

# A HISTORY OF THE TEXAS CIVIL COMMITMENT PROGRAM

Derek W. Logue of OnceFallen.com, Written for use by txfacts.org



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### INTRODUCTION

*“Civil Commitment of Sex Offenders Pretends Prisoners Are Patients.”* – Headline by Jacob Sollum article in Reason Magazine<sup>1</sup>

Sex offense registries and civil commitment laws were created in the 1930s and 1940s during the previous wave of heightened sex panics that experts deem the “sexual psychopath era,” but fell out of favor in the 1960s and 1970s as states shifted to treatment-oriented programs. It is unclear if any specific case, political statement, or court ruling had inspired Texas to pass sex offense civil commitment laws, but in the 1980s and 1990s, a wave of sex offense panics, largely fueled by false claims of Satanic Ritual Abuse and the sensationalized media coverage of rare but tragic child murders (such as Adam Walsh) sparked a renewed interest in public sex offense registries and civil commitment statutes. Washington State passed both a sex offense registry and modern civil commitment<sup>2</sup> in 1990, which in turn provided a blueprint for other states seeking to pass civil commitment laws.

The evolution of the Texas civil commitment program has been more complex than civil commitment programs of other states. The Texas program initially separated from the other civil commitment states by offering outpatient treatment. The outpatient program initially seemed like a cost-effective and humane way to balance the rights of persons convicted of sexual offenses with a perceived need for public safety measures.

It is often said that “the road to hell is paved with good intentions.” The road to the Texas civil commitment program became riddled with numerous controversies such as the ease at which outpatient registrants were returned to prison for minor infractions, the challenges of finding housing for those in the outpatient program, and scandals perpetrated those in charge of the program. Actions taken by the Texas legislature were heavy-handed and upended the lives of hundreds of outpatient registrants and their families.

Eventually, Texas had created a lockdown facility just like every other state with a civil commitment program. Unlike the civil commitment programs in other states, the Texas civil commitment program does not even bother pretending that they are anything but a prison. Civilly committed patients are represented by attorneys in commitment hearings. The Texas Civil Commitment Center in Littlefield was built to be used as a prison. The “patients” are treated as prisoners, are called “inmates”, and program rule violations are criminal charges. (A change in Texas law in 2015 removed felony charges for most, but not all, rule violations.) If the Texas civil commitment looks like a prison and it acts like a prison, calls their

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<sup>1</sup> Jacob Sollum. “Civil Commitment of Sex Offenders Pretends Prisoners Are Patients.” Reason. 10 Feb. 2021. Accessed 2 June 2022 at <https://reason.com/2021/02/10/civil-commitment-of-sex-offenders-pretends-prisoners-are-patients/>

<sup>2</sup> See Community Protection Act of 1990 (Chapter 3, Laws of 1990). Online copy accessed 2 June 2022 at <https://leg.wa.gov/CodeReviser/documents/sessionlaw/1990c3.pdf>

wards “inmates,” detains their wards in a prison, and their detainees are charged with crimes for rules violations, then folks, that is a prison.

This article is intended to provide an overview of the history of the Texas civil commitment program as used specifically against persons convicted of sexual offenses as well as a summary of key controversies and ongoing failures of this controversial program.

## GLOSSARY OF TERMS USED IN THIS REPORT

**435th Judicial District Court:** A special court created in 2008 that handled civil commitment cases exclusively until 2015, when the state decentralized civil commitment proceedings.

**Companion Bill:** A bill filed in one legislative chamber that is identical or very similar to a bill filed in the other legislative chamber. Companion bills are used to expedite passage, as they provide a means for committee consideration of a measure to occur in both chambers simultaneously. A companion bill that has passed one chamber can then be substituted for the companion bill in the other chamber.

**Council on Sex Offender Treatment (CSOT):** A three-member group created in 1993 by the Texas Legislature to oversee treatment and civil commitment. This council still exists, but the primary management of the civil commitment program was given to the Office For Violent Sex Offender Management in 2011.

**House Bill (HB):** A bill introduced by the Texas House of Representatives. The bill number often includes the number of the Texas Legislature that introduced or passed the bill. The Texas legislative session is biennial (two years for example, the 2015-2016 legislature is the 84th regular session, or 84(R). In the footnotes, I post both the legislature number and the year was introduced or passed. Example: HB 29 (76(R), 1999)

**Interagency Council on Sex Offender Treatment (ICSOT):** An agency founded in 1983 to address sex offense treatment. Replaced by the Council on Sex Offender Treatment in 1993.

**Office for Violent Sex Offender Management (OVSOM):** The name of the of the government office running the Texas Civil Commitment Program; created in 2011, the OVSOM name was changed in 2015 to the Texas Civil commitment Office.

**Penile Plethysmograph (PPG):** Derogatorily known as a “peter meter/reader” this device measures blood flow to the penis, which presumably measures arousal to sexual stimuli.

**Polygraph:** Popularly known as the “lie detector,” this device measures multiple body functions (like heart rate or breathing.) Many believe that this device detects minute physiological changes if the subject is telling a lie. It should be noted however, that the use of lie detector data is not allowed as evidence in many US court proceedings, presumably because it cannot be trusted.

**Resolution:** A legislative procedure that allows quick changes to a bill without full approval through a subcommittee.

Senate Bill (SB): A bill introduced by the Texas Senate. The bill number often includes the number of the Texas Legislature that introduced or passed the bill. The Texas legislative session is biennial (two years for example, the 2015-2016 legislature is the 84th regular session, or 84(R). In the footnotes, I post both the legislature number and the year the bill was introduced or passed. Example: SB 1224 (76(R), 1999)

“Sexually Violent Predator” (SVP): The Texas Health and Safety Code §841.003 defines an SVP as (a) someone who is a “repeat” offender (i.e., is convicted, pleads nolo contendere, or adjudicated in juvenile court for multiple offenses if at least one offense is considered “violent”) AND (b) “suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.”

Special Prosecution Unit (SPU, often pronounced “spew”): A prosecutor’s office that handles specific cases such as civil commitment.

State Counsel for Offenders (SCFO): Provides representation to indigent defendants during civil commitment proceedings.

Suspension of the Rules: A legislative procedure allowing for a bill to advance without a vote or discussion in a full legislative hearing. While often used for non-controversial legislation, this has frequently been used to pass sex offense legislation.

Texas Civil Commitment Center (TCCC): The official name for the lockup facility in Littlefield.

Texas Civil Commitment Office (TCCO): The current name of the government office running the Texas civil commitment program

Texas Department of Criminal Justice (TDCJ): The state corrections/prisons department.

## THE OUTPATIENT PROGRAM (1999-2015)

The “Interagency Council on Sex Offender Treatment,” created in 1983, was the first state agency created to address the treatment of persons convicted of sexual offenses. According to a 1996 report, “The Council was composed of representatives of nine state criminal justice and health and human service agencies and three public members with expertise in the treatment of sex offenders. Its primary duty was to determine the need for a state-administered sex offender treatment program and to make recommendations about the nature of any such program and its funding requirements...”

“Over time, the state’s approach to sex offender treatment has changed to reflect more of a regulatory model to determine who may provide treatment to sex offenders. In 1989, the Legislature authorized the Interagency Council to establish and publish a registry of providers of mental health or medical services for the rehabilitation of sex offenders and to develop procedures and eligibility requirements for registration. For the first time, the Legislature provided funding for the Interagency Council through a rider in the appropriation for the Texas Department of Corrections.”

“In 1993, the Legislature created the current Council on Sex Offender Treatment (Council) as a three-member body, appointed by the Governor, to succeed the Interagency Council. The Interagency Council was recast to reflect changes in the organization of the state’s criminal justice and health and human

service agencies, and it was renamed the Interagency Advisory Committee to advise the Council on administering its duties. In addition, the Legislature expanded the Council's authority to regulate the use of the title, 'sex offender treatment provider,' by licensed mental health and medical practitioners who also meet the Council's eligibility requirements. Persons already listed in the existing provider registry were "grandfathered" under the new requirements. The Council was also required to set treatment standards that providers must meet to be included in the registry..."<sup>3</sup>

While the agency's early role was primarily to determine the need for a state-administered program for treating persons convicted of sexual offenses, its mission has expanded over the years. As noted in a 1996 report, "the Council on Sex Offender Treatment..., which succeeded the Interagency Council in 1993, is largely responsible for determining who may provide treatment to sex offenders and serving as a clearinghouse for information about treatment strategies. The Council is essentially a regulatory agency responsible for registering providers of sex offender treatment and providing training on the treatment and supervision of sex offenders."<sup>4</sup>

One state legislator would play a pivotal role in the establishment of the Texas civil commitment program. Texas Republican State Senator Florence Shapiro, a former schoolteacher and supporter of the Texas Sex Offense Registry, known in 1995 as "Ashley's Law." Shapiro played a key role in promoting Predator Panic in the mid-1990s. Speaking at a conference in Bellevue, Washington, Shapiro stated, "...putting the modern sex offender into the traditional criminal justice system is usually as successful as keeping a snake in a shoebox... Sex offenders are a very unique type of criminal. I like to say they have three very unique characteristics: They are the least likely to be cured; they are the most likely to reoffend; and they prey on the most innocent members of our society." She cites no evidence, but that statement was promoted by the US Bureau of Justice Statistics, which in turn was used by US Solicitor General Ted Olson when writing a brief in support of sex offense registries in *Smith v. Doe*. Shapiro's statements were cited again in 2006, when California voters passed Proposition 83, a statewide residency restriction ordinance.<sup>5</sup>

Shapiro was seemingly not involved with the first attempt at a Sexually Violent Predator (SVP) Act in 1995. House Bill 595 would have provided court-ordered mental health services for those individuals determined to be a SVP. Proceedings for these mental health treatment services for SVPs would have been governed by the Texas Mental Health Code, Chapter 574 of the Texas Health and Safety Code. However, the bill failed before the House Criminal Jurisprudence Committee.<sup>6</sup> Presumably Shapiro's lack of involvement with this bill may have been due to her focus on supporting Ashley's Law.

But, as noted by the Texas Civil Commitment Office, "In 1997, the 75th Texas Legislature considered Senate Bill 77 authored by Senators John Whitmire (D-Houston) and Florence Shapiro. SB 77 was

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<sup>3</sup> "Council on Sex Offender Treatment." Texas Sunset Advisory Commission. 1996., p. 5-6

<sup>4</sup> *Ibid.*, p. 1

<sup>5</sup> Eric Dexheimer. "How a Plano legislator's remarks bred strict sex offender laws." Austin American-Statesman. 3 Sept. 2016. Accessed 19 Apr. 2022 at <https://www.statesman.com/story/news/2016/09/03/how-a-plano-legislators-remarks-bred-strict-sex-offender-laws/10111219007/>

<sup>6</sup> "Agency History." TCCO. Retrieved 2 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/tcco-agency-history.pdf>

substantially similar to HB 595 from the previous legislative session and would have provided for the involuntary commitment of SVPs. The measure died in committee, partly because of potential constitutional issues concerning similar laws and lack of appropriations for the commitment of SVPs. The estimated costs were \$10.4 million in renovations for a 96-bed facility, \$3 million in assessments per year, and \$78,000 per year per sexually violent predator to provide care, treatment, security, food, other necessities, managerial support and administrative staff. A key question appeared to be whether it was constitutional to involuntarily commit people after completing their criminal sentences. The Legislature directed an interim committee to study SVP laws and the need for an SVP law in Texas.”<sup>7</sup>

The Council on Sex Offender Treatment began planning the creation of a civil commitment program in October 1998. The Council recommended “a mental health model following the guidelines used for outpatient or inpatient civil commitment in the state mental health programs. The council endorsed establishing a treatment program that is based in the humane philosophy that rehabilitation was definitely possible and that continued intensive treatment was critical for rehabilitation. Against a civil commitment program were those who felt it was using psychiatry and psychology for the purposes of criminal punishment. There was a lot of concern about the cost of the inpatient programs being used in other states. Also against the program was a strong mental health lobby that stated that sex offender treatment in the mental health system would impinge on the funds available for mental health treatment of others. In addition, there was no body of research at that time that supported the prediction of the most dangerous persons, those who would reoffend, or those who would respond to treatment.”<sup>8</sup>

On November 9th, 1998, Shapiro introduced Senate Bill 29 to the 76th Texas Legislature.<sup>9</sup> A companion bill, House Bill 544, was introduced by Henry Cuellar (D-Laredo), Sherri Greenburg (D-Austin), Peggy Hamric (R-Houston), Todd Staples (R-Palestine), and Senfronia Thompson (D-Houston) on January 6th, 1999, but HB 544 never left committee.<sup>10</sup>

Shapiro’s bill stated the legislature found that “a small but extremely dangerous group of sexually violent predators exists. The legislature finds that a sexually violent predator does not have a mental illness, disease, or condition that renders the predator appropriate for commitment under Subtitle C, Title 7, because that law is primarily intended to provide short-term treatment to a person with a serious mental disorder and then return that person to the community. In contrast to a person who is appropriate for involuntary commitment under Subtitle C, Title 7, a sexually violent predator generally has a behavioral abnormality that is not amenable to existing mental illness treatment modalities and that makes the predator likely to engage in sexually violent behavior. The legislature finds that a sexually violent predator is highly likely to engage in repeat act of predatory sexual violence. The existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk that a sexually violent

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<sup>7</sup> Ibid.

<sup>8</sup> Walter J. Meyer, III, Maria Molett, C. David Richards, Liles Arnold, & Janet Latham. “Outpatient Civil Commitment in Texas for Management and Treatment of Sexually Violent Predators: A Preliminary Report.” *International Journal of Offender Therapy and Comparative Criminology*, 47(4), 2003 396-406  
DOI: 10.1177/0306624X03253846 , page 396

<sup>9</sup> HB 29 (76(R), 1999) Legislative History. Retrieved 2 June 2022 at <https://capitol.texas.gov/billlookup/History.aspx?LegSess=76R&Bill=SB29>

<sup>10</sup> HB 544 (76(R), 1999) Legislative History. Retrieved 2 June 2022 at <https://capitol.texas.gov/billlookup/History.aspx?LegSess=76R&Bill=HB544>

predator poses to society. The legislature also finds that the prognosis for curing a sexually violent predator is poor, and research is vitally important to the improvement of the efficacy of treatment. The legislature also finds that the treatment needs of the population of sexually violent predators are long-term, and the treatment modalities for that population are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. The legislature further finds that a civil commitment procedure for the long-term care and treatment of sexually violent predators is necessary.”<sup>11</sup>

Shapiro’s bill would have established a “special commitment center” to indefinitely detain a committed individual “until the person's behavioral abnormality has changed to the extent that: (1) the person is no longer likely to engage in a predatory act of sexual violence on discharge from the special commitment center; or (2) it is safe to conditionally release the person to a less restrictive alternative.”<sup>12</sup>

Under HB 29, the state defined a “Sexually Violent Predator” subject to civil commitment as:

- (1) A “repeat sexually violent offender”, i.e., someone convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses for which the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person is convicted or pleaded guilty; and
- (2) Someone who suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. “Behavioral abnormality” means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.<sup>13</sup>

When Republican state senator James E. “Buster” Brown introduced Senate Bill 365 (a bill covering private prisons, prison administration, and mental illness programs for prisoners), there was no mention of “civil commitment” or “sex offenders.”<sup>14</sup> A companion bill to SB 365, House Bill 1705, introduced by Republican State Senator Brian McCall, also made no mention of a civil commitment program. But these two bills would eventually include provisions for a civil commitment program.

