



Biennial Report Regarding the
Council on Sex Offender Treatment
September 1, 2006 – August 31, 2008

Prepared for the
Office of the Governor, Lieutenant Governor, and Speaker of the House of Representatives
Pursuant to Section 110.60, Occupations Code

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I. Council on Sex Offender Treatment (CSOT)

History

In 1983, the CSOT was created by the Texas Legislature due to the rising rate of sexual crimes and extremely high recidivism rates for untreated sexual offenders.

Mission

The CSOT's mission is to enhance public safety by developing and implementing standards and policies to protect the citizens of Texas through research-based assessment, treatment, and management of sexually violent predators, adult sex offenders, and juveniles with sex offending behaviors.

Philosophy

The CSOT believes public safety is served by contributing to the general knowledge of adults and juveniles with sex offending behavior through research and education and by ensuring offenders receive offense-specific treatment designed to reduce their individual risk of offending.

Objectives

- Eliminate sexual assault victimization.
- Increase awareness by educating, training, and disseminating information to the community and professional organizations whose purpose is to assess, treat, and manage sex offenders or to prevent sexual assault.
- Provide and promote a network of licensed professionals in the field of sex offender treatment and ensure continued competence of professionals by enforcement of the standards of practice.
- Enhance public safety through the management and treatment of clients within the outpatient sexually violent predator treatment program.
- Provide guidance and recommendations regarding legislation and public policy.
- Promote research in sex offender assessment, treatment, and recidivism.

Functions

The CSOT has four primary functions: 1) public safety by administering the Civil Commitment of Sexually Violent Predators Program as described in Health and Safety Code Chapter 841 and preventing sexual assault, 2) public and behavioral health by advocating for the management and treatment of sex offenders, 3) regulatory by maintaining a list of licensed sex offender treatment providers and establishing the rules and regulations regarding the treatment of sex offenders, and 4) educational by disseminating information regarding the management of sex offenders to the public. The CSOT's functions are synergistic with maintaining the highest level of public safety and preventing sexual assault through effective treatment and interventions in the management of sex offenders.

The CSOT Mandates

Occupations Code, Section 14.005 (a) Subtitle A, Title 3, Chapter 110

- Develops and implements policies and treatment strategies for sex offenders;
- Sets standards for treatment providers of sex offenders;

- Develops, researches, and implements the risk assessment tool(s) in determining a sex offender's risk to the community;
- Recommends to licensing and regulatory boards current methods of improving programs to meet the CSOT's standards;
- Develops and implements, by rule, licensing requirements and procedures for sex offender treatment providers;
- Maintains a list of qualified licensed sex offender treatment providers;
- Collects and disseminates information about sex offender treatment to judicial officers, community supervision or parole workers, state and municipal agencies, and the public;
- Distributes money appropriated to the CSOT by the Legislature for the development, operation, or evaluation of sex offender treatment programs;
- Advises and assists agencies in coordinating procedures to provide treatment services;
- Designs and conducts continuing education programs for sex offender treatment providers; and
- Establishes, develops, and adopts an individual risk assessment tool that evaluates the criminal history, the likelihood that the person will engage in criminal activity, and determine if the person is a continuing danger to the community.

Number of Licensed Sex Offender Treatment Providers

FY 2006- 362

FY 2007- 427

FY 2008- 460

Outpatient Sexually Violent Predator Treatment Program (OSVPTP)

Health & Safety Code, Article 4, Title 11, Chapter 841

- The CSOT administers Chapter 841;
- The CSOT adopts rules consistent with the purpose of the statute;
- CSOT/Department of State Health Services (DSHS) develops and the CSOT adopts policies, procedures, and standards of treatment and case management for persons committed under this chapter;
- The CSOT has two representatives who serve on the Multidisciplinary Team, which reviews sex offenders in the Texas Department of Criminal Justice (TDCJ) who have more than one sexually violent offense for civil commitment and refers potential sexually violent predators for a behavioral abnormality assessment;
- The CSOT provides by contract appropriate treatment, supervision, transportation, residential housing, and drug/alcohol screening for the committed person;
- The CSOT shall provide the global positioning satellite (GPS) tracking service through two employees of DSHS. Any tracking service personnel used by the department for the purpose must be approved by CSOT;
- The CSOT contracts with the Department of Public Safety to provides surveillance and monitoring of the GPS tracking in areas outside of Dallas/Tarrant and Harris Counties; and
- The CSOT contracts with an expert to perform a biennial examination to determine if the SVP's behavioral abnormality has changed.

