



Biennial Report Regarding the
Council on Sex Offender Treatment
September 1, 2008 – August 31, 2010

Prepared for the
Office of the Governor, Lieutenant Governor, and Speaker of the House of Representatives
Pursuant to Section 110.160, Occupations Code

December 1, 2010

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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 licensed sex offender treatment providers;

- Establishes, develops, and adopts the risk assessment tool or tools 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

FY 2009- 454

FY 2010- 463

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 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, the Department 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. On October 2010, the research project was completed and was 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: In progress: On October 29, 2010, the Council adopted the rules for Art. 62.302(a). The Council is in the process of adopting all relevant forms and directives for this section.

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 2015 |
| Holly Miller, Ph.D, LSOTP | May 2009 | February 2015 |
| 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 |
| Joseph Gutheinz, Public Member | May 2009 | February 2015 |

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.

81th Legislative Session

The CSOT staff tracked 45 sex offender and sexual assault bills during the 81th Legislative Session.

Legislation directly affecting CSOT or Outpatient Sexually Violent Predator Treatment Program

HB 2917 (Representative Jim McReynolds) Relating to authorizing the Department of State Health Services to obtain criminal history record information for certain applicants for employment.

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:

- Sex offender management including supervision and global positioning satellite tracking.
- Sex offender recidivism rates.
- Sex offender registration and community notification.
- Sex offender residency restrictions.
- Outpatient sexually violent predator treatment program.
- Sexually violent predators with mental health diagnoses.
- Early termination from registration requirement
- High risk and low risk sex offenders
- Dynamic risk assessments for sex offenders.
- Criminal history information for certain applicants for employment.

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.
- Implications of the Federal Adam Walsh Act
- 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.

Out of State and International Contacts

The CSOT 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.
- Sex offenders and social networking sites
- 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 and actuarial norms.
- Violations of sex offender treatment
- 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 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 staff provided information on the management and containment of sex offenders at various conferences throughout the state.

Conferences

March 8-10, 2009, 17th Annual Conference on Management and Containment of Adult and Juvenile Sex Offenders. The CSOT hosted the annual conference in Austin, Texas.

February 14-16, 2010, 18th Annual Conference on the Management and Containment of Adult and Juvenile Sex Offenders. The CSOT hosted the annual conference in San Antonio, Texas

CSOT Meetings

The CSOT held ten public meetings during the biennium.

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

Texas Administrative Code 810 became effective October 22, 2006. Currently, the Council is under the rule revision process.

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 | 93 |
| FY 09 | 96 |
| FY 10 | 114 |
| Total | 520 |

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). 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-Correctional Institutional Division.

As of August 31, 2010, there were 175 sexually violent predators that have been committed under Health & Safety Code Chapter 841. Of the 175:

- 92 reside in the community.
- 75 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.
- 5 are deceased and are not counted in the total number of commitments.

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.

The program has protected the public from repeat sexual offenses by the civilly committed SVPs. To date, none of the SVPs committed to the program have been charged with or convicted of a new sexual crime, which represents a 0% sexual recidivism rate.

Thirty-eight percent, 68 SVPs, have committed a non-sexual offense and been returned to prison. Of the 68 SVPs:

- 68 had technical violations which were sentenced to the Texas Department of Criminal Justice-Correctional Institutional Division, State jail, served county time, or received probation.
4 of the 68 were charged with a new non-sexual felony criminal offense.

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 175 SVPs are males.
- Race
 - White- 91
 - Black- 50
 - Hispanic- 34

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

- Harris- 46%
- Tarrant- 23%
- Dallas- 12%
- El Paso- 11%
- Travis- 6%
- Bexar- 1%

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 2010, which resulted in 37 civil commitments. Fifty trials are projected for FY 2011 and FY 2012.

| | |
|--------------|--------------|
| 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 | 41 |
| FY 10 | 37 |
| FY 11 | 50 Projected |
| FY 12 | 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 2010 performance measures reflect that the outpatient Sex Offender Treatment/Supervision program cost the state an average of \$27,656 per SVP per year. Comparatively, other states that have inpatient SVP treatment programs report costs between \$70,000 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 2009-2011 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 2009 was \$3,035,884 and total program costs for FY 2009 was \$2,069,861. The total amount appropriated for FY 2010 was \$3,183,676 and the total program costs for FY 2010 was \$2,820,952. The total amount appropriated for FY 2011 is \$4,070,817. The funds are located in DSHS strategy D.4.1.7, Sex Offender Treatment/Supervision.