On March 11th, 1999, State Senator Shapiro introduced Senate Bill 1224, which was intended to require sex offense registration for those listed required to register in their home states before moving to Texas. This bill also never mentioned civil commitment when it was introduced.<sup>15</sup> But Shapiro introduced an amendment on May 6th, 1999 to SB 1224 which would include community notification for a Registrant

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<sup>11</sup> SB 29 (76(R), 1999) as introduced. Retrieved 2 June 2022 at <https://capitol.texas.gov/tlodocs/76R/billtext/html/SB00029I.htm>

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> SB 365 (76(R), 1999) as introduced. Retrieved 1 June 2022 at <https://capitol.texas.gov/tlodocs/76R/billtext/html/SB00365I.htm>

<sup>15</sup> SB 1224 (76(R), 1999) as introduced. Retrieved 1 June 2022 at <https://capitol.texas.gov/tlodocs/76R/billtext/html/SB01224I.htm>



who was “civilly committed as a sexually violent predator” whether it was in Texas or another state.<sup>16</sup> On the same day, Shapiro amended SB 29, removing the “special civil commitment center” requirement, replacing it with an “outpatient” program.<sup>17</sup>

Brown introduced Senate Resolution 1159 on May 27th, 1999. This resolution would suspend Senate rules “to enable the conference committee appointed to resolve the differences between the house and senate versions of S.B. No. 365,” creating rules for a state civil commitment program. Shapiro’s SB 29 in the latest form was incorporated into SB 365 and passed by the Senate.<sup>18</sup>

House Bill 365 was signed by Republican Texas Governor George W. Bush on June 19th, 1999 and became effective on September 1st, 1999. With that, Texas became one of three states that passed a civil commitment statute in 1999, bringing the total of states with civil commitment programs to 15.<sup>19</sup>

As noted in a 2003 report, “During the 1999 legislative session, the Council on Sex Offender Treatment was charged with establishing a case management system for the treatment and supervision of the sexually violent predator. A predatory act is defined as an act that is committed for the purpose of victimization and that is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or a person with whom a relationship has been established. Sexually violent offenses are defined as indecency with a child (sexual contact), sexual assault, aggravated sexual assault, aggravated kidnapping with intent to sexually abuse or violate, and burglary with intent to commit a felony in one of the above. A sexually violent predator is defined as a person who suffers from a behavioral abnormality that makes a person likely to engage in an act of predatory sexual violence. They also must be a repeat sexually violent offender, which is a person convicted of more than one sexually violent offense for which a sentence is imposed for at least one of the offenses.”<sup>20</sup>

Once a person was determined to be eligible for civil commitment, the person was to be subject to an outpatient program “designed to provide intensive monitoring and cognitive behavioral treatment.” The program utilized a “case management” model. The case manager leads a “team” that is “composed of the case manager (who provides supervision), the treatment provider (who provides treatment), a representative of the Department of Public Safety (which provides global positioning satellite monitoring of the individual), and other adjunct or interim members (who provide other professional services to the individual, such as a primary care physician, psychiatrist, polygrapher, penile plethysmographer, or other mental health professionals).”<sup>21</sup>

The Council soon recognized the difficulties of providing suitable housing due to a host of new restrictions following the establishment of the public registry. “Housing is a particularly difficult problem

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<sup>16</sup> SB 1224 (76(R), 1999) Amendment F2, Retrieved 1 June 2022 at <https://capitol.texas.gov/tlodocs/76R/amendments/html/SB01224S2F2.HTM>

<sup>17</sup> SB 29 (76(R), 1999) Amendment F1. Accessed 2 June 2022 at <https://capitol.texas.gov/tlodocs/76R/amendments/html/SB00029S2F1.HTM>

<sup>18</sup> SR 1159 (76(R), 1999). History. Accessed 2 June 2022 at <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=76R&Bill=SR1159>

<sup>19</sup> Supra, “Outpatient Civil Commitment” 2003, p. 397

<sup>20</sup> Ibid., p. 399

<sup>21</sup> Ibid., p. 400

in the communities to which the sexually violent predator has been released. In many instances, a halfway house or commercial housing is not available. The council is prepared to purchase the appropriate supervised housing for the offender in the community, but most communities have rejected the use of halfway houses for sexually violent predators. Therefore, the offender often goes to live with his family. Sometimes the family's home location is not acceptable and the council has required the family to move to an acceptable location."<sup>22</sup>

The outpatient treatment curriculum was divided into five stages and was anticipated to take about 5 years to complete the entire treatment cycle.<sup>23</sup> The program also was designed to provide a biennial review (i.e., every two years); both the treatment provider and client must petition the court for a hearing requesting termination of civil commitment before a hearing is granted. But by 2003, only one petition had reached the courts, and that petition was rejected.<sup>24</sup>

By October 1, 2002, 1526 of the roughly 4000 persons estimated as eligible for civil commitment were referred to a "team," 302 of which were targeted for "expert assessment." Of those 302 referrals, 294 were deemed eligible, 2 were deemed ineligible, and 6 were not assessed by an expert. The Texas Department of Criminal Justice referred 210 to the "Special Prosecution Unit," and of those, 51 petitions were filed, leading to 21 commitments.<sup>25</sup>

The 2003 report concluded that the outpatient treatment program was a "huge savings in cost" (the program costs were under \$10k/year per prisoner) but noted many were simply being returned to prison for minor infractions. Still, the Texas program was touted as having other advantages, including "protection of civil rights" (shielding the state from lawsuits), intense surveillance through GPS monitoring and active case management, and having standards of treatment model, leading to an optimistic conclusion the Texas model could become the civil commitment model for all states.<sup>26</sup>

State Senator Florence Shapiro initially wanted a lockdown facility in 1999 but was rejected. In 2005, Shapiro filed Senate Bill 912, which added a provision that "the civilly committed can only live in a halfway house approved by the Council on Sex Offender Treatment. Currently (*sic*) law requires the order to state the required residence for the sexually violent predator. However, sometimes a court will allow the sexually violent predator to live in a remote area where there are no feasible resources to manage the Predator." This provision was not initially in the bill, but added in a committee substitution on April 13th, 2005.<sup>27</sup> Similar language was added to a companion bill, House Bill 1921.<sup>28</sup> Governor Rick Perry would sign the bill into law on June 17th, 2005.<sup>29</sup>

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<sup>22</sup> Ibid., p. 401

<sup>23</sup> Ibid., p. 401

<sup>24</sup> Ibid., p. 402

<sup>25</sup> Ibid., p. 402-403

<sup>26</sup> Ibid., p. 403-404

<sup>27</sup> C.S.S.B. 912 (79(R), 2005). Bill Analysis. 13 Apr. 2005. Accessed 2 June 2022 at <https://capitol.texas.gov/tlodocs/79R/analysis/pdf/SB00912S.pdf>

<sup>28</sup> See C.S.H.B. 1921 (79(R), 2005). Accessed 2 June 2022 at <https://capitol.texas.gov/tlodocs/79R/billtext/pdf/HB01921H.pdf>

<sup>29</sup> SB 912 (79(R), 2005). Accessed 2 June 2022. <https://capitol.texas.gov/billlookup/History.aspx?LegSess=79R&Bill=SB912>

As expected, a legal challenge was filed, but in 2005, the Texas Supreme Court upheld the constitutionality of the original SVPA in the case of *In re Commitment of Fisher*, 164 S.W.3d 637 (Tex. 2005). The court highlighted that the SVPA was less restrictive than other states' schemes as it permitted civilly committed persons "to live at home with their families." Id. at 652. Although the court had concerns with the "severe criminal penalties" for violations, it concluded that the SVPA's civil commitment scheme was "rationally connected" to the non-punitive purposes of supervision and treatment of civilly committed persons. Id. at 652, 656.<sup>30</sup>

The 2007 legislative session was particularly active. State Senator Jeff Wentworth (R-San Antonio) and Tommy Williams (R- The Woodlands) authored Senate Bill 1951, which would create a new district court to specifically handle sex offense civil commitment cases. The 435th District Court was to be established in Montgomery County, just north of Houston. Senate Bill 1951 was signed by Governor Rick Perry on June 15th, 2007.<sup>31</sup> Two bills, HB 2034 by Representative Kirk England with SB 1198 by Senator Florence Shapiro amended Health & Safety Code, Chapter 841, to clarify that the division of the Special Prosecutions Unit (SPU) responsible for civil commitment trials is a civil division. The bill allowed the local prosecuting attorney to request SPU assist in a violation trial and that failure to comply with civil commitment may be prosecuted in the county of violation or Montgomery County.<sup>32</sup> The bills combined to create a separate civil commitment bill and dedicate a "special" prosecutor's office specifically for handling civil commitment cases.

Shapiro tried unsuccessfully to pass bills in 2007 (SB 1741) and 2009 (SB 2037) that would have established a new bureaucratic office. In 2011, Shapiro finally succeeded in passing a bill (SB166, along with the companion bill introduced by Republican State Representative Jerry Madden) which added Chapter 420A to the Government Code. This established the "Office of Violent Sex Offender Management" (OVSOM) and would take over placement duties from the Council on Sex Offender Treatment. Governor Rick Perry signed the Shapiro bill on June 17th, 2011 and the bill became effective on September 1st, 2011.<sup>33</sup>

## GROWING CONTROVERSIES OF THE HYBRID "OUTPATIENT" PROGRAM

Despite being heralded as an innovative and cost-effective strategy to offer treatment to those convicted of sexual offenses, the program suffered from questions of efficacy and constitutionality.

### *Texas "Halfway Houses" Were Halfway to Prison*

It seems like the moment the original civil commitment law passed, Texas began a slow crawl towards the Shapiro's original goal of creating a shadow prison. The San Antonio Express-News reported in 2014 that, "In the early years of the program, many offenders who were allowed to live at home under

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<sup>30</sup> As noted in *Brown v. Taylor*, No. 16-11644 (5th Cir. 2018), p. 3

<sup>31</sup> SB 1951 (80(R), 2007) Bill History. Accessed 3 June 2022 at <https://capitol.texas.gov/billlookup/History.aspx?LegSess=80R&Bill=SB1951>

<sup>32</sup> *Supra.*, TCCO Agency History.

<sup>33</sup> *Supra.*, "TCCO Agency History."

supervision were returned to halfway houses and jails in 2004, under a ‘No More Victims’ policy that determined the safest method was to keep them in state-contracted residential facilities.”<sup>34</sup> The passage of SB 912 in 2005 formally shifted the full burden of finding housing to the state to find halfway houses that met the strict criteria of the Texas civil commitment statutes. Even before Shapiro passed SB 912, Texas was already “halfway” towards the goal of making civil commitment an extension of prison through the establishment of halfway houses run by private prison companies.

Halfway houses were scarce for those in the outpatient civil commitment program because the clients were high-profile cases with community notification policies that led to public outrage. The few halfway houses that were open to accepting committed persons were not ideal for returning citizens. As reported by the Prison Legal News in 2006, “Restrictions at the Wayback House (an approved transitional home) are strict and conditions harsh. The men sleep seven to a room in an old converted hotel in an industrial part of Dallas. They are not allowed to leave the halfway house without permission and are required to take drug screenings, sex offender treatment, lie detector tests and sexual arousal tests in which a device is attached to their penises while they are shown photos or videos of simulated sex offenses. Simple liberties such as working, drinking a beer, riding a bus or watching cable TV are typically forbidden. They may not even be allowed to visit or receive visits from friends and relatives, even if the potential visitor is sick and/or elderly. They may be prosecuted as violating civil commitment--a third-degree felony--for violations such as writing a state prisoner without authorization or leaving an angry phone message.” The executive director of the Texas Council on Sex Offender Treatment (TCSOT) assured reporters that the Texas program was safe and cost-effective. In 2006, the Texas civil commitment program has a cost of only half a million a year compared to the costs accrued by Florida (\$22.6 million) and California (\$45.5 million).<sup>35</sup>

The high turnover rate among those in civil commitment was largely overlooked by the low re-offense rates among those in the civil commitment program. Saint Louis Today reported in 2013 that while none of the 303 patients in the Texas Civil Commitment program have been released and some have been sent back to prison (presumably under the Texas HSC §841.085), none were returned for a sex offense. Allison Taylor, executive director of the Texas Office of Violent Sex Offender Management, touted this as a major success, stating, “Over 10 years now, it’s really amazing that we haven’t had a new sexual offense with the dangerous population that we are dealing with. We are being very proactive... Knock on wood, I am kind of amazed myself because of the population we deal with.”<sup>36</sup>

But soon after this interview, the halfway house scheme began to unravel. As noted in a February 2016 report by grassrootsleadership.org, “Texas worked with two private companies to provide housing for the outpatient civil commitment program: Avalon Corrections (since purchased by Corrections Corporation

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<sup>34</sup> Mike Ward & Anita Hassan. “State may turn to lockups to house civilly committed sex offenders.” San Antonio Express-News. 3 July 2014. Accessed 3 June 2014 at <https://www.expressnews.com/news/local/article/State-may-turn-to-lockups-to-house-civilly-5599551.php>

<sup>35</sup> Matthew T. Clarke. “Unique Texas Sexual Predator Civil Commitment Has Successes/Failures.” Prison Legal News. 15 Nov. 2006. Retrieved on 1 June 2022 at <https://www.prisonlegalnews.org/news/2006/nov/15/unique-texas-sexual-predator-civil-commitment-has-successesfailures/>

<sup>36</sup> Jesse Bogan. “A lone star in dealing with sexual predators.” St. Louis Today. 31 Aug. 2013. Retrieved 20 Apr. 2022 at [https://www.stltoday.com/news/local/crime-and-courts/a-lone-star-in-dealing-with-sexual-predators/article\\_fcfe08cb-7401-5c2b-865c-8aace15f575c.html](https://www.stltoday.com/news/local/crime-and-courts/a-lone-star-in-dealing-with-sexual-predators/article_fcfe08cb-7401-5c2b-865c-8aace15f575c.html)

of America) and GEO Group. Rather than entering into contracts with these companies, the Office of Violent Sex Offender Management (OVSOM) used memorandums of understanding (MOU) to provide housing service which totaled almost \$4 million between 2012 and 2014. Due to the lax requirements associated with an MOU, it is no surprise that problems arose. In the summer of 2014, Avalon threatened to release 67 men under their supervision if the state refused to increase their pay from \$44 per day per person to \$77 per day and GEO Group indicated they would not renew their contract. In addition, the OVSOM received numerous community complaints when they relocated a number of their clients to an Acres Homes boarding house, an east Austin neighborhood, and then secretly planned to relocate to a remote location in Liberty County - all without notifying residents and community members. Then, the state released a RFP for 'Community Residential Facility(s) to provide housing and related services for violent sex offenders who have been civilly committed.' They were hoping to make a final award in October 2014."<sup>37</sup>

In a two-page letter, Avalon complained it was becoming involved in increased litigation filed by committed persons and that its employees had to travel from El Paso to Montgomery County to the sole Texas court that handles those cases. Avalon also complained about the OVSOM's "lack of communication, support, and (the) secretiveness (of the OVSOM program)," and "recent scathing media and political criticism of OVSOM, that has been disseminated throughout Texas." Avalon stated, "Sexually violent offenders have become a lightning rod and any issue involving them is a potential public relations disaster."<sup>38</sup>

Allison Taylor, head of the program since 2003, resigned on May 1st, 2014. In the week before her resignation, the agency's presiding officer and board chair, Dan Powers, a Collin County child advocacy official, resigned. Taylor and the agency's second-in-command, Deborah Morgan, abruptly went on paid leave, leaving operations to lower-level staff. Senate Criminal Justice Committee Chairman John Whitmire, D-Houston, applauded the resignation. Whitmore had openly criticized the OVSOM as having a "total lack of transparency" and that it "has been out of control for some time." Nicolas Hughes, a Harris County assistant public defender who has represented several offenders in the program hoped the change would be positive but remained skeptical. Hughes told the Houston Chronicle, "Right now, the board seems to be dominated by pro-prosecution interests... I remain doubtful that the program will be run ethically or constitutionally."<sup>39</sup>

### *Criminalizing Minor Violations of Civil Commitment Rules*

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<sup>37</sup> Cate Graziani & Eshe Cole. "INCORRECT CARE: A Prison Profiteer Turns Care into Confinement. Grassroots Leadership. Feb. 2016. p. 11-12. Accessed 3 March 2022 at

[https://grassrootsleadership.org/sites/default/files/reports/incorrect\\_care\\_grassrootsleadership\\_2016.pdf](https://grassrootsleadership.org/sites/default/files/reports/incorrect_care_grassrootsleadership_2016.pdf)

<sup>38</sup> Mike Ward & Anita Hassan. "Company demands Texas remove sex offenders from halfway houses." Houston Chronicle. 1 July 2014. Accessed 3 June 2022 at

<https://www.houstonchronicle.com/politics/texas/article/Company-demands-Texas-remove-sex-offenders-from-5594185.php>

<sup>39</sup> Mike Ward & Anita Hassan. "Embattled sex offender agency director quits." Houston Chronicle. 1 May 2014. Accessed 3 June at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Embattled-sex-offender-agency-director-quits-5447049.php>

Since there were so few “halfway houses” considered “acceptable” by the OVSOM, the “solution” was simply to enforce the criminalization of minor infractions to open up beds for newly committed individuals.