Other Mandates Regarding Management of Sex Offenders

- **Dynamic Risk Assessment (DRA) Research:** Occupations Code §110.501. The CSOT shall work directly with the appropriate entities to develop, implement, research, and deploy dynamic risk assessment tools and protocols for use under this subchapter by persons licensed under this chapter. Costs incurred under this section shall be included with costs required to be paid under Code of Criminal Procedure, Section 11(i), Article 42.12. The CSOT shall work with the Legislative Budget Board (LBB) to study the recidivism of sex offenders treated under the pilot program, including a study comparing the various dynamic risk assessment tools and protocols. Senate Bill 909 of the 80th Legislative Session amended Government Code, §493.0151(b) by mandating that before an inmate serving a sentence for a sexual offense is discharged or released on parole or mandatory supervision from the Texas Department of Criminal Justice shall use the dynamic risk assessment tool developed by the CSOT under Occupations Code §110.164, to assign the inmate a risk level of low, medium, or high.

Status: In progress

In October 2005, the CSOT began the dynamic risk assessment research project and contracted with Dr. Mark Stafford and Dr. Matt Ferrara to develop, monitor, and analyze the data collected in this research project. The goal of this project is to collect research data from a variety of risk assessment tools, which in turn can be used when considering deregistration issues. The CSOT provided to the Governor and to the Legislature a project status report on November 6, 2006. On July 6, 2007 the CSOT adopted the Static 99, the Level of Service Inventory-Revised (LSI-R), and the HARE-Psychopathy Check List-Revised (PCL-R) as the dynamic risk assessment tools for adult, male sex offenders, and the Level of Service Inventory-Revised (LSI-R) and the HARE-Psychopathy Check List-Revised (PCL-R) for adult, female sex offenders. On September 28, 2007, the CSOT adopted a matrix to be used to score the dynamic risk assessment tools and assign a risk level. Additionally the CSOT adopted the Stable 2007 and the Acute 2007 dynamic risk assessment tools to be administered first within three to six months following release of the offender into the community. These instruments will then be administered one year following release into the community and then annually while an offender is under supervision. As of 2008, there were 215 sex offenders involved in the research project. By 2010, the research project will be able to provide a five-year recidivism study to determine which of the various dynamic risk assessment tools and protocols most accurately predict recidivism.

- **Code of Criminal Procedure, Chapter 62, Sex Offender Registration**
 - Art. 62.007, "Risk Assessment Review Committee; Sex Offender Screening Tool". The CSOT participates in the review of sex offenders' risk levels prior to release from prison for the purpose of community notification.
 - Art. 62.402(a) the CSOT by rule shall determine the minimum required registration period under 42 U.S.C. Section 14071.

- Art.62.402(b) the CSOT shall compile and publish a list of reportable convictions and verify the list with the Bureau of Justice Assistance.
- Art.62.403 the CSOT shall provide the individual risk assessment to a sex offender who files a motion for early termination of his/her obligation to register.

Status: completed

- **Online Solicitation Report: “A Report Regarding the Use of the Internet to Facilitate the Commission of Sex Crimes Including Recommendations for Ensuring Child Safety”.** Section 8 of Senate Bill 912 (79th Texas Legislative Session, 2005) required the CSOT to study the ways in which sexually violent predators, as defined by Health & Safety Code, Section 841.002, and other persons who commit sexually violent offenses, as defined by Code of Criminal Procedure, Article 62.01, use the Internet to meet or otherwise establish contact with potential victims.

Status: completed

In 2006, the report was prepared and submitted for the Texas Legislature and the Office of the Governor, Criminal Justice Division, pursuant to Senate Bill 912, Section 8, 79th Regular Session, 2005. The CSOT provided research regarding the ways in which sexually violent predators and other persons who commit sexually violent offenses use the Internet to meet or otherwise establish contact with potential victims.