As of August 31, 2010, the program employed 12 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 2010 to supervise the increased SVP caseloads.

Major 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 82nd Legislative Session

The CSOTs Recommendations for Code of Criminal Procedures, Chapter 62

- Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. Amend by deleting the following:

[(a) The council by rule shall determine the minimum required registration period under 42 U.S.C. Section 14071 (*)Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law.]**

(b) After determining the minimum required registration period for each reportable conviction or adjudication under Subsection (a), the council shall compile and publish a list of reportable convictions or adjudications for which a person must register under this chapter. **[for a period that exceeds the minimum required registration period under federal law.]** Reenacted and amended by Acts 2005, 79th Leg., Ch. 1008, Sec. 1.01, eff. September 1, 2005.

Justification: In July 2006 President George Bush signed into law the federal Sex Offender Registration and Notification Act (SORNA) The act is cited as the Adam Walsh Protection and Safety Act (AWA) which superseded the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. This section requires the State to adhere to any federal law regarding registration whether or not the State formally signs it into law. Thus, it requires the State to comply with the Adam Walsh Child and Safety Protection Act of 2006.

- Code of Criminal Procedures, Art. 12.01. LIMITATIONS. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward: Amend by adding to read as follows:
 - (1) no limitation:
 - (A) murder and manslaughter;
 - (B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;
 - (C) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained;
 - (D) continuous sexual abuse of young child or children under Section 21.02, Penal Code;
 - (E) indecency with a child under Section 21.11, Penal Code; [or]
 - (F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person; or
 - (G) a violation of a civil commitment requirement imposed under Health & Safety Code, Section 841.082.

Justification: Under Sec. 841.085. CRIMINAL PENALTY; PROSECUTION OF OFFENSE. (a) A person commits an offense if, after having been adjudicated and civilly committed as a sexually violent predator under this chapter, the person violates a civil

commitment requirement imposed under Section 841.082. (b) An offense under this section is a felony of the third degree. Since a violation (i.e. absconding or failing to register as a sex offender) is not listed in CCP Chapter 12 the limitation for prosecution is three years from the date of the commission of the offense: all other felonies. Thus if SVP absconds and he or she is not arrested within three years, the SVP cannot be prosecuted for these offenses. Note: the exception that tolls the running of any statute is if the defendant leaves the state.

The CSOT's Recommendations regarding the Adam Walsh Protection and Safety Act

- The Council recommends that the State not implement AWA.

Justification: Implementing AWA will mean that sex offenders will be placed into a tier classification based on the title of their offense, rather than being classified by scientifically supported risk assessment methods. A research-based approach to risk assessment is a substantially better method of identifying high risk sex offenders than classifying them based on offense title. Implementing AWA will be costly as resources that could be used to monitor high risk offenders will be utilized unnecessarily with offenders who represent a low risk to re-offend. The federal government has not allocated any consistent funding to underwrite the substantial cost that the local governments would incur if Texas were to attempt to come into compliance with the Adam Walsh Act. The Austin Police Department has identified three areas that will be impacted by AWA as it relates to sex offender registration and notification. First, more crimes will require notification. Second, the length of registration for the vast majority of offenders will increase. Third, there will be an enormous increase in the number of times a registered offender will have to make a personal appearance at the police department. Currently 9.1% of registered offenders in the city of Austin are required to report quarterly. If AWA is implemented in Texas, that number will increase to 78%. This will increase the number of personal appearances to validate registration information from 1593 to 4433 in Austin alone, a 178% increase per year.

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 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.

The CSOT’s Recommendations for Changes in the Government Code

- Government Code. Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. Amend by adding to read as follows:
 - (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:
 - (3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;
 - (6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175[.] and
 - (7) a current or former employee responsible for the administration of Health & Safety Code 841, regardless of whether the current or former employee complies with Section 552.1175.

Sec. 552.1175. CONFIDENTIALITY OF ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR A PROSECUTOR'S OFFICE. (a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations

Code;

(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);

(7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure; [and]

(8) police officers and inspectors of the United States Federal Protective Service [.]
and

(9) current or former staff responsible for the administration of Health & Safety Code, 841.

Justification: Currently, staff that administer Health & Safety Code, Chapter 841 and supervise sexually violent predators are not covered under the exceptions unless they were a former TDCJ employee. This amendment would enhance the safety of staff and their family from extremely dangerous sexually violent predators from obtaining personal information subject to an open records request.