Returns to prison on minor infractions of the civil commitment rules were a major issue that largely went overlooked years, but were predicted to be a problem from the establishment of the civil commitment statutes in 1999. In a report for the Voice for the Defense magazine, David P. O’Neil, proved a fictional scenario of a man named “Joe.” Joe, at the urging of his attorney and with the fear of facing life in prison, accepted a plea deal. If Joe went to trial, Joe would have been portrayed as a “sexual predator of the worst kind” for “victimizing two innocent 14-year-old girls.” Joe had a previous conviction for credit card theft, which presumably would enhance his sentence. But after his guilty plea was finalized, Texas passed the civil commitment law. “While Joe is commiserating over his present woes, he is told to consider himself fortunate that he is not living in one of the handful of states that civilly commits sexually violent predators. As he is counting this blessing, Joe is unaware that under the new Texas SVP law a technical violation of any of the terms of supervision constitutes a third degree felony, punishable (if the state alleges and proves Joe's two prior final convictions) by, a minimum of 25 and a maximum of 99 years in prison. (TEX. PEN CODE ANN. § 12.42(d)).”<sup>40</sup>

Unlike other programs, violating a rule of the civil commitment program is a criminal offense. Texas Health and Safety Code §841.085 stated in 2007, “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.”<sup>41</sup>

A man named Edward Russell was among those who were criminally charged with violation of the civil commitment program. Edward Russell was specifically charged with the following rule violations:

1. “Failing to participate and comply with a specific course of treatment by failing to follow the written standard requirements of the treatment plan of the OVSOM by failing to keep his thought journal (three counts); failing to participate and comply with a specific course of treatment by failing to follow the written standard requirements of the treatment plan of the OVSOM by failing to complete a “high risk” plan and “what if” assignment (one count);
2. Failing to abide by the written global positioning tracking service requirements ... provided by the case manager by separating from a miniature tracking device (two counts);
3. Failing to participate in and comply with a specific course of treatment by failing to follow the written standard requirements of the treatment plan of the OVSOM by engaging in anonymous or casual sex (two counts);
4. Failing to participate in and comply with a specific course of treatment determined by the OVSOM by failing to follow the written standard requirements of the treatment plan of the OVSOM by

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<sup>40</sup> David P. O’Neil. “Civil Commitment of Sexually Violent Predators: Indeterminate Life Sentencing.” Voice For The Defense, September 1999, p. 11. Retrieved 1 June 2022 at [https://www.voiceforthedefenseonline.com/newsletters/1999/1999\\_09.pdf](https://www.voiceforthedefenseonline.com/newsletters/1999/1999_09.pdf)

<sup>41</sup> See HB 2034 (80(R), 2007). Accessed 6 June 2022 at <https://capitol.texas.gov/tlodocs/80R/billtext/html/HB02034F.HTM>

engaging in deviant masturbation as set out in the treatment behavior contract requirements by masturbating to the thoughts of a male child (one count);

5. Failing to participate in and comply with a specific course of treatment by failing to follow the written standard requirements of the treatment plan of the OVSOM by failing to take prescribed medication as directed by the attending physician or psychiatrist (one count); and
6. Failing to participate in and comply with a specific course of treatment by failing to follow the written additional supervision requirements of the treatment plan of the OVSOM by communicating with a halfway house resident in a manner considered to be obscene, threatening, or harassing (one count).”<sup>42</sup>

As noted by the prosecutor in Russell’s case (who wrote anonymously):

“Within a month of arriving at the Avalon Half Way house, Russell committed several violations, which ranged from not taking his prescribed medication to having casual or anonymous sex. Again, though these actions are not illegal to the average law-abiding person, the importance of complying with the conditions of his civil commitment was clearly spelled out in Russell’s order... Were we really going to prosecute a criminal who actually served his full prison term... for not doing his homework and cussing? ... Russell was charged with three counts of failing to complete his thought journal; two counts of separating from his Global Positioning Service (GPS); one count of failing to take prescribed medication; one count of having casual or anonymous sex; one count of using obscene or threatening language; one count of masturbating to the thought of little boys; and the final and most important count: his discharge from treatment...”

“The jury came back in 45 minutes and handed down the maximum on each count: 20 years. I always watch how a defendant reacts to a verdict. Over the years, I have seen grown men break down into tears, pass out, become angry, fake heart attacks, and cry for their mothers. Russell had no reaction; he just stood there. As Alana and I left the courtroom, we started talking about the verdict and Russell’s reaction (or lack thereof). We both agreed that in reality, TDCJ is easier for Russell than civil commitment. Within prison regulations, he can masturbate, doesn’t have to keep a thought journal, and isn’t attached to a GPS device. When he is released from prison and once again civilly committed, I have no doubt he will end up back at the defense table. My hope is for Russell to stay in prison where he belongs.” The prosecutor adds a note at the end that those in the program “prefer to watch *The Suite Life of Zach and Cody*” while most men prefer ESPN.<sup>43</sup>

The most recent development in Russell’s appeals, a court order issued on November 8th, 2017, overturned at least some of Russell’s convictions:

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<sup>42</sup> Russell v. Davis, 297 F. Supp. 3d 639 (2017). Footnote 2.

<sup>43</sup> “Criminal punishment for violating a civil commitment order.” The Prosecutor. January-February 2012, Volume 42, No. 1. An online copy was accessed on 2 June 2022 at <https://www.tdca.com/journal/criminal-punishment-for-violating-a-civil-commitment-order/>

“Although § 841.082(a)(1), (2), (3), (5), (6), (7), and (8), provide clearly defined requirements reasonably related to the purpose of the statutory scheme and § 841.082(a)(9) allows the judge to impose requirements as necessary, §841.082(a)(4), “requiring the person’s participation in and compliance with a specific course of treatment,” is ambiguous. The phrase “specific course of treatment” is not defined in the statutory scheme and does not provide an ordinary person fair notice of what conduct it punishes. See *Kolender*, 461 US at 361. How would an ordinary person go about deciding what a “specific course of treatment “involves or understand that failing to keep a “thought journal,” failing to complete a “high risk plan” or “what if” assignment, engaging in anonymous or casual sex, or masturbating to the thoughts of a male child is potentially unlawful? Clearly, the “specific course of treatment” for any person must be decided by professionals specifically trained in the area and may be subject to change over time. Thus, the problem is not what the provision is designed to prohibit, but what it actually subjects to criminal penalty without notice.”

“Therefore, the Court concludes that prior § 841.085 and §841.082(4) of the Texas Health and Safety Code under which Petitioner was convicted are overly vague...This conclusion is further reinforced by the state legislature’s subsequent revision of § 841.085 to decriminalize the failure to abide by a similar provision in the revised statute “requiring the person’s participation in and compliance with the sex offender treatment program provided by the office and compliance with all written requirements imposed by the office.” See TEX. HEALTH & SAFETY CODE ANN. §§ 841.082(a)(3), 841.085 (West 2017).”

“For the reasons discussed, Petitioner’s petition for writ of habeas corpus is GRANTED as to Petitioner’s convictions under §§841.085 and 841.082(a)(4), which are void for vagueness. Therefore, the convictions and sentences for the offenses resulting from a violation of §841.082(a)(4) are VACATED. In all other respects, the petition for writ of habeas corpus is DENIED.”<sup>44</sup>

Scott Pawgan, a Conroe attorney representing civil commitment candidates, told the Houston Chronicle, “This process has been sterilized by the state to the point where it favors getting people into this system and keeping them there forever.” As noted in the Houston Chronicle, “Agency reports show that from 1999 to 2012, no one appears to have graduated. Eight died... (Law professor Eric) Janus said Texas’ ability to charge the civil-commitment offenders with a third-degree felony for violating the rules ‘has always struck me as a highly problematic and a highly distinctive part of the Texas law.’ An agency report states that from 1999 to 2012, 44 percent of the offenders have gone back to prison for rules violations. ‘What they’ve done in a sense is create a private criminal law code for these people, that they’ve criminalized behavior that for anybody else is not a crime, that it (Texas) seems to mix and match the civil and criminal (laws) in a very problematic way,’ he said.”<sup>45</sup>

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<sup>44</sup> Russell v. Davis, 297 F. Supp. 3d 639 (2017). As discussed later in this article, a 2015 bill decriminalized program rule violations as felony charges.

<sup>45</sup> Mike Ward & Anita Hassan. “For sex offenders who completed their sentences, ‘the only way out appears to be to die’.” Houston Chronicle. 26 Apr. 2014. Accessed 3 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/houston/article/For-sex-offenders-who-completed-their-sentences-5432609.php>



In 2015, the Houston Chronicle reported that the OVSOM “created a revolving door to avoid a shortage of bedspace, often using minor rule infractions as grounds to send its charges back to prison, sometimes for life.” State Senator Whitmire told the Chronicle, “There’s no question to me that they revoked more people when they ran out of beds, so they could continue committing people to the program. That’s absolutely not the way this program was supposed to work.” Of the 180 men returned to prison since the program began, only 13 had returned on new crimes rather than technical violations.<sup>46</sup>

“Al Wilson, a former parole officer who worked as a case manager for the OVSOM for 18 months, starting in 2009, did not recall managers ever talking about a bed shortage. However, Wilson, who believes he was fired because he would not unfairly cite an offender under his supervision, said there was pressure to cite the men in the program for even the most minor infractions. ‘In my opinion, they made it really difficult to succeed in the program,’ he said. ‘There was always the pressure that if they did anything they thought was wrong, they wanted it documented.’”<sup>47</sup>

A Houston Chronicle review of court records showed that rules violations can include failing to keep up entries in one’s “thought journal,” having “unapproved” sex fantasies, yelling in what is deemed an “aggressive manner,” making inappropriate jokes or comments, not taking medication or failing to charge their ankle monitors for two consecutive hours twice a day. In one extreme case, a civilly committed person was six minutes late returning to his hallway house. He had been stuck standing in line at a local clinic, waiting to get prescriptions for his heart and blood pressure medications refilled. The civilly committed person was charged and convicted for violating the rules and sent back to prison with a life sentence. The OVSOM justified the heavy-handed ruling by blaming the committed man for ignoring instructions to hold off on filling his prescriptions. During the trial, prosecutors emphasized the SVP label slapped onto the committed man and even brought in one of his alleged victims to testify during the sentencing phase.<sup>48</sup>

Another committed man was sent back to prison after his ankle monitor slipped off during a game of basketball despite following procedure and immediately notified officials. Officials responded that the committed man should not have been playing basketball.<sup>49</sup>

*The 435th Judicial District Court, the Special Prosecutor Unit, and Judge Michael Seiler*

The creation of a dedicated and centralized civil commitment court and prosecutor’s office played a significant role in creating a culture of hatred and corruption within the Texas civil commitment scheme.

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<sup>46</sup> Mike Ward & Anita Hassan. “Sex offenders back to prison to make room in treatment program.” Houston Chronicle. 15 Feb. 2015. Accessed 3 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/texas/article/Sex-offenders-back-to-prison-to-make-room-in-6082766.php>

<sup>47</sup> Ibid.

<sup>48</sup> Anita Hassan & Mike Ward. “Critics say Texas’ sex crime rehab program aims to reimprison offenders.” Houston Chronicle. 3 Jan. 2015. Accessed 3 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Critics-say-Texas-sex-crime-rehab-program-aims-5982660.php>

<sup>49</sup> Matthew Clarke. “Texas Sex Offender Oversight Agency Faces Investigations, Calls for Reform.” Prison Legal News. 4 Mar. 2015. Accessed 3 June 2022 at <https://www.prisonlegalnews.org/news/2015/mar/4/texas-sex-offender-oversight-agency-faces-investigations-calls-reform/>

Even if this “separate but equal” system of “justice” was created with good intentions, the end result created an insurmountable obstacle for anyone unfortunate to have been caught up in the web. The biased air of specialized civil commitment courts heavily influence juries to condemn defendants in civil commitment court. In one survey of 153 jurors from 14 actual SVP hearings, most (81.7%) “considered a 15% estimated chance of recidivism to mean that the respondent was ‘likely’ to reoffend, and many (53.6%) even considered a 1% chance to indicate likely re-offense. Jurors who heard lower risk estimates in trials were more likely to report that a low chance of recidivism (as low as 1%) indicated an offender was likely to reoffend. Results suggest that jurors view risk more in terms of the severity of potential harm than in terms of strict statistical probability. Results also suggest that when laws give jurors discretion to define tolerable risk, jurors consider even a statistically low degree of risk intolerable.”<sup>50</sup>

Jon English exemplifies the typical attitude of these special prosecutors. In Prosecutor English’s Twitter bio (@plowjon), English describes himself as a “Supposed former infatuation junkie/ singer/ songwriter turned prosecutor; Special Prosecution Unit. Yes, I have a Soundcloud.”<sup>51</sup>