CSOT Members

The CSOT consists of seven members appointed by the Governor with the advice and consent of the Senate. Four members are professional clinical expert members and three members represent the public. Members serve staggered six-year terms. The terms of two members expire on February 1 of each odd-numbered year. The Governor designates a member of the CSOT as presiding officer. The CSOT is an independent board administratively attached to DSHS.

Board Members	Appointed	Term Expires
Liles Arnold, LPC, LSOTP, Chair	July 1998	February 2009
Maria Molett, MA, LPC, LMFT, LSOTP	October 1998	February 2009
Aaron Pierce, Ph.D., LSOTP	April 2005	February 2011
Dan Powers, LCSW, LSOTP	July 2008	February 2013
Ronnie Fanning, Public Member	July 2008	February 2011
Alida Hernandez, Public Member	July 2008	February 2013
Public Member	VACANT	

Department of State Health Services employs full-time staff to carry out the responsibilities of the CSOT.

Interagency Advisory Committee

Pursuant to Chapter 110.204, Occupations Code, the Interagency Advisory Committee shall cooperate with the CSOT and at the request of the CSOT, advise the CSOT on the duties under the Occupations Code, Chapter 110. The following are members: Texas Juvenile Probation Commission, Sam Houston State University, Office of the Governor-Criminal Justice Division, Office of the Attorney General-Crime Victims Services Division, Department of State Health Services- Community Mental Health & Substance Abuse Programs, Texas Department of Criminal Justice- Rehabilitation and Reentry Programs Division, Texas Youth Commission, and Department of Family and Protective Services.

80th Legislative Session

The CSOT/DSHS staff tracked 88 sex offender and sexual assault bills during the 80th Legislative Session.

Legislation directly affecting CSOT or Outpatient Sexually Violent Predator Treatment Program

- **HB 8** (Riddle/Duell) (Jessica's Law) Relates to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders. Adds a new offense of continuous abuse of a child. Ends statute of limitation for sexual assault under Penal Code, Section 22.011(a)(2) or aggravated sexual assault Penal Code, Section 22.021(a)(1)(B). Limits prosecution from 20 years from the 18th birthday on sexual performance of a child, aggravated kidnapping with intent, and burglary with intent. Mandates sex offender treatment programs for inmates under Penal Code, Section 21.02(h) or 22.021(f). Adds death penalty provision for a second conviction with one super-aggravating factor. Adds monitoring sexually violent predators by GPS tracking. Adds that a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Health & Safety Code, Section 841.082. Effective September 1, 2007.

Status: completed

All requirements of this bill regarding GPS tracking service have been utilized since 2000. The GPS tracking provides real time tracking, real time reports on the sexually violent predator's (SVP) location and cumulative reports of the SVP's location. All requirements relating to the SVP paying for the cost of tracking services have been completed.

- **HB 2034** (England/Shapiro) Relates to the regulation of sex offender treatment providers. Clarifies the definition of a sex offender and sex offender treatment provider. Deletes rehabilitation service and adds that a person does not have to be a licensed sex offender treatment provider to provide adjunct treatment to an offender. Clarifies that the CSOT licensees are subject to the rules of the CSOT rather than the rules of the other licensing entity with respect to sex offender treatment. Amends Health & Safety Code, Chapter 841 so a judge is not subject to an objection other than an objection made under Government Code, Section 74.053(d). Clarifies Special Prosecution Unit (SPU) civil division. Allows the local

prosecuting attorney to request that the SPU assist in the violation trial. Allows for prosecution in the county of violation or Montgomery County of any offender who fails to comply with the civil commitment order. Effective immediately upon two-thirds vote of the House and Senate or September 1, 2007.

Status: completed

All requirements of this bill regarding these modifications to the definitions were implemented effective October 22, 2006. See Texas Administrative Code, Chapter 810.

- **SB 103** (Hinojosa/Madden) Relates to the Texas Youth Commission (TYC). Adds that TYC may not exempt any employee of TYC from the CSOT licensing requirements imposed under Occupations Code, Chapter 110 for any reason. Effective immediately upon two-thirds vote of the House and Senate or September 1, 2007.

