



**Progress Report Regarding the 80th Legislative Session
and
Recommendations for the 81st Legislative Session**

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**Council on Sex Offender Treatment (CSOT)
Texas Department of State Health Services (DSHS)**

Progress Report Regarding the 80th Legislative Session

HB 8 (Riddle/Duell) Effective September 1, 2007

SECTION 1.12. Health and Safety Code, Section 841.082, is amended by adding Subsection (b) to read as follows:

- (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.

Progress: complete

All requirements of this bill regarding global positioning satellite (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.

SECTION 1.13. Health and Safety Code, Subchapter E, Chapter 841, is amended by adding Section 841.084 to read as follows:

Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding Section 841.146(c), a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Section 841.082 and monthly shall pay to the council the amount that the council determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The council immediately shall transfer the money to the appropriate service provider.

Progress: anticipated completion and implementation date is pending the Comptroller's Office cost analysis

- DSHS created the notification form advising the SVP of required reimbursement.
- DSHS created policies and procedures, financial study, notice to SVPs, delinquency letter, and formula for calculating payment amount, all of which have been approved by the CSOT.
- DSHS created Council Directive congruent with the policy, financial study, delinquency letter, and formula for calculating payment amount.
- The Corrections Software Solutions database has been modified to reflect regarding HB 8 requirements.
- DSHS created Health and Human Services Administrative System (HHSAS) chart field set up to track and process the revenues associated with HB 8.
- DSHS staff have been trained on new policies and procedures regarding HB 8.
- DSHS and the Comptroller's Office are in process of establishing a lockbox to receive payments. Comptroller's Office will be performing a cost analysis.

- DSHS created Comptroller budget and payment tracking form and USAS codes
- Full implementation is pending the cost analysis by the Comptroller's Office.

HB 2034 (England/Shapiro) Effective immediately upon two-thirds vote of the House and Senate or September 1, 2007,

SECTION 1. Occupations Code, Subchapter A, Section 110.001, Definitions, was amended by amending Subdivisions (6) Sex Offender and (7) Sex offender treatment provider and adding Subdivision (8) Sexually motivated conduct.

SECTION 2. Occupations Code, Subchapter A, Chapter 110, was amended by adding Section 110.002 Application of the Chapter related to adjunct treatment.

SECTION 3. Occupations Code, Subchapter A, Section 110.158, was amended to address administrative sanction against the provider.

SECTION 4. Section 110.301, Occupations Code, was amended by amending Subsection (a) deleting rehabilitation service and adding Subsection (c) relating physicians prescribing medicine.

Progress: complete

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) Relating to the Texas Youth Commission (TYC); adds that TYC may not exempt any employee of TYC from 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.

Progress: complete

All requirements of this bill regarding licensing requirements were implemented effective October 22, 2006. See Texas Administrative Code, Chapter 810.

SB 909 (Whitmire/Madden) Relating to Texas Department of Criminal Justice (TDCJ); TDCJ may not exempt any employee from CSOT licensing requirements under Occupations Code, Chapter 110. Effective immediately upon two-thirds vote of the House and Senate or September 1, 2007.

Progress: complete

All requirements of this bill regarding licensing requirements were implemented effective October 22, 2006. See Texas Administrative Code, Chapter 810.

CSOT Recommendations for the 81st Legislative Session Regarding Health & Safety Code Chapter 841 (Civil Commitment)

- **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 amendment would have to be made to the Texas Constitution, Article 1, BILL OF RIGHTS.

Section 11 – BAIL: All prisoners shall be bailable by sufficient sureties unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law”.

Section 11a - MULTIPLE CONVICTIONS; DENIAL OF BAIL

“(a) Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefore, (2) accused of a felony less than capital in this State, committed while on bail for a prior felony for which he has been indicted, (3) accused of a felony less than capital in this State involving the use of a deadly weapon after being convicted of a prior felony, or (4) accused of a violent or sexual offense committed while under the supervision of a criminal justice agency of the State or a political subdivision of the State for a prior felony, after a hearing, and upon evidence substantially showing the guilt of the accused of the offense in (1) or (3) above, of the offense committed while on bail in (2) above, or of the offense in (4) above committed while under the supervision of a criminal justice agency of the State or a political subdivision of the State for a prior felony, may be denied bail pending trial, by a district judge in this State, if said order denying bail pending trial is issued within seven calendar days subsequent to the time of incarceration of the accused;

- **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 DSHS/CSOT 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 detainers before releasing a resident in their custody.

Currently, there are two types of detainers: a civil detainer warrant (for landlord evictions) and a criminal detainer warrant. DSHS/CSOT 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 or CSOT knowledge; the program specialist or CSOT 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 CSOT 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 council 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 DSHS/CSOT 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 for 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 Council on Sex Offender Treatment 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:
 - A possible decrease in the already small number of treatment providers. In a 2003 DSHS fee study of treatment providers, 42% of providers responded to the survey, in which 32% indicated that they **would not** renew their licensed sex offender treatment

- provider license if the fee was increased by \$50 or \$100 dollars. This would have resulted in a decrease of 144 providers.
- 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.
 - Prentky and Burgess (1990) estimated the total expense per sexual offense to be \$183,333.00 dollars.
 - 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. Sex offender treatment providers must continually be aware of the risk of colluding with and/or contributing to the offender's denial. Also in sex offender treatment, confidentiality may not be maintained

based on the need to ensure public safety and because secrecy is a major premise of sexual offending

Thank you for considering the above recommendations for the upcoming legislative session.