



CIVIL LAW UPDATE

By Allison Taylor
Executive Director of the Council on
Sex Offender Treatment

Civil commitments of sexually violent predators

Texas imposes the only outpatient treatment for civilly committed sexual offenders in the U.S. Here is some background on civil commitment and information in case you handle a commitment violation case in the future.

From February to September of 1980, James Richards, the “Freeway Rapist,” preyed upon at least six women. He drove alongside his victims and convinced them to pull over by indicating they were having car problems. He threatened them with a gun or an ice pick, then robbed and raped them. He received four 10-year sentences for sexual assault, two 10-year sentences for robbery, and one 20-year sentence for aggravated sexual assault. He was released on mandatory supervision in 1987. In 1992, he received nine years for indecency with a child.

Sexual offenses such as these result in significant physical and emotional distress to victims, and because sex offender behaviors are extremely resistant to change, sanctions to both punish and control deviant behaviors are neces-

sary to protect public safety. Sex offenders are an extremely heterogeneous mixture and do not fit into a standard profile but rather fall into numerous categories, from the voyeur, exhibitionist, statutory offender, incest offender, the pedophile, and the rapist, to the sexually violent predator. All of the rest may be ugly, but the SVP is in a class by himself.

They are not typical sex offenders. SVPs are repeat offenders at extremely high risk to re-offend. It is widely agreed that sex offenders cannot be “cured,” but the assumption that sexually violent predators cannot be treated in the community is not true; in fact, with specialized treatment and supervision, many can manage their behaviors.¹

Washington was the first state to civilly commit sexually violent predators (SVPs), followed by Kansas a few years

later.² The intent of civil commitment law is to enable states to contain a small group of very dangerous sex offenders who do not have the requisite mental disease or defect rendering them subject to the existing involuntary civil commitment statute.

Texas is unique. It is the only state whose civil commitment program is outpatient, instead of inpatient. (The legislature voted for that less expensive option in 1999.) Thirty sexually violent predators³ have been committed since the program’s inception, and 35 more are expected to join them in the next two years. And with more facilities contracted to house SVPs once committed, more Texas prosecutors and investigators will handle cases of commitment violations in the future. (See the sidebar, *opposite*, for how the commitment process works. It’s important to note that no Texas prosecutors outside the Special Prosecution Unit in Huntsville will ever try a civil commitment case. Rather, Texas prosecutors will start seeing more cases of commitment violations. Read on to find out more.) This article will fill in some blanks about civil commitment and the organization overseeing it, the Council on Sex Offender Treatment (CSOT).

Texas’ Council on Sex Offender Treatment

CSOT was created in 1983 by the 68th Legislature (Senate Bill 84) under the name the Interagency Council on Sex Offender Treatment, in response to the rising rate of sexual crimes and extremely high recidivism rates for untreated sexual offenders. The council receives



appropriation from the General Revenue Fund from the Texas Department of Health's Professional Licensing and Certification Division.

As administrator of the civil commitment program, the council utilizes extensive interagency coordination and cooperation, in which local prosecutors play a large role. The council conducts monthly update meetings regarding commitment cases, which include the council, Texas Department of Criminal Justice, Department of Public Safety, Special Prosecution Unit, and prosecutors from across the state.

These monthly meetings are a blessing to prosecutors handling commitment violation cases. Dayna Blazey, assistant district attorney in Travis County, is relieved to have guidance in these uncharted civil commitment waters. "At the monthly meetings in Austin, prosecutors from around the

state come to discuss problems," she says. "They are general brainstorming sessions on how we're going to deal with these issues. The prosecutors are pretty well networked; we know who's handling these cases across the state, and

there's communication back and forth."

Lynne Parsons, assistant district attorney in Harris County, agrees that the meetings are an invaluable networking tool. "They keep us up to date with

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The civil commitment process

1 A multidisciplinary team reviews and refers sex offenders for a behavioral abnormality assessment. If a behavioral abnormality exists, the case is referred to the Special Prosecution Unit (SPU).

2 If the SPU files a petition alleging predator status, an expert for both the prosecution and defense conduct another assessment which includes a clinical interview and psychological testing; they review risk assessments, institutional records, and medical and psychological reports. The Office of State Counsel for Offenders represents indigent persons at civil commitment proceedings.

3 Using the beyond a reasonable doubt standard, a judge or 12-person jury must unanimously agree that a person is a repeat sexually violent predator and suffers from a behavioral abnormality making him likely to engage in predatory sexual violence. A person who suffers from a behavioral abnormality as determined under this chapter does not have an unsound mind.

4 Civil commitment continues until it is determined that the SVP's behavioral abnormality has changed and he is no longer likely to engage in predatory sexual violence.

5 Upon entering the program, the SVP is assigned to a case manager, who is responsible for coordinating the SVP's treatment, supervision, and tracking.

6 The case manager conducts five to eight face-to-face contacts with the SVP and approximately 18 collateral contacts per month. S/he works closely with treatment providers, the Department of Public Safety, residential staff, parole officers (if applicable), local prosecuting attorneys, and the Texas Workforce Commission.