Status: completed

All requirements of this bill regarding these modifications to the definitions were implemented effective October 22, 2006. See Texas Administrative Code, Chapter 810.

- **SB 909** (Whitmire/Madden) Relates to the continuation and functions of Texas Department of Criminal Justice (TDCJ), Texas Board of Criminal Justice, Correctional Managed Health Care Committee, and the Board of Pardons and Paroles. Adds that before an inmate is discharged or released onto supervision, TDCJ shall use the dynamic risk assessment developed by the CSOT to assess risk levels. Adds that TDCJ may not exempt any employee from the CSOT licensing requirements under the Occupations Code, Chapter 110. Effective immediately upon two-thirds vote of the House and Senate or September 1, 2007.

Status: completed

All requirements of this bill regarding these modifications to the definitions were implemented effective October 22, 2006. See Texas Administrative Code, Chapter 810.

- **SB 1951** (Wentworth/Williams/Hartnett) Relates to the creation of 435th Judicial District Court in Montgomery County for civil commitment proceedings under Health & Safety Code, Chapter 841 and criminal cases involving Health & Safety Code, Section 841.085, and Code of Criminal Procedures, Article 62.203. Effective September 1, 2007.

Status: All requirements of the bill have been completed and the court established.

- **HB 1751** (Cohen/West) Relates to the imposition and use of a fee on certain sexually oriented businesses to fund sexual assault prevention programs. Increases funding for Sexual Assault Nurse Exams, victim assistance, rape crisis centers, a DSHS study on the prevalence of sexual assault, a University of Texas study on the sexual assault and domestic violence, sexual assault training for Texas Rangers, to increase the number of civil commitment trials, for monitoring high risk offenders, and for increasing TYC and TDCJ sex offender treatment programs. Effective January 1, 2008.

Status: Court ruled the law unconstitutional and the case is currently on appeal.

Legislative Contacts

The CSOT board members and the CSOT/DSHS staff responded to legislative inquiries and provided testimony as resource witnesses regarding the following issues:

- Jessica's laws pertaining to sex offender prosecution, punishment, and supervision of sex offenders.
- Sex offender management including supervision and global positioning satellite tracking.
- Sex offender recidivism rates.
- Sex offender registration, risk assessment, and community notification.
- Sex offender residency restrictions.
- Outpatient sexually violent predator treatment program.
- Sexually violent predators with mental health diagnoses.
- Deported sex offenders removed from the sex offender registry.
- Dynamic risk assessments for sex offenders.
- In-prison sex offender treatment.
- Funding for sexual assault programs, research, sexual assault training, monitoring high risk sex offenders, and increasing civil commitment trials through the adult entertainment tax.
- Licensure for community based and in-prison sex offender treatment providers.
- Time-frames for prosecuting sexual assault.

Media Coverage (Television and Radio Interviews, Articles, and Publications)

The CSOT board members and the CSOT/DSHS staff responded to inquiries from the national media (*America's Most Wanted*, *48 Hours*, *ABC 20/20*, *New York Times*, *Albany New York Times*, *Government Technology*, and *Weekend in America*) and state/local media (*Dallas Morning News*, *Houston Chronicle*, *Ft. Worth Star Telegram*, *San Antonio Express*, *St Petersburgs Times*, *Austin American Statesman*, *WFAA-Dallas*, *WOAI-San Antonio*, *KXAN-Austin*, *KSAT-San Antonio*, *Channel 33-Dallas*, *Channel 25-Waco*, *FOX 7-Austin*, *KVUE-Austin*, *Fox 26-Houston*, *NBC-Tyler*, *KLBJ-AM 590*, and *Telemundo*) regarding the following:

- Texas' outpatient sexually violent treatment program.
- Sex offender registration, deregistration, risk level assignment, and community notification.
- Jessica's laws pertaining to sex offender prosecution, punishment, and supervision of sex offenders.
- Management of sex offenders including supervision, GPS tracking, and polygraphs.
- Sex offender treatment.
- Sex offender recidivism rates.
- Online solicitation of children and internet offenders.
- Female sex offenders.
- Dynamic risk assessment.
- Sex offender management boards.
- Death penalty for sex offenders.