Trying to write humorously about a week of his experiences as an SPU prosecutor for the Texas Prosecutor journal, English proclaims, “In a nutshell, we are the attorneys who prosecute crimes committed on property owned or operated by the Texas Department of Criminal Justice (TDCJ) or the Texas Juvenile Justice Department (TJJD), and all of the civil commitment cases involving sex offenders throughout the state... (Y)ou never, ever pronounce our acronym as ‘spew.’ It’s S-P-U. We can call ourselves ‘spew’ if we want to, but other people can’t... If the SPU is the Justice League, SCFO (which you can, and should, pronounce SKO-fo) is the Legion of Doom. Not because they are evil supervillains who are bent on world domination, but because they are the publicly compensated defense attorneys for evil supervillains who are bent on world domination. (SCFO stands for State Counsel for Offenders, a public defender’s office.) Things often hit a snag when a ‘free-world’ attorney gets thrown into the mix. This happens when an inmate decides to fire SCFO or when a case involves a defendant who wasn’t incarcerated (i.e., a TDCJ staff member or someone who was visiting a prison)... Here’s a brief example of the kind of work they do every day so the rest of us don’t have to: When deposing a sex offender one day, a colleague of mine asked about his first sexual experience. He asked her, “You mean people-sex?” Which meant exactly what you think it means. And that, in itself, is enough reason for you to say a quick ‘thank you’ right now that the SPU Civil Division exists and that its folks are really, really good at their jobs.”<sup>52</sup>

Beneath this bad attempt at humor is passive-aggression. The SPU prosecutor considers himself a “superhero” while people convicted of sex offenses are “supervillains who are bent on world domination.” English calls defense attorneys “SKO-fos,” which I assume is intended to be a play on the

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<sup>50</sup> Jefferson C. Knighton, Daniel C. Murrie, Marcus T. Boccaccini, & Darrel B. Turner. “How Likely Is “Likely To Reoffend” in Sex Offender Civil Commitment Trials?” *Law and Human Behavior*. 2014 Jun;38(3):293-304. doi: 10.1037/lhb0000079. Online copy retrieved on 9 June 2022 at <https://littlefieldtccc.files.wordpress.com/2021/01/bae8b-howlikelyislikelytoreoffend.pdf>

<sup>51</sup> See <https://twitter.com/plowjon>

<sup>52</sup> Jon English. “A week in the life of an SPU prosecutor.” *The Texas Prosecutor*. Nov-Dec 2018. Accessed 3 June 2022 at <https://www.tdcaa.com/journal/a-week-in-the-life-of-an-spu-prosecutor/>

term “mofo,” shorthand for “motherfucker.”<sup>53</sup> Some resentment pops up when the accused hires a “free-world” attorney but boasts the law on his side. English also admits skepticism when a prisoner makes accusations of sexual assault behind bars, adding, “(U)nlike most free-world cases, victims in prison sexual assault cases actually have a strong incentive to fabricate the story, because reporting that you are a victim of a sexual assault almost certainly results in transfer to another prison.”<sup>54</sup>

This is not to say Jon English is admitting to corruption and bias, but it is hard not to assume the bias can be simply overridden. This mentality is evident throughout the relatively short judicial career of 435th Judicial District Court Judge Michael Seiler. Michael Seiler worked in the Montgomery County Prosecutor’s Office from 1999 until he was appointed by Governor Rick Perry in 2008 to act as judge over the newly minted 435th Judicial District Court in Conroe. Seiler ran unopposed for reelection in 2012.<sup>55</sup> Judge Seiler would soon abuse his judicial power.

In August 2008, SCFO attorney Randall Miller appeared in Judge Seiler’s court representing an offender who had allegedly engaged in homosexual activities. During jury selection, Judge Seiler made several comments that were critical of Miller. Judge Seiler told Miller that if he did not stop asking the jury panel questions regarding their views on homosexuality with the intent of getting the entire panel struck, Miller would soon not have a “job in this county.” Judge Seiler stated, based upon the prior answers of the jurors: “Nobody here is going to admit to liking homosexuals.” At one point during jury selection, a potential juror indicated his belief that Miller was “getting slammed” by Judge Seiler; that Judge Seiler had an evident “bias” in the case; and that the juror did not believe that the offender could get a “fair trial” in Judge Seiler’s court. According to the record, the juror said, “I stated a previous problem I have. In my trial, what appears to be happening here happened to me, where you are getting slammed whether you know it or not. I don’t know how anybody in this room could be on this jury and feel like this is going to be a fair trial. She asked questions about whether we had issues. You’re asking questions about whether we had issues, and you keep getting slammed by the Judge saying you can’t ask that. You can’t ask that. I think this whole thing is - if you stay here, you are crazy.”<sup>56</sup>

During an address to the Montgomery County Republican Women in September 2011, Judge Seiler told an audience that he dealt “with 50, usually pedophiles, that are about to be released from prison.” Seiler boasted he had never released anyone; all the cases he had heard have resulted in civil commitment; research showed that castration does not stop predators because of mental illness; and “[t]he castration would have to kind of occur at neck level[.]”<sup>57</sup>

During a trial held on March 5th, 2012, Judge Seiler made repeated comments to Barbara Corley (section chief in the SCFO office) in the presence of a jury, among other things, that Corley was “wasting” everyone’s time; that Corley had a “law degree” and needed to “use it;” that Corley was doing things

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<sup>53</sup> See <https://www.merriam-webster.com/dictionary/mofo>

<sup>54</sup> *Supra.*, English 2018

<sup>55</sup> “Michael Seiler.” Ballotpedia. Accessed 3 June 2022 at [https://ballotpedia.org/Michael\\_Seiler](https://ballotpedia.org/Michael_Seiler)

<sup>56</sup> “Public Reprimand and Order of Additional Education: Honorable Michael Thomas Seiler 435th Judicial District Court Conroe, Montgomery County, Texas.” p. 3, see also footnote 9. Accessed 3 June 2022 at <http://www.scjc.texas.gov/media/4076/hon-michael-thomas-seiler-12-0737-di-et-al-public-reprimand-and-order-of-additional-educationwebsite.pdf>

<sup>57</sup> In Re Commitment of Kenneth Wayne Terry, NO. 09-15-00053-CV (TX App Ct 2015)

“wrong;” and that he believed Corley was trying to “sneak stuff past [him].” Seiler also berated her behind closed doors, adding, “Thank you for not wanting to follow [the Court of Appeals’] rulings and not wanting to follow mine either. You’re just a joy to be with in here, Ms. Corley. Your ability to practice law is very frustrating to me...”<sup>58</sup>

On July 26, 2012, Corley appeared in Judge Seiler’s court to represent 46 prisoners for a hearing on motions to modify the terms of their civil commitments to track changes made to the language of the statute. According to Judge Seiler, the 46 prisoners were all serving life sentences in prison and were unlikely to be released under the civil commitment statute. Judge Seiler claimed Corley was allowed to be present at the modification hearing despite not being required to do so by the statute. Citing “security concerns” and “a potentially volatile situation in the courtroom created by the presence of 46 prisoners,” Judge Seiler met separately with Corley and the prosecutor and told Corley to file any objections she may have in writing. Despite this instruction, Corley attempted to make an objection in the courtroom. In response, Judge Seiler’s bailiff told her to “sit down.” Judge Seiler, out of frustration, then stated: “Sit down or I’ll throw you out of the courtroom.” In an appeal, the 9th Circuit Court of appeals ruled that Corley was not disruptive or in contempt of court.<sup>59</sup>

In a January 29, 2013 proceeding, Dr. John Tennison, an expert witness who regularly appeared on behalf of SCFO in civil commitment cases, argued with Judge Seiler about setting up a table around the witness stand to display books and research materials. Judge Seiler told Dr. Tennison to “put all that stuff down. Okay? No one needs to see it... You know, you’ve testified here multiple times and never look at all that junk; so just put it away, unless you’re going to be referring to it.” When Dr. Tennison responded he intends to use the material as he often did in cases, Judge Seiler sarcastically replied, “He can keep the books up there. You know if he wants to argue with a State District Court Judge, then flipping argue with a State District Court Judge. Okay? That’s perfect.” Judge Seiler then called a recess for the day. Dr. Tennison described Judge Seiler as “red-faced,” speaking in an angry tone, and gesticulating “wildly”, while adding this was not the first time Judge Seiler acted in a degrading manner. Judge Seiler denied the allegations but admitted he could have better handled the situation.<sup>60</sup>

On April 26, 2013, Judge Seiler spoke at a Texas Patriots PAC meeting during which he discussed the nature of civil commitment cases and the role of his court in hearing such cases. During his presentation, Judge Seiler stated that if an individual scored above a 25 on a PCL-R test, that person is statistically considered to be a psychopath; Seiler then proclaimed he is the only judge in Texas that regularly dealt with psychopaths. While making this presentation, Judge Seiler displayed a photo of the fictional serial killer “Hannibal Lecter.” Judge Seiler described a trial involving a “psychopath” and told the audience that he kept a gun on his lap as he heard the testimony of this individual because the man “was way out there.” Judge Seiler discussed the difficulty of finding placements in halfway houses for predators and whether to place all civilly committed predators in one location rather than spread out among six halfway houses, adding, “We’re kind of dealing with the nuclear radiation of defendant. Nobody wants them. We don’t want them in our community, right, and so we’re trying to figure out where they want to put them...”

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<sup>58</sup> Supra., Public Reprimand of Judge Michael Seiler . p. 2

<sup>59</sup> Ibid. p.2, See footnote 4 and 5

<sup>60</sup> Ibid., p. 3-4

sexual predators are kept separate from the parolees, probably for their own safety and the safety of the people in prison. I'm dealing with some really special individuals here. They are really special..."<sup>61</sup>

Judge Seiler used three specific cases during his presentation, using the committed person's name and photograph. Judge Seiler described one person, a former football player accused of sexual assaulting his high school classmates, as a "complete psychopath," displayed a photo of the player in uniform along with the words "cheerleader killer", then claimed the defendant's case was the reason Texas has a civil commitment statute. Judge Seiler brought up the second case as the "guy I tried last week" then added, "(W)hen you deal with psychopath individuals in controlled settings and law enforcement, they have a real hard time just maintaining control." Judge Seiler said that "I wondered what was taking the jury so long, but a lot of times they want to just make it look official, so they'll spend 30, 40 minutes back there..." Judge Seiler referred to a third man, his first case, as a "pedophile rapist" and added the man "wasn't a pedophile grooming an individual with a child. He actually raped them. Bad guy." (Seiler also noted you'll never forget your first time sending someone to civil commitment.) Judge Seiler informed the audience that the predator "told the jury that if the little boy had blue eyes, it's not like they can help - he can help himself. I'm like, that's why we have Judge Seiler..." The defendant in this case had Judge Seiler recused from his case.<sup>62</sup>

Between August 2014 and April 2015, Judge Seiler had been the subject of at least sixteen recusal motions, eight of which were granted. In each of the recusal motions, attorneys alleged that Judge Seiler could not be fair or impartial in their clients' civil commitment cases due to, among other factors, his biased comments to the Texas Patriot PAC audience and his intemperate treatment of SCFO attorneys.<sup>63</sup> As reported in the Houston Chronicle, Seiler granted prosecutors' motions to exclude testimony of the defense's expert witness, who are the only witnesses in those trials who could dispute prosecutors' claims. In addition, Judge Seiler refused to allow juries to be instructed

In April 2015, the State Commission on Judicial Conduct issued a public reprimand and Order of Addition Education to Judge Seiler. The Commission concluded Judge Seiler violated multiple rules of judicial conduct, including Canons 3B(4) and 3B(5) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution when he showed partiality and unprofessional conduct on the bench. The Commission further concluded that Judge Seiler's presentation before the Texas Patriots PAC could cause a reasonable person to perceive that Judge Seiler would not be fair and impartial while presiding over civil commitment proceedings, in violation of Canon 4A(1) of the Texas Code of Judicial Conduct. Judge Seiler's public comments about specific cases that were subject to his court's continuing jurisdiction, did suggest to a reasonable person how he would rule when those individuals come before the court in future proceedings, in violation of Canon 3B(10) of the Texas Code of Judicial Conduct. Because Judge Seiler was recused from several civil commitment cases as a direct result of his presentation before the Texas Patriots PAC (Tea Party), the Commission concluded that his extrajudicial

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<sup>61</sup> Ibid., p. 4-5; as noted in In Re Commitment of Kenneth Wayne Terry, NO. 09-15-00053-CV (TX App Ct 2015), Judge Seiler was also noted as saying, "if the Legislature amended the SVP statute to remove the right to a jury trial, he could "get through all 35,000 sex offenders pretty quickly[.]"

<sup>62</sup> Ibid., p. 5

<sup>63</sup> Ibid., p. 5

conduct interfered with the proper performance of his duties, in violation of Canon 4A(2) of the Texas Code of Judicial Conduct.<sup>64</sup>

In addition to the public reprimand, Judge Seiler received a sentence of “four hours of instruction with a mentor judge which included three sessions: (1) the appropriate treatment of attorneys, witnesses, and others with whom the judge deals in an official capacity; (2) avoiding bias and the appearance of bias; and (3) avoiding extrajudicial conduct that casts doubt on a judge’s capacity to act impartially and/or interferes with the proper performance of the judge’s duties.”<sup>65</sup>

Judge Seiler remained on the bench. In 2016, Judge Seiler faced a political challenger in his bid for reelection. Judge Seiler had previously campaigned as “a prosecutor to judge the predators.” By this time, Seiler had signed more than 200 civil-commitment orders and held about 50 new trials a year.

In February 2016, the Montgomery County District Attorney’s Office launched an investigation into Judge Seiler when a juror in a previous case received a letter inviting him for a “meet and greet” for his reelection campaign at the Genuwine Tasting Room in Magnolia. Inappropriately obtaining juror information could be charged as the misdemeanor offense of Abuse of Official Capacity, which would be punishable of a fine up to \$4,000 and up to a year in jail. Instead, Seiler opted to immediately resign in an agreement with the DA’s Office. Seiler would forego his salary, benefits, ability to qualify for a judicial pension, and was permanently disqualified from ever seeking judicial office or sitting as a visiting judge.<sup>66</sup>

According to Ballotpedia, Michael Seiler would have won the Republican primary (with 29,220 votes or 41.81% of the vote) over challengers Patty Maginnis (with 28,565 votes or 40.88% of the vote) and Thomas Brewer III (with 12,095 votes or 17.31% of the vote). There would have been a runoff between Seiler and Maginnis had Seiler not resigned from the campaign.<sup>67</sup>

## THE HOUSING BUBBLE BURSTS (2014-2015)

With the departure of Allison Taylor in May 2014, the Office of Violent Sex Offender Management was left in a state of utter disrepair. The OVSOM board only consisted of three members, and the chairman of the board, Dan Powers, had turned in his resignation citing too heavy a workload for a volunteer position. Elizabeth “Christy” Jack, a Fort Worth deputy chief district attorney, was promoted to the chairman position.<sup>68</sup>

Marsha McLane, a program specialist with the Texas Board of Pardons and Paroles, was voted unanimously by the new board to head the OVSOM. McLane told the Houston Chronicle when she first

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<sup>64</sup> Ibid., p. 6-7

<sup>65</sup> Ibid., p. 7

<sup>66</sup> Catherine Dominguez. “Seiler Seiler resigns from 435th bench, avoids criminal prosecution.” The Courier of Montgomery County. 16 Feb. 2016. Accessed 3 March 2022 at <https://www.yourconroenews.com/news/article/Seiler-resigns-from-435th-bench-avoids-criminal-9474157.php>

<sup>67</sup> “Michael Seiler.” Ballotpedia. Accessed 3 June 2022 at [https://ballotpedia.org/Michael\\_Seiler](https://ballotpedia.org/Michael_Seiler)

<sup>68</sup> “Perry Picks Fort Worth Attorney As New Head Of Sex Offender Agency.” 25 April 2014. Accessed 3 June 2022 at <https://www.cbsnews.com/dfw/news/perry-picks-fort-worth-attorney-as-new-head-of-sex-offender-agency/>

entered the OVSOM building the office was stacked with dusty cardboard boxes, dead crickets lining a dirty carpet, and no independent computers or phone lines. Most of the employees worked from home. It took days to access computer files, and many personnel summoned to a meeting stated they never had an in-person meeting in Austin before. McLane stated, “The (executive director) and the deputy director are not available. The general counsel resigned. I’m literally having to start from scratch...I don’t understand how you can run an agency without ever coming in...We’re going to put in place a system here that works.”<sup>69</sup>

McLane also inherited a growing housing crisis. By July 2014, the private prison companies were demanding the civilly committed be removed from their halfway houses. Texas officials were considering using state lockups to house committed persons as well as allowing some to return home with GPS ankle monitors.<sup>70</sup> One committed person who was confined to a wheelchair and developmentally disabled was placed in an already filled halfway house because nearly 100 area nursing homes refused to take him. One halfway house ordered their residents to quit their jobs without clearing that order with the state, which put the residents in danger of violation of commitment laws. A second agency was forced to hire a security guard at a boarding house for 15 committed persons after a nearby charter school expanded operations to within 1000 feet of the boarding house. The private prison contractors that ran the halfway houses were demanding that all committed persons be removed from their properties by August 31st, 2015.<sup>71</sup>

In January 2015, Judge Michael Seiler released the first civilly committed person into the community by choice rather than by appeal. The committed individual had been under civil commitment since 2009 had been recommended by an OVSOM case manager.<sup>72</sup> But this was merely a drop in the bucket of the expanding housing crisis exacerbated by local residency restriction laws. (Texas does not have statewide residency restrictions, but allows municipalities to make their own restrictions.) The man who had been serving time after his GPS monitor slipped off during a basketball game was authorized to move to his parents’ home in Pasadena, but the city had passed a 1000 foot residency restriction law. The committed man sued.<sup>73</sup> While no outcome of the case was ever reported, that man has since been freed and as of June 2022 is still living in Texas.

