological testing, review of the risk assessments, institutional records, and all relevant medical and psychological records and reports. If a behavioral abnormality is identified, the case is referred to the Special Prosecution Unit to determine whether to file a petition for a trial to seek a commitment of the individual. The Special Prosecution Unit is responsible for initiating and pursuing a civil commitment.

If the Special Prosecution Unit (SPU) files a petition alleging a predator status, the State Counsel for Offenders (SCFO) is notified and provides representation in the civil commitment proceeding. If SCFO is unable to represent, the court shall appoint other counsel.

All civil commitment trials are held in Montgomery County, Texas (435th District Court, Presiding Judge Mike Seiler). A judge or twelve person jury must unanimously answer “yes” beyond a reasonable doubt to the following questions:

1. Is the person a repeat sexually violent offender?
2. Does the person suffer from a behavioral abnormality that makes him/her likely to engage in a predatory act of sexual violence?

If the judge or jury unanimously responds “yes” to both questions, the person is ordered into the OSVPTP program upon release from prison. The judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

- (1) requiring the person to reside in a Texas residential facility under contract with the council or at another location or facility approved by the council;

- (2) prohibiting the person's contact with a victim or potential victim of the person;
 - (3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;
 - (4) requiring the person's participation in and compliance with a specific course of treatment;
 - (5) requiring the person to:
 - (A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and
 - (B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;
 - (6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;
 - (7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone;
 - (8) requiring the person to notify the case manager immediately but in any event within 24 hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person; and
 - (9) any other requirements determined necessary by the judge.
- (b) A tracking service to which a person is required to submit under Subsection (a)(5) must:
- (1) track the person's location in real time;
 - (2) be able to provide a real-time report of the person's location to the case manager at the case manager's request; and
 - (3) periodically provide a cumulative report of the person's location to the case manager.

After the trial and prior to entering the program, the court coordinator identifies the county of residence for the judicial order and testifies regarding program requirements. The court coordinator coordinates transportation and residential placement for the SVP.

As administrator of the OSVP/TP, the CSOT is responsible for the following but not limited to:

- Comprehensive case management supervision
- Residential housing requirements (if applicable)
- Intensive sex offender treatment (Intake, Groups, Individuals, Family Sessions, etc.)
- Anti-androgen medication
- Mandated polygraphs (Instant Offense, Sexual History, Maintenance, and Monitoring)
- Mandated penile plethysmographs
- Biennial examinations
- Restricted transportation
- Substance use testing
- Compliance with DPS registration every 30 days
- Compliance with the 1000 foot child safety zone

***A civilly committed person who is not indigent is responsible for the cost of the Global Positioning Satellite (GPS) tracking service and shall pay to the Council the amount the Council determines will be necessary to defray the cost of operating

The court coordinator conducts a face-to-face visit with the SVP on the prison unit and explains the requirements of the OSVPTP program. The court coordinator forwards all SVP documentation to the program's Central Office, Department of Public Safety, the assigned case manager, and treatment provider. Upon arrival at the residential facility, the case manager meets with the SVP and activates the GPS tracking. In Dallas, Tarrant, and Harris counties, the case managers monitor GPS tracking, and in Travis, Bexar, and El Paso counties, Department of Public Safety monitors GPS tracking. The case manager makes the appropriate referrals based on the SVP's needs.

The SVP is assessed by the licensed sex offender treatment provider, who conducts group, individual, and family therapy sessions, prepares the individual treatment plan, prepares the SVP for polygraph examinations, and makes appropriate referrals. Each year the SVP has the right to petition the court for an unauthorized release from the OSVPTP. Every two years the SVP is afforded a biennial review. The judge shall set a hearing if the judge determines at the biennial review that a requirement imposed on the person under this chapter should be modified or probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. The state must prove beyond a reasonable doubt that the behavioral abnormality has not changed. If the burden of proof is met, the SVP civil commitment will continue.

If the SVP fails to comply with the order of commitment, he/she may be charged with a 3rd degree felony, which may result in incarceration in the TDCJ-Institutional Division.

Of primary importance and the most compelling statistic for the success of this program is that none of the SVPs committed to the program have been charged with or convicted of a new sexual crime. There have been no instances of sexual re-offending. The program has protected the public from repeat sexual offenses by the civilly committed SVPs.

Civil Commitments by Fiscal Year

Since civil commitment of the first SVPs in fiscal year (FY) 2001, the number of commitments remained relatively stable at 7-14 civil commitments per year through FY 2007. Additional funding for civil commitment trials was allocated to the Special Prosecutions Unit in FY 2008, which resulted in 28 civil commitments. Fifty trials are projected for FY 2009 and FY 2010.

FY 01	7
FY 02	11
FY 03	13
FY 04	10
FY 05	11
FY 06	14
FY 07	8
FY 08	28
FY 09	50 Projected
FY 10	50 Projected

Cost/Staffing

Texas is the only state that serves all SVPs in an outpatient setting, which has proven to be more economical than traditional inpatient programs. Fiscal year 2008 performance measures reflect that the outpatient Sex Offender Treatment/Supervision program cost the state an average of \$26,371 per SVP per year. Comparatively, other states that have inpatient SVP treatment programs report costs between \$41,000 and \$166,000 per SVP per year. (Washington State Institute for Public Policy, 2006).

The outpatient Sex Offender Treatment/Supervision program is funded via an appropriation to the Texas Comptroller of Public Accounts. The 80th Legislature Regular Session House Bill 1 (General Appropriations Act) appropriated funds to the Texas Comptroller of Public Accounts for the outpatient sex offender treatment and supervision program in the Texas Comptroller of Public Accounts Judiciary Section's 2008-2009 appropriation in Strategy D.1.9. An interagency contract between the two agencies defines the disbursements of the funds to DSHS. The total amount appropriated for FY 2008 is \$2,840,656, and \$3,039,193 is appropriated for FY 2009. The funds are located in DSHS strategy D.4.1.7, Sex Offender Treatment/Supervision.

Due to the growth of the program and to improve cost efficiency, the program moved from contracted case management to full time, state employee case management in 2005. Under contracted case managers, the program cost an average of \$36,480 per client per year for SVPs residing in the community; this cost included treatment, supervision, housing, transportation, biennial examinations, and various required testing. With the use of full time, state employee case managers, the program cost an average of \$26,371 per client per year for SVPs residing in the community; this cost includes treatment, supervision, housing, transportation, biennial examinations, and various required testing.

Last Updated May 2009