Out of State and International Contacts

The CSOT/DSHS staff responded to over one hundred out of state and international inquiries regarding the following issues:

- Implications of the federal Adam Walsh Act.
- Texas' outpatient sexually violent predator treatment program including the law, process, supervision, and treatment.
- Interstate compact agreements regarding sexually violent predators.
- Sex offender management boards.
- Sex offender management including supervision and GPS tracking.
- Sex offender housing and residency restrictions.
- Sex offender recidivism rates.
- Psychopathy and sexual violence.
- Sex offender risk assessments.
- Licensing sex offender treatment providers.
- Developmentally delayed sexually violent predators.
- Community perceptions and juvenile sex offenders.
- Family reunification with juvenile and adult sex offenders.

Presentations/Trainings/Booths

The CSOT board members and CSOT/DSHS staff conducted presentations on the management and containment of sex offenders to U.S. Federal Probation, victim advocacy groups, sexual assault response teams, district attorneys, and law enforcement. Additionally, the CSOT board members and the CSOT/DSHS staff provided information on the management and containment of sex offenders at various conferences throughout the state.

Conferences

February 10-12, 2008, 16th Annual Conference on Management and Containment of Juveniles and Adult Sex Offenders. The CSOT hosted the annual conference in Galveston, Texas.

CSOT Meetings

The CSOT held nine public meetings during the biennium.

CSOT Rules-Standards of Practice (22 Texas Administrative Code 810)

Texas Administrative Code 810 became effective October 22, 2006.

II. 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 1997, the 75th Legislature transferred the CSOT to the Texas Department of Health Professional Licensing and Certification Unit as a result of a Sunset Advisory Commission review. The CSOT board member's duties originally were regulatory and educational. 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 Process

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

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. 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.

As of August 31, 2008, there were 102 sexually violent predators that have been committed under Health & Safety Code Chapter 841. Of the 102:

- 30 reside in the community.
- 21 reside in county jail on violations of the order of commitment.
- 46 are awaiting release from the Texas Department of Criminal Justice into the outpatient Sex Offender Treatment/Supervision program.
- 1 has been committed to a state hospital.
- 1 is placed at a state school.
- 1 has absconded.
- 2 are deceased.

SVP Recidivism Rates: Recidivism rates are based upon information gathered from an arrest, a conviction, or incarceration. Recidivism may be based on a technical violation related to the civil commitment order, a sexual re-offense, or a new criminal offense.

To date, there have been no sexual re-offenses committed by an SVP, which represents a 0% sexual recidivism rate.

Of the 102 SVPs in the program, 35, or 34%, have committed a non-sexual offense and been returned to prison (7 SVPs have returned to prison twice). Of the 35 SVPs:

- 32 have technical violations, a 91% recidivism rate.
- 3 have been charged with a new criminal offense, a 9% recidivism rate (1-failure to register; 1- aggravated assault on a peace officer; and 1- failure to register, failed to identify and assault).

The 0% sexual recidivism rate is one of the most compelling performance measures supporting the outpatient sexually violent predator treatment program in Texas.

Other SVP Statistics:

- All 102 SVPs are males.
- The average age of SVPs is 46.7 years, with the oldest 79 years and the youngest 27 years.

- Twenty-four SVPs are diagnosed with psychopathy.
- Thirty-four SVPs are diagnosed with borderline psychopathy.

Percentage of Commitments by County (All trials are held in Montgomery County.)

- Harris- 55%
- Tarrant- 21%
- Dallas- 9%
- El Paso- 8%
- Travis- 5%
- Bexar- 2%

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.

As of August 31, 2008, the program employed 7 case managers, 1 court coordinator, 1 program specialist IV, 1 executive director, and 1 administrative assistant IV and expects to add three to five additional positions in FY 2009 to supervise the increased SVP caseloads.

Court Decisions

October 12, 2005. The U.S. Supreme Court denied the motion to hear *In Re Commitment of Fisher's* petition and finalizes the successful defense of the Texas SVP Act.