Meanwhile, the 435th Judicial Circuit Court continued to place more people into civil commitment. In one case, it only took an hour to civilly commit a man who had only one arm, was wheelchair-bound,

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<sup>69</sup> Mike Ward & Anita Hassan. “New director finds sex offender office in shambles.” Houston Chronicle. 6 May 2014. Accessed 3 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/houston/article/New-director-finds-sex-offender-office-in-shambles-5458294.php>

<sup>70</sup> Supra. Ward & Hassan. “State may turn to lockups to house civilly committed sex offenders.”

<sup>71</sup> Mike Ward & Anita Hassan. “Sex offender program housing crisis worsens.” Houston Chronicle. 26 Apr. 2015. Accessed 4 June 2015 at <https://www.houstonchronicle.com/news/politics/texas/article/Sex-offender-program-housing-crisis-worsens-6223805.php>

<sup>72</sup> Brandon K. Scott. “Montgomery County district court judge gives first order releasing sex offender into community.” The Courier of Montgomery County. 30 Jan. 2015. Accessed 3 June 2022 at <https://www.yourconroenews.com/news/article/Montgomery-County-district-court-judge-gives-9468106.php> . As of 3 June 2022, the returning citizen is still free, living in another state and is compliant with that state’s registration laws.

<sup>73</sup> Cameron Langford. “No Place to Go, Forever, Texas Offender Says.” Courthouse News Service. 10 Sept. 2015. Accessed 4 June 2022 at <https://www.courthousenews.com/no-place-to-go-forever-texas-offender-says/>

suffered, hearing loss, and had several other health problems. In response, State Senate Criminal Justice Committee Chairman John Whitmire told the Houston Chronicle, “If he poses no threat, then he shouldn't be in this program...Even if he poses a threat, it sounds like he is the type of offender who the state currently has serious problems managing properly. That's something we need to change.” The Chronicle report added, “Marsha McLane, the agency's executive director, said the case highlights a continuing quandary: No place to properly house offenders with severe disabilities and health issues.”<sup>74</sup>

Exacerbating the existing problem was the revelation that Texas quietly banished from the state at least two previously convicted persons back in 2004; these two were later convicted on new offenses in other states in direct violation of a state law prohibiting banishment. As noted in the Houston Chronicle, the statute of limitations had expired on new criminal charges against the men in Texas, so officials filed a request for a “writ of attachment,” a legal maneuver most commonly used in civil cases to seize or reclaim property. Legal experts questioned whether this order carries any weight. Even Judge Seiler questioned if the writ was legal. But Erin Faseler, section chief for the civil division of Texas' Special Prosecution Unit, told Judge Seiler that Texas still has authority over the two men because they are subject to modifications to their original civil commitment orders and their cases are required to undergo review every two years; these laws that were in place at the time of their banishment. Faseler argued Texas had “continuing jurisdiction.”<sup>75</sup>

A state auditor's report published in January 2015 stated that the OVSOM spent \$7.5 million between September 2011 and May 2014, but the agency “had no formal budgeting process and or even cost estimates for treatment services it was supposed to provide. Accounting and record-keeping were so bad that auditors could not find documentation to validate more (than) \$54,000 in spending, nor could they find any evidence that more than \$140,000 in ankle monitoring fees collected from men in the program had been spent for that purpose... The report says the agency did not follow state contracting rules, noting that 53 of the 54 contracts were awarded without competitive bidding. Some of the contracts with treatment providers did not specify costs or even describe the services to be provided. The report notes that ‘one former office employee asserted that the office located contractors by word of mouth’ rather than by following state procurement procedures.”<sup>76</sup>

A scathing January 2015 op-ed by the San Antonio Express-News Editorial Board described the Texas civil commitment program as “run in a manic, pell-mell fashion. The upshot is this: Sex offenders haven't been treated, and the public has been placed at greater risk...We encourage lawmakers to overhaul the agency. Sex offenders who complete their prison terms should be vigilantly monitored after release, and they should receive legitimate treatment to limit the threat of reoffending. The existing civil-commitment

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<sup>74</sup> Anita Hassan & Mike Ward. “Amputee's case held up as example in sex offender program.” Houston Chronicle. 25 Feb. 2015. Accessed 4 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Lawmakers-look-to-reform-sex-offender-program-as-6102307.php>

<sup>75</sup> Anita Hassan & Mike Ward. “Judge signs orders to return sex offenders to Texas.” Houston Chronicle. 6 Nov. 2014. Accessed 3 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/texas/article/Judge-signs-orders-to-return-sex-offenders-to-5876957.php>

<sup>76</sup> Mike Ward & Anita Hassan. “Scathing audit paints sex offender agency in disarray.” Houston Chronicle. 28 Jan. 2015. Accessed 4 June 2022 at <https://www.houstonchronicle.com/politics/texas/article/Scathing-audit-paints-sex-offender-agency-in-6047232.php>



program is clearly a sham — and that doesn't help keep the public safer.”<sup>77</sup> In a later article, Curtis Barton, who was with the State Counsel for Offenders before transferring to the Harris County Public Defender's Office, said of the lawmakers, “They can finally see what a train wreck it's become” and added that the civil commitment program “has basically become a vehicle to violate people's rights, and it's not meeting the goals of what it was enacted to do, which it (*sic*) to be a treatment program in an outpatient setting to safely integrate people back into society.” Senator Whitmire admitted, “We've got a crisis on our hands...This is as big a screw-up as I've seen in all my years up here.”<sup>78</sup>

## THE LOCKDOWN PROGRAM (2015-PRESENT)

By 2015, Texas was in danger of losing the civil commitment scheme altogether. In addition to the ongoing housing crisis and scandals involving OVSOM officials, a federal judge had found Minnesota's civil commitment program unconstitutional because it lacked a clear path to “graduate” from the treatment program and be released. Rather than risk federal involvement, Texas fast-tracked legislation to drastically alter the state's civil commitment program.<sup>79</sup>

“Reforming” the imploding sex offense civil commitment program was a priority for the 84th Texas Legislature (2015). Senators Whitmire and Charles Perry (R-Lubbock) authored Senate Bill 746, introduced on February 24th, 2015 and signed by Governor Greg Abbot on 17 June 2015, effective immediately.<sup>80</sup> This bill created a number of changes to the existing program:

- Renamed the “Office of Violent Sex Offender Management” (OVSOM) to the “Texas Civil Commitment Office” (TCCO)
- Expanded the number of board members from three to five
- Removed from consideration for civil commitment those cases in which the individual was adjudged not guilty by reason of insanity to ensure that those who are civilly committed are able to participate in the treatment program.
- Decentralized civil commitment cases from one district court in Montgomery County to all Texas counties based on the SVP's last county of conviction for a violent sex offense. The district prosecutor was formally recognized as the representative of the state in civil commitment cases.
- Reduced the number of requirements for placement in civil commitment from eight to five: in order to allow TCCO the ability to tailor treatment programming
  - 1) that the SVP reside where instructed by TCCO instead of requiring the person to reside in a Texas residential facility under contract with the office or at another location or facility approved by the office;

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<sup>77</sup> Express-News Editorial Board. “Revamp sex offender program.” MySA.com, 13 Jan. 2015. Accessed 4 June 2022 at <https://www.mysanantonio.com/opinion/editorials/article/Revamp-sex-offender-program-6013072.php>

<sup>78</sup> Mike Ward & Anita Hassan. “Lawmakers demand fast action on sex offender housing shortage.” Houston Chronicle. 18 Feb. 2015. Accessed 6 June 2022 at <https://www.houstonchronicle.com/politics/texas/article/Lawmakers-demand-fast-action-on-sex-offender-6088588.php>

<sup>79</sup> Supra., “Incorrect Care.” p. 12

<sup>80</sup> SB 746 (84(R), 2015). Bill History. Accessed 3 June 2022 at <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=84R&Bill=SB746>

- 2) that the SVP is prohibited from contacting his victim;
- 3) that the SVP participate in and comply with the sex offender treatment program and written requirements imposed by the office;
- 4) that the SVP submit to GPS monitoring and refrain from tampering with or manipulating the GPS device; and
- 5) that the SVP prohibition from leaving the state without TCCO's authorization.
- The three deleted requirements were a proposed ban on alcohol/some drug use, a prohibition against entering places designated as "child safety zones," and "any other requirements determined necessary by the judge"
- Created a formalized agreement order which specifies that any agreed order of civil commitment must require that the SVP submit to the treatment and supervision of TCCO.
- Removed polygraphs and plethysmographs from required treatment program.
- Created a "tiered" system that provides for the seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually to release from civil commitment, based on the person's behavior and progress in treatment. Section 841.0832 was added which provides that TCCO shall operate, or contract with a vendor to operate, one or more facilities for the housing of committed persons. In the operation of such facilities, TCCO is required to designate a facility to serve as an intake and orientation facility for those released from prison.
- Section 841.0834 provides that TCCO is required to transfer a committed person to less restrictive housing and supervision if the transfer is in the best interests of the client and conditions can be imposed to adequately protect the community (but can be sent back if necessary); Allows committed persons who wish to transfer to a less restrictive tier may file a petition with the court. A fully released person required to return to his county of last conviction.
- Section 841.084 was amended to provide that a client who is not indigent is responsible for the cost of the housing, treatment, and GPS monitoring provided under Chapter 841. TCCO has implemented this requirement by enacting a policy that non-indigent clients are to pay 33.33% of their income toward their housing, treatment, and GPS costs or the actual cost of services, whichever is less.
- Repealed the section that violating civil commitment rules was a felony except under the following circumstances: (1) not residing where instructed by the TCCO; (2) contacting a victim; (3) leaving the state without permission; and (4) GPS violations.<sup>81</sup>

When the bill was introduced, the Texas watchdog blog "Grits For Breakfast" found, "The most alarming proposal (in SB 746) is the elimination of outpatient treatment. All of the men who have been committed were ordered to 'OUTPATIENT' treatment as required under the existing statute. The judge of the 435th and the agency incorrectly required civilly committed men to reside in facilities under contract with the agency, resulting in unlawful confinement. This bill simply legislates this continued unlawful confinement. There is some speculation that the agency will open a single institution to house persons in civil commitment. The bill provides for a tiered program to provide for the transition from total confinement to less restrictive housing and eventual release from the civil commitment. The problem is the current law provides for release from civil commitment and no one has been released yet. Confining all civilly committed persons in one facility will simply further isolate the program from scrutiny, isolate

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<sup>81</sup> Supra., TCCO Agency History. See also SB 746 (84(R), 2015) Bill Analysis (Enrolled). Accessed 4 June 2022 at <https://capitol.texas.gov/tlodocs/84R/analysis/html/SB00746F.htm>

participants from their family and community, and make it harder than ever to transition out of commitment. The tiered program is common in other states. Last year, the new executive director of the agency and other agency personnel traveled to Washington State to observe that state's program. It appears that this is a move to make the Texas program more like that model.”<sup>82</sup>

The prediction was right. As noted by the Texas Observer, “Senate Bill 746, turned Texas’ program from an outpatient model into something more fuzzy — a ‘tiered’ treatment program that began with offenders in a ‘total confinement facility’ and ended, theoretically at least, where Texas began its civil commitment experiment in 1999: with an outpatient treatment program in which patients were allowed to live in the community. The law also directed the agency to ‘operate, or contract to operate,’ at least one facility for the new program.”<sup>83</sup>

Even before the passage of SB 746, rumors began as early as June 2014 that Texas was looking into using former lockdown facilities. Media reports confirmed that Texas had considered using a recently-closed facility that housed juveniles in 2015, but the idea was fiercely fought by Beaumont officials.<sup>84</sup>

Texas officials had zeroed in on the Bill Clayton Detention Center in Littlefield (pop. 7000, a town 36 miles northwest of Lubbock). This facility already had a controversial history—it was run by the private prison GEO Group, and the facility lost a contract due to poor management and the suicide of a prisoner who had been left in solitary confinement for a year. GEO abandoned the facility, leaving Littlefield responsible for paying an \$11 million bill. Littlefield tried unsuccessfully to auction it off for use as an immigrant detention center.<sup>85</sup>

In a July 31st, 2015 news report, TCCO director Marsha McLane announced a contract with Florida-based private prison company Correct Care Recovery Solutions to house about 190 committed persons at the privately-owned Billy Clayton Detention Center in Littlefield.<sup>86</sup> (The lobbying efforts of Correct Care Solutions should be noted. The 2016 Grassroots Leadership report stated, “Although it remains somewhat unclear where lobbying records for GEO Group, GEO Care and Correct Care Solutions separate, each has made sizable investments in Texas employing the same lobbyists. Lionel Aguirre, Frank Santos, Jennifer Sellers and Gabriel Sepulveda have all been hired by GEO Group, GEO Care and Correct Care Solutions, oftentimes working for all three companies at once.”)<sup>87</sup>

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<sup>82</sup> “Analyzing legislation to reform Texas sex-offender civil commitment program.” Grits For Breakfast. 4 March 2015. Accessed 4 June 2022 at <https://gritsforbreakfast.blogspot.com/2015/03/analyzing-legislation-to-reform-texas.html>

<sup>83</sup> Michael Barajas. “A Prison By Any Other Name.” Texas Observer. 12 February 2018. 4 June 2022 at <https://www.texasobserver.org/a-prison-by-any-other-name/>