7 On an SVP's commitment and annually thereafter, the case manager must provide the SVP with written notification of his right to file with the court a petition for release without the case manager's authorization. The case manager may also file an authorized petition for release to the court, which prompts a hearing. The State once again must prove beyond a reasonable doubt that the SVP's behavioral abnormality has not changed.

8 The SVP is entitled to a biennial exam performed by an expert. In preparation for judicial review, the case manager provides a report of the biennial examination to the judge, who then conducts a review of the SVP's status. The SVP is entitled to representation but not to be present at the review.

9 The judge sets a hearing if s/he determines at the review that: a requirement imposed on the SVP should be modified; or probable cause to believe that the SVP's behavioral abnormality has changed to the extent that the SVP is no longer likely to engage in predatory sexual violence exists.

10 If the judge sets a hearing, the SVP and the State are entitled to an immediate examination of the SVP by an expert. Hearsay evidence is admissible if the judge considers it otherwise reliable. The SVP is entitled to be present and to have all constitutional protections as at the initial civil commitment proceedings. On the SVP's or prosecutor's request, the court shall conduct the hearing before a jury. The burden of proof at the hearing is on the State to prove beyond a reasonable doubt that the SVP's behavioral abnormality has not changed to the extent that the SVP is no longer likely to engage in predatory sexual violence.

Disposition of cases reviewed by the multidisciplinary team (MDT) (1999-June 2003)*

Offenders reviewed by the MDT	1,858
Referrals for a behavioral abnormality assessment	346
Offenders deemed ineligible	2
Expert assessments received	344
Assessments not referred to SPU	100
Assessments referred to SPU	244
SPU petitions declined	172
SPU petitions filed	62
Petitions pending review	10
Non-suited	18
Offenders pending trial	7
Offenders not committed	2
Offenders' cases abated	5
Offenders civilly committed	30

* Statistics from TDCJ's Programs and Services Division



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what's going on with the rest of the state and what other counties are doing," she says. And everyone is welcome to attend, even prosecutors in counties that don't deal with violations yet.

Civil commitment in Texas

In 1997, Senators Florence Shapiro (Plano) and John Whitmire (Houston) introduced legislation (Senate Bill 77) regarding sexually violent predators, but the bill died in committee. But interest in this legislation sparked the council to develop a background information packet for the legislature to consider when establishing a civil commitment program for Texas SVPs.

The council recommended a mental health model following the guidelines for outpatient and inpatient civil commitment in the state mental health programs and endorsed a treatment program based on rehabilitation and continued intensive treatment.⁴

On September 1, 1999, the governor signed Senate Bill 365, which established the first outpatient civil commitment program in the United States. It targets sexually violent predators recently released from prison who pose a serious risk to community safety or are at high risk to re-offend.

The civil commitment order is not affected by certain subsequent convictions, including a new felony conviction if a sentence is not imposed, conviction for a misdemeanor regardless of whether a sentence is imposed, and a judgment or verdict of not guilty by reason of insanity. The statutory duties the order imposes are only suspended for the duration of any confinement of a SVP who receives a conviction.⁵

Outpatient civil commitment incorporates intensive treatment, monitoring with high-technology global positioning satellite tracking, comprehensive case management, and Department of Public Safety surveillance.

Only registered sex offender treatment providers who contract with the council may assess and provide treatment. Sex offender treatment groups are offense-specific and limited to 10 offenders. Self-help, drug intervention, or time-limited treatment is used only as adjuncts to more comprehensive treatment. Typically, sex offenders on community supervision attend group treatment once a week and have one individual session per month. SVPs under civil commitment attend group therapy two times per week and have two individual sessions per month. SVPs are mandated to take polygraphs regarding their instant offense, sexual history, maintenance, and monitoring. Penile plethysmographs are utilized to assess sexual arousal. Sex offender treatment is multifaceted to include cognitive/behavioral approaches, arousal control, victim empathy, relapse prevention, biomedical approaches/psychopharmacological agents, increasing social competence, comorbid diagnosis, increasing support systems, and after-care.

Participation in treatment is not just showing up for group and individual sessions. Active participation includes compliance with a specific course of treatment and conditions of the treatment plan. SVPs who violate conditions of their treatment can be unsuccessfully discharged from group because of increased risk to the community.

Failure to comply with the commitment order can result in a third-degree

felony charge. A minor violation of the order may be that the SVP is well into his offense cycle and about to commit a new offense. Other violations include removing the ankle monitor. It's these violations that regular prosecutors handle now and in the future.

Inpatient vs. outpatient

Texas' outpatient program may appear to be a precarious endeavor to states that have committed millions of dollars to inpatient programs, where the belief is that SVPs cannot reside in communities without committing new offenses. However, the Texas program may be the most rehabilitative while maintaining the highest level of community safety.