November 30, 2004. *In Re Commitment of Fisher*-Court of Appeals 13th District, the Texas Supreme Court upheld the constitutionality of the Texas SVP Act.

III. Recommendations for the 81st Legislative Session

The CSOT's Recommendations for Changes in Health & Safety Code, Chapter 841

- **Health and Safety Code, Section 841.085, Criminal Penalty.** Amend by adding to read as follows:

“(d) To secure a defendant's attendance at trial a person who is arrested for a violation of a requirement imposed under Section 841.082, a magistrate shall impose a condition of bond set not less than \$200,000 to ensure the safety of the victim(s) of the alleged offense or the safety of the community.”

Justification: SVPs are the most dangerous population of sex offenders, yet some SVPs have been released on \$750 dollar personal recognizance (PR) bonds. The bond amounts for SVPs vary across the State. Harris County bonds can range from \$10,000 PR bond to no bond. Some parole and probation warrants regarding technical and criminal violations are non-bondable. The halfway houses in which SVPs reside are not secure facilities. When an SVP is in violation and knows the consequence of a third degree felony or habitual sentencing, he/she is considered a “flight” risk, which jeopardizes public safety.

If changes are made in 841.085 regarding bail, an amendment would have to be made to the Texas Constitution, Article 1, BILL OF RIGHTS, SECTION 11.

- **Health and Safety Code, Section 841.085, Criminal Penalty.** Amend by adding to read as follows: “(e) if the person violates a requirement imposed under Section 841.082, the detaining agency or county jail shall notify the CSOT/DSHS case manager/program specialist assigned to the SVP twenty-four hours (24) hours prior to release of the SVP and/or upon immediate notification of the impending release of the SVP. The case manager/program specialist shall provide the detaining agency or county jail with the appropriate contact information for notification.”

Justification: County jails are not required to notify the program specialists who supervise SVPs regarding their release. Most correctional/detention institutions or jails will check their databases and the databases of other agencies for law enforcement detainees before releasing a resident in their custody.

Currently, there are two types of detainees: a civil detainer warrant (for landlord evictions) and a criminal detainer warrant. The CSOT/DSHS does not have the authority to issue a civil detainer to a law enforcement or detention agency. The program specialists have been diligent with the detaining agency in providing their contact information, but there have been several instances in which SVPs have been released without program specialist knowledge; the program specialist were eventually when the SVP arrived back at the halfway house hours after release.

- **Health and Safety Code, Section 841.085, Criminal Penalty.** Amend to read as follows: “(a) person commits an offense if the person violates a requirement imposed under Section 841.082. (b) Notwithstanding Section 6.02(b), Penal Code, proof of a culpable mental state is

not required for a conviction of an offense under this Section". An offense under this section is a felony of the third degree. (Filed as HB 3306 by England, 80th Legislative Session)

Justification: This would be a strict liability offense similar to the offense of Driving While Intoxicated, which is viewed as a public safety issue. This would allow law enforcement and district attorneys to expedite charges. Currently, the State must prove culpable mental state that the SVP knowingly, intentionally, and recklessly violated the order of commitment. It is very difficult to prove the SVP knowingly, intentionally, and recklessly failed to comply with the judicial order (i.e., failed to attend, participate in, and comply with a specific course of treatment or obstructed or tampered with the GPS tracking). When an SVP is in violation and knows the consequence of a third degree felony or habitual sentencing, he/she is considered a "flight" risk. The program must be able to execute a warrant as soon as possible to ensure public safety.

- **Health and Safety Code, Section 841.083(a), Treatment; Supervision.** Amend to read as follows: "the CSOT shall approve and contract for the provision of [a] treatment [plan] for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in a reasonable amount not to exceed [\$6,000] \$20,000 for providing the required treatment." (Filed as HB 3306 by England, 80th Legislative Session)

Justification: Sex offender treatment must be consistent, intense, and long-term. It is beneficial to the CSOT/DSHS to pay a reasonable fee for licensed sex offender treatment provider services to ensure that there are sufficient providers in light of the program's continuing expansion. Ensuring that SVPs are provided the specific course of treatment by licensed providers is essential in protecting public safety.