<sup>84</sup> Supra., “Incorrect Care.” Feb 2016., p. 12-13 See also Mike Ward & Anita Hassan. “Beaumont officials do not want more sex offenders/” Houston Chronicle. 3 Apr. 2015. Accessed 6 June 2022 at <https://www.houstonchronicle.com/politics/texas/article/Beaumont-officials-do-not-want-more-sex-offenders-6178335.php>

<sup>85</sup> “Incorrect Care” Feb. 2016. P. 12-13

<sup>86</sup> Mike Ward & Anita Hassan. “State picks West Texas lockup to house sex offenders.” Houston Chronicle. 31 July 2015. Accessed 6 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/texas/article/State-picks-West-Texas-lockup-to-house-sex-6418518.php>

<sup>87</sup> Supra, “Incorrect Care” 2016

TCCO chair Christy Jack proclaimed the contract “marks the beginning of a new chapter for the Texas civil commitment program.” Littlefield City Manager Mike Arismendez called the announcement “good news” because it will bring jobs to the community, and was less controversial than the attempt to turn the facility into an immigrant detention center, which drew hundreds of protesters. By contrast, the hearing for the civil commitment program only drew 20 people. But Nancy Bunin, a Houston attorney who represents several men in the program, saw the move as an attempt to deny those in the program adequate legal representation and to further punish them. Bunin stated, “To select a location like this appears to be punitive and anti-therapeutic...Why on earth would you select a site that will remove them from their jobs, from their medical care, from their other treatment - where there is none of that. Their access to counsel will be limited. It's outrageous.”<sup>88</sup>

The repackaged “Texas Civil Commitment Center” officially opened on September 1st, 2015. The opening came with some optimism primarily from Texas officials seeking stability to the housing crisis they created as well as from Littlefield residents now off the hook from the \$11 million bill they were paying when the private prison industry left town. They even gave reporters a tour. Even some of the newly imprisoned expressed some optimism that there will now be a finish line to their “treatment.” There was skepticism, though, after raising concerns about food portions, recreation and new treatment programs. While a picture is usually worth a thousand words, this picture used by the Houston Chronicle says only one word—prison. A prisoner wearing what appears to be a prison uniform is sitting at a round metal prison table (i.e., polished heavy metal tables welded or bolted to the floor, usually only seen in prison). In the background are rows of heavy metal prison cell doors and sterile white floors and walls. Behind one of the inmates, another inmate can be seen dressed in all whites and sporting an ankle monitor.<sup>89</sup>

Those subject to the civil commitment program were rounded up, many of whom were staying in boarding houses and halfway houses. The Texas Observer tells the story of some of the roundups:

“Jason Schoenfeld, who was staying at a Fort Worth halfway house at the time, made a frantic phone call to his friend John, a fellow veteran. John, who’s retired and old enough to be Schoenfeld’s father, met the 46-year-old Gulf War veteran while volunteering at the Fort Worth VA hospital. John taught Schoenfeld breathing techniques to calm his nerves during an exercise class he’d volunteered to lead at the VA; records show the VA gave Schoenfeld a 30 percent disability rating for post-traumatic stress disorder after his combat service. John eventually grew fond of Schoenfeld and wanted to help him, even after learning his new friend had served an 18-year prison sentence for aggravated sexual assault of a child.”

“John says he heard desperation in Schoenfeld’s voice as he asked whether John could come grab his stuff before it ended up in a dumpster. “It was clear he didn’t have anybody else,” John told me. He says Schoenfeld looked confused to the point of tears when John and his wife arrived at

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<sup>88</sup> Supra., Ward & Hassan. “State picks West Texas lockup to house sex offenders.”

<sup>89</sup> Mike Ward. “New facility sparks hope for sex offenders and downtrodden town.” Houston Chronicle. 23 Sept. 2015. Accessed 6 June 2022 at <https://www.houstonchronicle.com/politics/texas/article/New-facility-sparks-hope-for-sex-offenders-and-6525356.php>

the halfway house. “We didn’t even know what city he was going to,” John says. Schoenfeld gave him two bulging garbage bags; John now stores them in his home.”

“Schoenfeld and the others were frisked, loaded onto vans and prison buses and driven hundreds of miles to Littlefield, a remote, sparsely populated corner of the Texas Panhandle, where guards shuffled them into the Bill W. Clayton Detention Center, a prison that had been empty for six years.”

“Once inside those old prison walls, the men surrendered their IDs, Social Security cards, birth certificates and credit cards, along with cash and coins. Guards dug through the Hefty bags, tossing out all sorts of personal items now considered contraband. They went from living in halfway houses that looked like motels to windowless cells with cinderblock walls, hard steel bunks and metal toilets. But officials at the detention center were adamant: This wasn’t a prison. They instructed the men to call their living quarters ‘rooms,’ not prison cells.”

“Unlike at the halfway houses, the new inmates couldn’t come and go. It wasn’t clear when their sentences would end, if ever.”<sup>90</sup>

Just days after the Houston Chronicle toured the prison and wrote a story about optimism and “hope” the program would put an end to the problems plaguing the Texas civil commitment program, it wrote a new story questioning the efficacy of the new facility:

“In relatively short order, officials concede the program struggled for months to find a site where it could operate, creating a new regimen program that will withstand mounting legal challenges. Officials’ latest difficulties include how to provide effective mental health and therapy services, as well as jobs and resettlement programs, in a remote community in West Texas where those opportunities are mostly non-existent. Most of all, the therapeutic program that’s housed in a former prison, must not be a prison...”

“Treatment experts, after initial assessments, informed state officials on Thursday that there are likely some men in the program who are so mentally impaired that they cannot benefit from the program, including one who appears to have dementia. Others have the cognitive skills of fifth-graders and below...”

“So far, 111 of the men in the civil commitment program - including 21 who are still in prison and three who were in state hospitals or schools - signed waivers to voluntarily transfer into the new program. Ninety-seven others did not. The result was a stream of hearings in the Montgomery County courtroom where the men originally were ordered into the civil commitment program. Many of those hearings involved mentally impaired offenders. One chief question state officials face is whether those men were afforded proper legal due process, in signing legal documents or attending court hearings that they could likely not understand to be placed in the new program.”

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<sup>90</sup> Supra., Barajas “A Prison by any other name” 2016

“‘There wasn't any evidence presented at any of the hearings that I attended about the tiered-treatment program,’ said Bill Marshall, an attorney representing several of those challenging their transfers. He is still awaiting a ruling in his cases. ‘I don't know how a judge can make a decision about whether one of my clients would benefit from participating in this new so-called tiered treatment program if the judge doesn't know anything about this new tiered-treatment program.’”<sup>91</sup>

Families and friends of those corralled into the Littlefield facility also argue the state has simply stashed them in a for-profit prison on the outskirts of the state, far away from the support services they'll need if there's any hope of transitioning back into society.”<sup>92</sup>

The involvement of the private prisons is another concern. As noted in the 2016 Grassroots Leadership report, “Although in theory there is now a process for individuals to move through the program and potentially be released, the state's contract with CCS incentivizes keeping the Littlefield facility full. The state will pay CCS \$128.70 per person per day initially, but once the population increases to over 250 individuals, the state gets a break and will pay less than \$100 per person per day.<sup>92</sup> CCS's contract in Florida works the same way. The bed rate is \$102.28 for up to 680 residents, dropping 30 percent after that, to \$69.90 per bed.”

“Similarly to private prison and immigrant detention contracts, the state is incentivized to keep the number of individuals confined in Littlefield high, rather than encouraging rehabilitation and release. This perverse incentive is especially troublesome because oversight for the program will come only from the agency itself. As evidence of this perverse incentive, a man housed in the Florida Civil Commitment Center revealed that CCS files excessive disciplinary reports, which are then used against program participants. He writes, ‘There is something fundamentally wrong when my for-profit keepers can write as many disciplinary reports against me as they please ... and then use those disciplinary reports against me at trial to commit me and during my annual review to keep me committed so my for-profit keepers can make money off me.’”<sup>93</sup>

But Marsha McLane asked people to suspend their disbelief. She told the Lubbock Avalanche-Journal, “It looks like a prison, walks like a prison, but we're not running it like a prison. This is not a warehouse for sex offenders, it's a treatment program.” McLane added it will take between five and seven years, on average, for men to “graduate” the revamped program.<sup>94</sup> Nicoya Waits told the Texas Observer that visiting her brother in the Littlefield facility was no different than visiting him in prison. “‘I walk up to a fence, I have to get buzzed in, get scanned and searched and go through correctional officers asking me a bunch of questions, locking big heavy doors everywhere we go,’ she recalls. ‘We sit in a visitation room

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<sup>91</sup> Mike Ward & Anita Hassan. “Treatment for sex predators questioned at remote center.” Houston Chronicle. 27 Sept. 2015. Accessed 6 June 2022 at <https://www.houstonchronicle.com/news/houston-texas/texas/article/Treatment-for-sex-predators-questioned-at-remote-6533866.php>

<sup>92</sup> Supra., “A Prison By Any Other Name”

<sup>93</sup> Supra., “Incorrect Care” 2016

<sup>94</sup> Sarah Refique. “Video: Exclusive look inside the home of the state's most sexually violent offenders.” Lubbock Avalanche Journal. 4 June 2016. Accessed 6 June 2022 at <https://www.lubbockonline.com/story/news/local/2016/06/05/video-exclusive-look-inside-home-states-most-sexually-violent-offenders/14913071007/>

where somebody is monitoring us, both physically in the room and on video. It didn't feel like an outpatient facility. It felt just like a prison.”<sup>95</sup>

On the legal front, a few judges had recognized the new program might be unconstitutional. Just after the facility opened, visiting state District Judge Putnam Reiter refused to commit five persons, which led to questions how officials can impose treatment under a law that was now repealed.<sup>96</sup> Judge Reiter had released another man in December. Reiter found Texas had violated the prisoner's rights because the prisoner commitment order said he was indefinitely committed for outpatient treatment and supervision not inpatient care in a former prison. But the freedom only lasted a week; the 9th Circuit Court of Appeals reversed the order and the man was shipped to Littlefield. The Circuit court relied heavily on the belief there was an actual end to the program and previous rulings upholding civil commitment. After the Reiter ruling, the state allegedly released three people from the program. But trial attorney William Marshall told reporters three times as many people have left civil commitment through suicide than through release.<sup>97</sup>

The 85th Texas Legislature passed Senate Bill 613 in 2017, which clarified language in Section 841.0835 of the Health and Safety Code to specifically provide that HHSC is required to provide inpatient psychiatric services and housing for those who are unable to effectively participate in sex offender treatment due to their mental illness.<sup>98</sup> This was to ensure those unable to participate in the civil commitment program would be indefinitely detained. In addition, the legislature allowed guards at the Littlefield lockup to wield pepper spray and batons.<sup>99</sup>

Many of the problems that haunt private prisons elsewhere quickly became a problem at the Littlefield center. A FOIA request by the Texas Observer found “a steady churn of staff since the prison reopened. The men confined there say that the turnover makes it impossible for them to advance in treatment, which is their only way out of indefinite detention. Correct Care has been scolded for delays in providing medical care and for repeatedly failing to conduct or document all the therapy that taxpayers are now funding.” Correct Care collected one-third of money sent to the prisoners to “pay for treatment and confinement.” Loved ones sending care packages were required to include the receipts to Correct Care so the company could charge prisoners a fee of one-third of the cost of the package. Some were forced to wear—and pay for—GPS monitors despite being confined to the prison. Unruly prisoners were held in solitary confinement for months at a time. Requests for a tour were denied; the reporter added, “The not-a-prison prison operates with more secrecy than most supermaxes.”<sup>100</sup>

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<sup>95</sup> Supra., “A Prison By Any Other Name”

<sup>96</sup> Mike Ward & Anita Hassan. “Judge refuses to order five sex offenders into reformed civil commitment program.” Houston Chronicle. 16 Sept. 2015. Accessed 6 June 2022 at <https://www.houstonchronicle.com/politics/texas/article/Judge-refuses-to-order-five-sex-offenders-into-6509930.php>

<sup>97</sup> Cameron Langford. “Court Sends Freed Sex Offender Back to Program.”

<sup>98</sup> Supra., “TCCO Legislative History”

<sup>99</sup> Supra., “A Prison By Any Other Name.”

<sup>100</sup> Supra., “A Prison By Any Other Name”

When Management and Training Corporation, another private prison company, took over the care of the facility in 2019, the men were re-labeled “inmates.”<sup>101</sup> With this act, the last pretense that the Texas Civil Commitment Program was anything but a prison was removed.

Since 2016, the number of commitments per year to the program has remained steady, between 18 (in 2016) and 41 (in 2017). With the changing of the law in 2015 to eliminate felony charges for breaking commitment rules, the number of committed persons returning to prison lowered from a high of 51 in 2013 to between two and seven per year. According to the TCCC, there were 372 “clients” but of those, only 24 were listed as being in “Tier 4” (the highest tier and closest to release), while most (187) were listed as “Tier 2.” The TCCC predicts to have over 500 committed persons in the program by 2023. The TCCC boasts of collecting \$255,685 in fees from committed persons in Fiscal Year (FY) 2020; For FY 2021, the TCCC received just under \$20 million. “The TCCO’s budget is fully funded by General Revenue, except for \$62,000 per year from, cost recovery reimbursements from SVP clients.”<sup>102</sup> This has proven to be a lucrative business for the TCCO.

## LIFE ON THE INSIDE OF THE LITTLEFIELD SHADOW PRISON

Life on the inside of the Littlefield facility was a heavily guarded secret by the TCCO but occasional media reports highlighted the abuses at the civil commitment center.