There are a few similarities between Texas and other states' civil commitment programs. First, sex offenders are assessed by the state, and only the most predatory are referred to trial for civil commitment. Second, a trial is conducted, and sexually violent predators placed in the program are maintained on civil commitment indefinitely.⁶

But that's where the similarities end. In other states, civilly committed sex offenders are locked in a secure residential facility and can choose not to participate in sex offender treatment. The prognosis for rehabilitating sexually violent predators in a prison setting is poor; the treatment needs of this population are very long term; and the treatment for this population is very different than traditional treatment modalities.

In Texas, civilly committed sex offenders are allowed to transition back into the community where they are mandated to attend, participate in, and comply with intensive outpatient treatment and supervision. Failing to do so



resulting in a criminal charge (third-degree felony).

The success rate for offenders treated in an inpatient setting is about half of that for offenders treated in an outpatient setting. Of California's 427 and Wisconsin's 232 civilly committed individuals, 75 percent refuse treatment. David Cuppenheimer, director of the Sex Offender Treatment Program at Massachusetts Correctional Institute in

ways to stop them before acting) due to intensive external controls (i.e., a locked facility, security, etc.). Inpatient offenders do not have to contend with the normal stresses of the free world, the availability of alcohol or drugs, and inadvertent contact with potential victims. Offenders in inpatient treatment settings still face the obstacle of applying what they learn in treatment to life in the community.

of the outpatient treatment program in 1999, none of the SVPs released have been charged with or convicted of a new sexually violent offense.

If you have questions, you can reach the Council on Sex Offender Treatment may be reached at 512/834-4530 and online at www.tdh.state.tx.us/hcqs/plc/csot.htm.

Endnotes

1 Cole, Collier; Cory, David; McKenzie, Cecilia; Meyer, Walter; 1997, ATSA, Center on Sex Offender Management, "Policy Development for the Center of Sex Offending Behavior"; Tanner, Jim; DiLeo, Diane; Crapeau, Debbie; 2003, Sex Offender Law Report, vol. 4, No. 2, "Revisiting Improvements to Sex Offender Management."

2 Meyer, Walter; Molett, Maria; Richards, C. David; Arnold, Liles; Latham, Janet, International Journal of Offender Therapy and Comparative Criminology, "Outpatient Civil Commitment in Texas for Management and Treatment of Sexually Violent Predators: A Preliminary Report" (2003)

3 The state legislature has defined a sexually violent predator (SVP) as a repeat sexually violent person who commits an act directed toward a stranger; a casual acquaintance, or someone with an established relationship for the purpose of victimization. SVPs have been convicted of more than one sexually violent offense, such as indecency with a child, sexual assault, aggravated sexual assault, aggravated kidnapping with intent, burglary with intent, and any attempt, conspiracy, or solicitation of latter; and suffer from a behavioral abnormality that makes them likely to engage in future acts of predatory sexual violence. (Art. 4 Texas Health & Safety Code, Title 11, Chapter 841)

4 Meyer, Molett, Richards, Arnold, and Latham, 2003

5 Health & Safety Code Chapter 841.150

6 Ferrara, Matt (2000) "Contractor Handbook For the State of Texas Outpatient Sexually Violent Predator Treatment Program"

7 Salter, Jay (1997) "Sexually Violent Predators: What Happens After They've Served Time?"

8 Arizona, California, Florida, Iowa, Illinois, Kansas, Massachusetts, Minnesota, Missouri, North Dakota, New Jersey, South Carolina, Virginia, Washington, and Wisconsin

Cost comparison

The annual outpatient civil commitment cost is \$15,000–\$20,000 per client. (Texas' program was allocated \$800,000 for the 2004–05 fiscal year.) By comparison, annual inpatient treatment in 15 other states⁸ costs \$80,000–\$125,000 per offender.

Of the approximately 2,000 SVPs nationwide, less than four percent have been released from inpatient treatment. The average rate of civil commitment growth across the nation is 23 offenders per month, and as of April 2002, approximately 1,000 detainees were awaiting commitment trials. This realistically will result in escalating cost to the taxpayers in these states.

By comparison, as of July 15, 2003, 30 sexually violent predators have been civilly committed in Texas. Eleven are active in the community. Eighteen have been arrested for violations of the order of commitment, such as failing to participate in a specific course of treatment or global positioning satellite system violations. Of those arrested two have been committed to the state hospital. One is deceased. There are currently seven pending civil commitment trials. It is projected that 15 clients will be committed each year. Since the implementation

County of Residence* SVPs	# of
Harris	8
Travis	4
Dallas	3
Tarrant	3
Bexar	3
McLennan	2
Oklahoma City, OK	1**
El Paso	1
Undetermined SVPs in the Institutional Division whose residence has not been established	5

* County of residence is determined by private residence plan or contract facility availability
** SVP is deceased.

Norfolk, reported that attorneys routinely advise their clients to refuse treatment and avoid disclosure, which inhibits treatment.⁷ An outpatient program in which treatment is mandated, such as Texas' system, can potentially provide for more long-term community safety than inpatient programs.

In addition, treatment progress made in an inpatient setting does not readily transfer to the community because the offender does not have to develop internal controls (i.e., identifying triggers for deviant behaviors and