Recommendations for the 81st Legislative Session Regarding Licensing of Sex Offender Treatment Providers

- **Texas Health and Safety Code, Chapter 12, Powers and Duties of Texas Department of Health §12.0111. LICENSING FEES.** Amend by adding (e). The complete language of §12.0111 with the new (e) follows: "(a) This section applies in relation to each licensing program administered by the department or administered by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department. In this section and Section 12.0112, "license" includes a permit, certificate, or registration.
(b) Notwithstanding other law, the department shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program.
(c) Notwithstanding other law, each regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department and that issues licenses shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department and the regulatory board or agency to recover from the license holders all of the direct and indirect costs to the department and to the regulatory board or agency in

administering and enforcing the applicable licensing program.

(d) This section does not apply to:

- (1) a person regulated under Chapter 773 ; or
- (2) a license or registration under Chapter 401

(e) Notwithstanding other law, the CSOT that is under the jurisdiction of the department or administratively attached to the department and that issues a license shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department and the regulatory board or agency to recover from the license holders 60% of the direct and indirect costs to the department and to the regulatory board or agency in administering and enforcing the applicable licensing program.”

Added by Acts 2003, 78th Leg., ch. 198, § 2.42(a), eff. Sept. 1, 2003.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 1061, § 1, eff. September 1, 2007.

Justification:

- As of 2003, the CSOT was subject to the Texas Health and Safety Code, Chapter 12, Powers and Duties of Texas Department of Health §12.0111. Due to limited numbers of licensees, the CSOT has not recovered 100% of its direct and indirect costs. Currently, there are only 451 licensed sex offender treatment providers in Texas in 72 counties. There is concern that a fee increase substantial enough to recover 100% of costs of the program would jeopardize the provider base and public safety. This concern is based on:
 - TDCJ releases approximately 200 sex offenders per month, and in 2003 there were approximately 13,600 sex offenders receiving direct community supervision and treatment. Seven hundred (5%) sex offenders reside in 99 rural counties (data provided by Community Justice Assistance Division).
 - Currently licensed sex offender treatment providers pay \$200 for a biennial license renewal. Each licensed sex offender treatment provider must be dually-licensed; he/she must first be licensed as a mental health provider, such as a psychologist, licensed professional counselor, social worker, or marriage and family therapist. The licensee must pay a primary license renewal fee in addition to the \$200 licensed sex offender treatment provider renewal fee. To comply with Health and Safety Code §12.0111, the licensed sex offender treatment provider renewal fee would have to be almost doubled, from \$200 to \$350, an amount that may be perceived as intolerable for some licensed sex offender treatment providers.
- With fewer licensed treatment providers, public safety could be compromised; studies have shown that sex offenders receiving treatment recidivate at a lower rate than sex offenders not receiving treatment.
 - Child molesters who participated in a cognitive behavioral treatment program had fewer sexual re-arrests than the sex offenders who did not receive any treatment (13.2% vs. 57.1%, respectively). Both groups were followed for 11 years. The recidivism data was obtained by official sources and self-reports. Also, exhibitionists receiving treatment were reconvicted or charged with a sexual offense less than the untreated exhibitionists (23.6% v. 57.1%, respectively). (Lane Council, 2003)
 - The overall effect of treatment shows reductions in both sexual recidivism (10% of the treated subjects to 17% of untreated) and general recidivism (32% for treated subjects to 51% of untreated subjects). (Hanson, 2000)

- Additional expenses related to the cost of victimization due to sexual assault or re-offense could be realized.
 - A Lane Council study found the cost incurred by victims of rape and sexual assault was \$109,778 and sexual abuse of a child was \$126,024. Costs included productivity, medical care, mental health care, police services, social services, tangible loss, and loss of quality of life. These estimates demonstrate the devastating impact of sex crimes on victims.
- It is already a challenge to recruit sex offender treatment providers due to the required specialized qualifications and training and uniqueness of the treatment process; recruitment from the mental health professions to this field will be an ongoing challenge. Sex offender treatment is different from traditional psychotherapy in that it is court or parole board-mandated, highly structured, victim-centered, and imposes values and limits.