In 2016, “Rachel” (a pseudonym), who worked as a licensed vocational nurse, applied for a job as a “therapeutic security technician” at the center. She thought the feds were going to house immigrant families at the detention center, but during her job interview, Rachel was informed that she would be working with “sex offenders.” On her first day at work, security made sure everyone knew they’d be working with a “dangerous” population. “They told us these guys are violent, that they will snatch you up and try to rape you,” she recalled. “We were all fucking scared from Day One.” Rachel says she quit a year and a half later, not because she was sick of working with the clientele but because she was appalled by the conditions inside the lockup, particularly the poor medical care. Rachel told the Texas Observer, “People were not getting the treatment they needed. A lot of these guys were really old. The clinic was always running out of medications or never had the right ones. It was all very unorganized.” (Rachel requested a pseudonym for the story “out of fear she might otherwise never find work in town again.”)<sup>103</sup>

Another former security officer, Mandi Harner, told Reason.com, “MTC does not run it in a therapeutic manner whatsoever...They run it like a prison. I’m not going to tell you everyone in there is an angel. But there are some men who deserve treatment they’re not getting, and also some who did things as teenagers who don’t deserve to be there their whole lives.” Another former Littlefield guard estimates about 15 percent of the men are intellectually challenged and cannot complete the therapy; the average age of the

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<sup>101</sup> Lenore Skenazy. “Former Staffers Condemn Cruel Treatment of Inmates at a Texan Prison for Sex Offenders.” Reason. 12 Aug. 2021. Accessed 6 June 2022 at <https://reason.com/2021/08/12/texas-civil-commitment-sex-offenders-littlefield/>

<sup>102</sup> “Biennial Report regarding the Texas Civil Commitment Office December 1, 2018 – November 30, 2020.” TCCO. Accessed 8 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/plans-reports-rules/tcco-biennial-report-2020.pdf>

<sup>103</sup> Supra., “A Prison By Any Other Name”



inmates is 58; several of the inmates were age 80 or older; there were several blind men; and several inmates use walkers and wheelchairs. The former guard referred to the Littlefield prison as a human “storage facility.”<sup>104</sup>

Whatever little hope anyone ever had of ever getting out was quickly replaced with a feeling of hopelessness. John, who had reported Jason Schoenfeld’s transfer to the Littlefield facility, had seen his friend trade the fear of getting sent back to prison under the old program for the kind of malaise that accompanies a sentence without an end date.”<sup>105</sup> One man had castrated himself. Another man, who spent years working his way up through the tiers just to be restarted for allegedly cursing at a guard. That man went back to his cell and hanged himself.<sup>106</sup>

The “treatment” offered at the Littlefield facility was described in a 2021 Reason.com article as “hodge podge.” A former therapist at the facility stated inmates are required to openly admit and share their offenses in a group, and they had to keep a “masturbation log” discussing when they masturbate, what they thought about while masturbating, and whether or not they climaxed. This log was shared openly in the group. Inmates wear GPS monitors for at least two years, and take penile plethysmographs at their expense. It takes roughly a year to move up a tier, and a single infraction can send a committed person back to the starting line.<sup>107</sup>

The Littlefield private prison facility was initially shutdown because a prisoner committed suicide after being detained in solitary confinement. Under TCCO direction, lengthy solitary confinement is still being used at the Littlefield facility, often for weeks or months at a time.<sup>108</sup> But TCCO keeps details about the use of solitary confinement, or as they call it, the “Secure Management Unit” (SMU). Unlike the definitions contained in the TCCO’s “glossary of terms” page, SMU is only defined by what the letters in the acronym stand for without further explanation.<sup>109</sup> SMU is not mentioned anywhere else on the TCCO website. When a request for details was sent to the TCCO, replied with a short response stating, “The Special Management Unit (SMU) is a separate living unit within the Texas Civil Commitment Center that is utilized for temporary housing of clients who are pending investigation, pending criminal charges, have requested protective housing, have received wing restriction as a sanction due to a serious or repeated rule violation, or that pose a risk to the safety and security of the TCCC.”<sup>110</sup> The TCCO refused to elaborate further. While Texas has come under fire for the widespread use of solitary confinement in the state prison system,<sup>111</sup> there are no efforts to acknowledge any similar problem in Littlefield facility.

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<sup>104</sup> Supra., “Former Staffers Condemn Cruel Treatment”

<sup>105</sup> Supra., “A Prison By Any Other Name”

<sup>106</sup> Supra., “Former Staffers Condemn Cruel Treatment”

<sup>107</sup> Ibid.

<sup>108</sup> Supra., “a Prison by Any Other Name.” See also Cate Graziani. “Things are just as bad as we feared at a ‘civil commitment center’ in Texas.” Grassroots Leadership. 26 Feb. 2018. Accessed 9 June 2022 at <https://grassrootsleadership.org/blog/2018/02/things-are-just-bad-we-feared-civil-commitment-center-texas>

<sup>109</sup> See <https://tcco.texas.gov/sites/tcco/files/documents/tcco-definitions-acronyms.pdf> as of 18 June 2022

<sup>110</sup> Jessica L Marsh, TCCO Deputy Director, email to Derek Logue, sent 13 June 2022

<sup>111</sup> See Marc Levin. “Reining in Solitary Confinement in Texas: Recent Progress and Next Steps.” Texas Public Policy Foundation Jan. 2022. Accessed 18 June 2022 at <https://www.texaspolicy.com/wp-content/uploads/2021/01/Levin-Reining-in-Solitary-Confinement.pdf>

The Texans Against Civil Commitment (TACC) website posted brief statements from those within the civil commitment program.<sup>112</sup> There is a general consensus of hopelessness and feelings that the program is a type of “hate crime.” Here are just a few examples:

- “Texas’ sex offender civil commitment was created for hate and retribution and used to test the expansion of law. There have been over 600 sex offender civil commitments since its beginning in 1999; less than 20 men have been released by appeal, court challenge or token success; more than 275 men have been put back in prison; and, over 100 men have died in its auspice. 22 years of facts speak for themselves. It has nothing to do with public safety or treatment. There will never be a treat and release model, a clear path out or justice by it. It is nothing more than a collateral life sentence for those in it. Sex offender civil commitment is an ex post facto, double jeopardy, cruel and unusual punishment and indefinite sentencing scheme.”<sup>113</sup>
- “Having to process this confusing state of mind I was in, I felt as if I was being retried for the cases I’ve already served time. 30 years is a long time for me to grow and to come to this place to talk about why I did these things, how I thought back then, and express treatment terminology. I go through mental trauma of the past and fight every day to understand what happened. I can’t explain this to anyone that would fully understand what’s going on here. This has my family too overwhelmed to comprehend. They are hurt and helpless because they don’t know what to do. My dad is 73 years old. My mother is 77 years old. My grandmother is 91, and I can’t explain about this place to her. I have to tell her I’m still in prison... This place is more strict and scarier than any other place. They can keep us away from communication. Who would know if I could or couldn’t really call my family? When we went through Corona-19, we were locked down and I got infected. I thought I was going to die in a cell alone... This is a hate crime. The reality is to keep sex offenders off the street. I wake up next to a toilet and a roommate who is a stranger just like in prison. I have a monitor because I’m on parole. Almost everyday (*sic*) I get woke up to walk the breezeway because my monitor on my leg is not registering (in a locked facility). It’s a 30-minute walk at 1AM and again on the same day at 4:30AM. I go to group and hear people arguing in the living area. People are fighting and arguing. I’m living in prison all over again. My family asks me, how was my day? I’m just silent. I have to find encouragement within myself. I hear them ask, “How much longer? Grandma is holding on and wants to hug you before she leaves. Medical, officers, trays, barbed wire fence, certain time to eat. Who can I talk to? What help? What change? Where am I? Just keep moving forward to the end of the tunnel. The light to freedom here on this earth, or to be with God and I’ll be with my family there. That is my only hope.”<sup>114</sup>
- “We’re overcrowded and it’s no joke. Texas Civil Commitment Office (TCCO) and Management & Training Corporation (MTC) are housing inmates in a dry good closet with no access to water. The closet was a kitchen storage for bread and canned goods. The inmates housed in this commandeered space will have to go to another housing area for any hydration, hygiene, or toilet use... This repurposed housing area has very limited air flow and only one entrance/exit. It cannot possibly pass fire codes. This is the smallest and most crowded housing yet with six bunk beds/twelve people crammed in an area the size of a couple of cells. The facilities water-use and sewage are maxed out at

<sup>112</sup> <https://texansagainstcivilcommitment.com/>

<sup>113</sup> A TCCC Resident. “IT IS WHAT IT IS.” Texans Against Civil Commitment. 27 Oct. 2021. Accessed 6 June 2022 at <https://texansagainstcivilcommitment.com/2021/10/27/it-is-what-it-is/>

<sup>114</sup> A TCCC resident. “Freedom on Earth?” TACC.

the current capacity of inmates. Our electricity is over-extended and constantly failing. This must teeter on the inhumane. We are miserable, but hey, it's treatment and we're all so much better for it. Right? ... How long will TCCO get away with murder? Literally 25 people have died here from inadequate medicate care and only seven have managed to find another way out. This isn't long-term treatment as pitched by the heads, it's a life-sentence. The inmate population continues to grow, and they just get more creative in where to house us within these prison fences. What's next?"<sup>115</sup>

- "This greatly parallels to the history of lobotomies between 1920-1950. At its peak, they were "treating" 200 patients a day on an out-patient basis. 200 lobotomies a day in barber chairs with ice picks and mostly on children. Most of the doctors never interviewed the patients but moments, or at most an hour prior to the procedure. All of these were court ordered at the behest of a fad cure for aggression. Who and where are these great supporters of this atrocity now? They're the same people now peddling SOCC. These hypocrites will one day be hiding under the rocks those lobotomists are. It's so shameful that not even the families of those doctors, legislators, lawyers, and judges will claim their legacy. Not one name is remembered, and rightfully so. These people are the scum of humanity. It'll take 20-30 years for the stain of sex offender civil commitment to fade after it is abolished. Senator Whitmire, Marsha McLane, and all their pawns like Dr. Edd, Dr. Woodrick and Dr. Arambula will be nothing more than an embarrassment to the state of Texas."<sup>116</sup>

Complaints about the Texas Civil Commitment Office and the Littlefield facility have culminated in the formation of two groups fighting civil commitment—Texans Against Civil Commitment (TACC)<sup>117</sup> and Texas Families Against Committing Texans Standup (F.A.C.T.S.).<sup>118</sup> Together, they organized a protest in front of the Texas Civil Commitment Center in Littlefield on April 9th, 2022. Dozens of protesters showed up in opposition to the for-profit prison. Protestors told KLBK News that they believe residents' civil rights have been violated. Kevin Word with Texans Against Civil Commitment told KLBK News, "We don't support anyone committing crimes- I want to make that clear. This is supporting people being released [from treatment] after they've served their time...Murderers are being let out. They're not being post-convicted and held because they might do something. That's why these men are here- because they might do something... The program has released less than six [residents] since 2015 and there have been 29 that have died in the facility. Medical care is non-existent." Linnell Hanks, mother of a Civil Commitment resident, added, "My son has been in Civil Commitment longer than he was in prison. And he's still at tier one. This is his seventh year in Texas Civil Commitment." Nicole Robinson, whose son is imprisoned at the Littlefield facility, stated, "They're supposed to be residents and they're not being treated like that. They are being treated like animals. They're being taken advantage of and they're being used as a check... That's the reason why they don't want them to graduate... because when they graduate, they have to have enough guys to cycle them out in order for them to keep getting they (*sic*) check." Jennifer Williams, whose son remains in the facility, wants the program shut down altogether, adding, "I'm asking Senator [John] Whitmire to come and shut it down like he promised to do in 2015 when he

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<sup>115</sup> A TCCC Resident. "BUSTIN' AT THE SEAMS." TACC. 26 Oct. 2021. Accessed 6 June 2022 at <https://texansagainstcivilcommitment.com/2021/10/26/bustin-at-the-seams/>

<sup>116</sup> A TCCC Resident. "Justice Is Coming." TACC. 20 Oct. 2021. Accessed 6 June 2022 at <https://texansagainstcivilcommitment.com/2021/10/20/justice-is-coming/>

<sup>117</sup> <https://texansagainstcivilcommitment.com/>

<sup>118</sup> <https://txfacts.org/>

walked through these walls and said, ‘if it doesn’t work, I’m going to shut it down...These are free men. They’ve done their time.’”<sup>119</sup>

What the news media failed to mention was the protesters were not allowed near the property of the civil commitment center and were threatened with legal action if anyone drew near. Organizers gave a more detailed account of the protest:

“On April 9th, family, friends, and advocates came together to bring awareness and to educate others about the Texas Civil Commitment Center in Littlefield, Texas. What started as just an idea shared between a few friends quickly spread and gained momentum. This ‘protest’ was dreamed and planned by women with loved ones inside the facility. Meeting up at the Best Western Hotel in Littlefield, strangers embraced each other and began talking like long lost friends. Over the past few months, connections have been made; many not being able to converse with anyone who understood what TCCO is. T-shirts were passed out and we were given instructions by Lamb County Sheriff, Gary Maddox. He instructed us as where to park and what we could and couldn’t do.”

Driving to the facility, there was an area sectioned off toward the back, just for us; but it was tucked away out of sight. Hidden, just like the men in Littlefield. None of us drove all this way to be out of sight and out of mind. We wanted to be heard. We wanted to be seen. The members of the event moved signs, chairs, and cars all towards the highway out front. An award winning photographer from Austin, Texas, Alan Pogue, was there to take pictures and video the event. KLBK news from Lubbock captured the story and interviewed family members. Amarillo attorney, Ryan Brown, graciously offered his representation that day if anything were to happen. Although we did not need it, his presence was greatly appreciated. Local attorney, Daniel Hurley, was present and kindly listened to each of us tell stories about our loved ones. Several members of Lubbock’s Covenant Presbyterian Church were in attendance, with Elder Edward George leading us in prayer. A moment of silence and balloon release was conducted for all the men who have passed away since the facility opened in 2015. Despite TCCO’s claims, we have an accurate count of all these deaths.”

“The wind of course picked up, per West Texas weather, but it didn’t stop us from getting the word out. The turnout was good, really good, for the first time getting together. The whole purpose was to spread awareness, reach more family members, and to let the men inside know that they have not been forgotten. We are working hard and we will keep working until they come home.”<sup>120</sup>

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<sup>119</sup> Elizabeth Fitz. “Protestors make alarming allegations about statewide sex offender treatment program in Littlefield.” KLBK News/Everything Lubbock. 11 Apr. 2022. Accessed 8 June 2022 at <https://www.everythinglubbock.com/news/protestors-make-alarming-allegations-about-statewide-sex-offender-treatment-program-in-littlefield/>

<sup>120</sup> Texas Tea Newsletter. Vol. 1, Issue 5. April 2022. (Note: This is a newsletter created by and for those negatively impacted by the TCCO.)

Organizers of the April 2022 protest are planning more public awareness campaigns in the future, including a protest at the TCCO offices in September 2022.

## SUMMARY

When Republican Texas State Senator Florence Shapiro worked with Democratic State Senator John Whitmire in the 1990s to establish a civil commitment program in Texas, Shapiro's initial goal was a lockdown facility. Instead, Texas opted to become the only state in the US to adopt an "outpatient" program for civil commitment. Texas spent roughly 16 years in a slow march towards Shapiro's lockdown camp. Texas created a hybrid program in 2005 they still considered "outpatient" but forced the committed person to live exclusively within the confines of restrictive halfway houses run primarily by private prison companies. Texas legislatures passed laws making program violations a felony, created a special civil commitment court and prosecutors office, and rebranded the treatment office as an office for "violent sex offenders." Unsurprisingly, it led to a number of abuses at all phases of the civil commitment scheme.

In the wake of a post-release housing crisis and scandals involving both the staff at the Office for Violent Sex Offender Management and Judge Michael Seiler of the special civil commitment court, the Texas Legislature passed a sweeping "reform bill" that labeled the program the "Texas Civil commitment Office" and eliminated felony charges for minor rule violations, but also established a lockdown facility in an isolated rural community. The committed persons were rounded up and locked up in a former prison with little to no hope for release. Shapiro's ultimate goal of a lockdown facility was fully realized in September 2015.

In most states with civil commitment programs for persons convicted of sexual offenses, these lockdown facilities are called "shadow prisons." They look like prisons, behave like prisons, and are operated by prison companies. Texas tried for a time to claim the Littlefield facility, built for a private prison company, was a "treatment facility." But with the hiring of Management and Training Corporation to run the Littlefield camp, the Texas Civil Commitment Program completed the evolution from innovative outpatient program to the same controversial extension of prison present in 19 other states. High costs, mistreatment and abuse of prisoners, and scandals among civil commitment officials are as common, or perhaps even more prevalent, compared to similar embattled programs in states like Minnesota.

Most states try to hide the fact that their civil commitment programs are extensions of prison sentences. Texas does not even try to hide the intent of the Littlefield program, which is to extend prison indefinitely, often for life. The Texas civil commitment program has been a disaster for years and should be completely abolished.

## APPENDIX 1: DEATHS INSIDE THE LITTLEFIELD FACILITY

The Texas Civil Commitment Office has tried to downplay the deaths at the Texas Civil Commitment Center at Littlefield. However, despite TCCO's claims, it is not unreasonable to assume many are dying in the facility because of stress, the lack of adequate medical treatment, and the relatively old age of prisoners at the Littlefield facility.

The following list of deaths at the Texas Civil Commitment Center in Littlefield has been provided by TACC and FACTS, noting that this may not be a full accounting of the men who have died at the Littlefield facility. Getting accurate information about the inner workings of the camp is difficult because TCCO employees have reportedly withheld info and have prevented prisoners from passing along information to their loved ones.

Known deaths as of June 8th, 2022:

- Deaths in 2016 (6): Benito Davilla, Daniel Almaguera, Johnny Yabarra, Raul Quintero, Robert Shoemaker, and Robert Russell.
- Deaths in 2018 (2): William Scott and John Graves
- Deaths in 2019 (3): Gilbert Gomez, David Peteras, and Leonard Khalaja
- Deaths in 2020 (9): Daniel Frazier, Adolf Martinez, Edwin England, Rodney Haines, Melvin Estes, Luis Castillo, Anthony Henderson, John Walsh, and William Weissinger
- Deaths in 2021 (5): Thomas Matlock, Terry Pair, Jerry Redfearn, Danny Connely, Daryl Holt (JEL)
- Deaths in 2022 (5): Robert Luna, Lorne Clark, James Giellihar, Dennie Bunn, and John Davis

The had told KLBK in April 2022 that only three “sexually violent predators have passed away.”<sup>121</sup> Despite claims that the Littlefield center engaged in a rigorous and “proactive” COVID screening protocol,<sup>122</sup> the TCCO's own reports on COVID case counts from January 2021-June 2021 notes that five prisoners died from COVID with two more deaths pending an official determination regarding the cause of death.<sup>123</sup>

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<sup>121</sup> Supra., Elizabeth Fitz, “Protesters”

<sup>122</sup> See <https://tcco.texas.gov/sites/tcco/files/documents/tccc-covid-19-protocols.pdf>

<sup>123</sup> See <https://tcco.texas.gov/sites/tcco/files/documents/tcco-covid-19-case-counts-january2021-june2021.xlsx>

## APPENDIX 2: TIMELINE OF KEY EVENTS IN TEXAS CIVIL COMMITMENT PROGRAM

This is a summary of key events in the evolution of the Texas Civil Commitment Program:

- 1983: Interagency Council on Sex Offender Treatment (ICSOT) was established
- 1989: The ICSOT established a registry of approved treatment providers
- 1993: The Texas Legislature establishes the three-member “Council on Sex Offender Treatment” (CSOT) to replace the ICSOT
- 1995: Texas legislature established a public sex offense registry (“Ashley’s Law”); civil commitment law introduced but fails.
- 1997: Florence Shapiro and John Whitmore tried and failed to pass civil commitment law
- October 1998: CSOT began plans for a civil commitment program
- November 9th, 1998: Shapiro introduced SB 29, a civil commitment bill
- March 11th, 1999: Shapiro introduced SB 1224, a bill requiring registration of civilly committed persons
- May 27th, 1999: Using suspension of the rules, JE “Buster” Brown introduced SR 1159 to add Shapiro’s civil commitment bill to SB 365
- June 19, 1999: Governor George W. Bush signed SB 365, which included the establishment of an “outpatient” civil commitment program.
- September 1st, 1999: SB 365 took effect
- May 20th, 2005: *In re Commitment of Fisher*, 164 S.W.3d 637 (Tex. 2005) The Texas Supreme Court upheld constitutionality of the Texas civil commitment program
- June 17, 2005: Governor Rick Perry signed SB 912 (Shapiro), requiring those subject to civil commitment to stay only in approved state-run halfway houses
- 2007: SB 1951 (Wentworth and Williams) established the special “435th District Court” to handle civil commitment cases; HB 2034 (England) and SB 1198 (Shapiro) formally established a “Special Prosecution Unit” (SPU) to prosecute civil commitment cases
- June 5, 2008: Governor Rick Perry appointed Michael Seiler as judge for the 435th District Court
- June 7th, 2011: Governor Rick Perry signed bill establishing the “Office for Violent Sex Offender Management” (OVSOM) to take over CSOT operations
- 2012-2014: The OVSOM made arrangements with Avalon and GEO Group (private prison companies) to house committed persons
- May 1st, 2014: Allison Taylor, head of OVSOM, resigned after scandals involving the placement of civilly committed persons without proper notification; Marsha McLane became the new head of OVSOM.
- January 2015: Judge Michael Seiler approved first release of civilly committed person to release into community.
- January 2015: State audit found the OVSOM was in “disarray” and could not account for spending and records of committed persons.
- February 24th, 2015: SB 746 (Whitmire and Perry) introduced to reform issues with OVSOM
- April 24th, 2015: Judge Michael Seiler was publicly reprimanded for showing extreme prejudice and unprofessional conduct in numerous civil commitment cases.

- June 17th, 2015: Governor Greg Abbot signed SB 746 into law. SB 746 renamed the OVSOM as the “Texas Civil Commitment Office” (TCCO), eliminated felony offenses for most infractions of civil commitment rules, and authorized a lockdown facility to house the civil commitment program.
- July 31st, 2015: The TCCO announced a contract with private prison company “Correct Care Solutions” to run a new lockdown civil commitment facility in Littlefield.
- September 1st, 2015: The civil commitment lockdown facility in Littlefield was officially opened. Civilly committed persons were rounded up and shipped to the Littlefield facility.
- February 16th, 2016: Michael Seiler resigned from the bench at the 435th Judicial Court, as he was being investigated for misusing juror information for his reelection campaign.
- 2017: SB 613 (85(R), 2017) passed, requiring those convicted of sex crimes and who suffer from mental illness or was considered not guilty by reason of insanity to be detained indefinitely until mentally stable to participate in the civil commitment program
- 2019: The private company “Management and Training Corporation” took over operations of the Littlefield facility; MTC removes treatment language from internal memos and refers to the Littlefield detainees as “inmates”
- April 9th, 2022: Members of two groups dedicate to reforming/abolishing the controversial program, Texas Against Civil Commitment (TACC) and Families Against Committing Texans Standup (FACTS), hosted a protest in front of the Littlefield facility.



### APPENDIX 3: THE CIVIL COMMITMENT PROCESS

Not every person convicted of a sex offense is automatically qualified for civil commitment. This section provides an overview of the civil commitment process, as told by the Texas Civil Commitment Office and thus may not accurately depict how the program is run behind closed doors.

The steps taken in deciding who is eligible and subject to civil commitment were taken from a flowchart provided by the TCCO website:<sup>124</sup>

1. 24 Months Prior to Release: TDCJ provides notice of offenders serving a sentence for a sexually violent offense that may be a repeat sexually violent offender to the seven-member “Multi-Disciplinary Team” (MDT)
2. This MDT determines whether the offender is a repeat sexually violent offender and likely to commit a sexually violent offense after release. If majority of the 7 member panel votes yes, the person is referred for an evaluation. This panel consists of a mental health professional from the Department of State Health Services, one person from the TDCJ victim services division, one person from the TDCJ sex offender rehabilitation program, a licensed peace officer from the Department of Public Safety with five years’ experience or the officer’s designee, two people from the Texas Civil Commitment Office, and a licensed sex offender treatment provider from the Council on Sex Offender Treatment.
3. If the evaluator determines that the offender suffers from a behavioral abnormality, TDCJ refers the case to the prosecutor in the county in which the person was most recently convicted of a sexually violent offense.
4. The prosecutor decides whether to file a petition for civil commitment and may request legal, financial, and technical assistance from the Special Prosecutions Unit.
5. Prior to trial, both the State and the offender are entitled to an additional evaluation to determine whether the offender suffers from a behavioral abnormality. Depositions are also taken.
6. The individual can agree to be committed or can go to trial. At trial, the state must prove the individual is an SVP beyond a reasonable doubt.
7. If committed, TCCO provides supervision and treatment upon the SVP's release from prison.

The civilly committed person is sent to the Texas Civil Commitment Center in Littlefield. The civil commitment program is structured into five tiers, with the first four tiers of programming are offered at the Littlefield facility. Prisoners at the TCCC participate in six hours of “sex offender treatment” weekly as well as additional programming. Those who make it to Tier Five participate in “sex offender treatment groups” weekly and attend individual sessions monthly. As noted elsewhere in this report, it generally takes a year to advance to the next tier in the program. Prisoners are required to wear a GPS ankle bracelet and the program collects fees for GPS monitoring and other expenses.

In addition to programming specific to their tier level, the Littlefield facility (allegedly) offers”

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<sup>124</sup> “Sexually Violent Predator Civil Commitment Process.” TCCO. Accessed 9 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/sexually-violent-predator-civil-commitment-process.pdf> . See also TCCO Memo “SUBJECT: TIERED PROGRAMMING AND MOVEMENT BETWEEN TIERS”. 28 Sept. 2021. Accessed 9 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/policies/policy-4-1-tiered-programming-movement-between-tiers.pdf>

- Life Skills
- Individual Sessions are provided every 90 days and when needed or upon request
- Weekly study hall/required for tier 1 and 2 and sometimes in higher tiers if needed
- Weekly community meetings
- Spiritual services
- Alcohol and substance abuse treatment services including NA/AA,
- Education classes
- Resume writing
- Budgeting
- Structured and open recreation
- Employment and vocational training
- The opportunity to work for minimum wage
- An assigned case manager

Some privileges are only available to those on a specific tier level. As a prisoner advances a tier, the prisoner receives more privileges and a move to less restrictive housing within the facility.

Visitation is allowed by family and friends who are approved contacts. Visitation may be in-person or by video. Visitation is from 9 a.m. to 4 p.m. on Saturdays and Sundays, as well as on designated holidays. Exceptions for in-person visitation may be made in advance for visitors traveling a certain distance.

Below are the treatment tiers as described by the TCCO's overview of the program:<sup>125</sup>

*Tier One: "Responsibility"*

Upon arrival at the Littlefield facility, the prisoner will be required to take courses in "building problem solving skills and focus(ing) on how good decisions are made." This tier includes curricula that will help the prisoner with building problem solving skills and will teach the prisoner how good decisions are made. This tier addresses the prisoner's individual needs and considers the level of skill the prisoner has for managing their life. The goals of Tier One include: attending and actively participating in treatment; understanding cognitive behavior therapy and thinking errors; demonstrating honesty, accountability, readiness for change; and understanding healthy sexuality.

Tier 1 prisoners are required to attend scheduled programs and activities listed on the approved Building Schedule, have specific dorm rules more restrictive than prisoners in higher tiers, are authorized movement coordinated and supervised by staff while outside the housing dorm, and may volunteer to work (i.e., general cleaning, etc., without monetary compensation).

Tier 1 prisoners are restricted to the following personal belongings: 10 sets of clothing, 6 pairs of shoes, hygiene products, some jewelry (1 watch, 1 wedding band and 1 religious medallion), legal material, a

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<sup>125</sup> "Civil Commitment Program Overview." Texas Civil Commitment Office. June 2021. Accessed 9 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/civil-commitment-program-overview.pdf>

desk fan, a clock/radio, a desk lamp, a typewriter or word processor, 1 pair of headphones, 1 approved newspaper, 1 approved magazine, up to 5 approved non-legal books, 25 approved loose photographs approved by the Treatment Team, 1 set of dominoes, 2 decks of playing cards, 2 board games, and approved art supplies. In addition, Tier 1 prisoners can receive one initial care package and one approved package from a vendor or family semi-annually.

Tier 1 prisoners are also allowed limited commissary purchases up to \$100 monthly within the authorized storage capacity provided and if the client has funds, can vote and hold a position on the Client Council, engage in Intra-Housing dorm events (i.e., sports, board games and holiday events), and may order and purchase food from local food establishments on special occasions as determined by the Facility Administrator and approved by TCCO. (Special occasions can involve the entire Center or just the Tier 1s).

### *Tier Two – “Awareness and Discovery”*

Tier 2 prisoners “will work on disclosure of offending behavior and their offense cycle, sexual history and relationships. This Tier will help the (prisoner) work on their risk factors and develop a path towards establishing a balanced, self-determined lifestyle that is incompatible with offending behavior. Tier 2 consists of two phases: Tier 2-Initial Placement or Incident Report (Tier 2-I) and Tier 2. (Prisoners) are placed in Tier 2-I for the first six months of this tier. A (prisoner) may also be considered for Tier 2-I if the client receives a sustained incident report. The prisoner will participate in disclosure group, which includes curricula that covers offending behavior; relationships; and sexual history. The prisoner works on developing behaviors toward establishing a balanced, self-determined lifestyle that is free from offending behavior. The goals of Tier Two include: admitting to the offenses; understanding their offense cycle; being accountable for the choices they have made; identifying risk; and continuing to demonstrate an understanding of healthy sexuality.”

Tier 2 prisoners can participate in the paid client work program under special circumstances (i.e., moving furniture or equipment, major cleaning projects, etc.) and participation does not impact job opportunities for Tier 3s and Tier 4s and approved by the Texas Civil Commitment Office (TCCO). Those who completed Tier 2-I are eligible for removal of their Global Positioning System (GPS) ankle bracelets while on site at the Texas Civil Commitment Center.

Tier 2 prisoners are allowed the following additional personal items: 1 pair of stud earrings, a TV, a DVD player, 1 approved music media player, 1 additional approved magazine (2 total), 5 additional approved non-legal books (10 total), 25 additional approved loose photographs (50 total), 15 approved DVDs or CDs, drawing pencils & 2 sketch pads, 2 approved completed art projects.

Tier 2 prisoners can get an approved package quarterly, up to \$140 in commissary monthly, and may order and purchase food from local food establishments on special occasions plus once semiannually as determined by the Facility Administrator and approved by TCCO. (Special occasions can involve the entire Center or just the Tier 2’s).

### *Tier Three - Healthy Relationships and Empathy*

Tier 3 prisoner will learn to control their risk factors and build relationship skills. This tier assists the prisoner to understand and share with others in a more empathic and emotionally healthy manner through ongoing development and supervised practice of self-control behaviors, thoughts, and emotions. The goals of Tier Three include: being able to identify high-risk situations; increasing social support; gaining skills in recognizing healthy relationships; and creating a maintenance plan for managing risk.

Tier 3 prisoners are allowed less restrictive movement from the housing dorm in specific authorized areas and activities (i.e., treatment, recreation and work), granted six months rotation in paid client work program, and are eligible for TCCO approved cellphone & charger upon approval.

Approved additional personal property includes: 1 non-religious necklace, approved gaming systems, battery operated TV-radio, 1 additional approved newspaper (2 total), 1 additional approved magazine (3 total), 25 additional approved loose photographs (75 total), 15 additional approved DVDs or CDs (30 total), 2 additional board games (4 total), 1 additional approved completed art projects (3 total), and two approved packages quarterly.

In addition, Tier 3 prisoners are allowed up to \$180 in commissary, a movie night once per month, and may order and purchase food from local food establishments on special occasions plus once each quarter as determined by the Facility Administrator and approved by TCCO. (Special occasions can involve the entire Center or just the Tier 3s).

#### *Tier Four – Preparation for Community Reintegration*

Tier 4 prisoners will receive support and guidance to reinforce and support the new skills learned in treatment. The prisoner will also prepare to return to the community through individually tailored curriculum using offense-focused group presentation, cognitive restructuring, role play, and life planning. Tier 4 also includes an Advanced Group Environment (AGE) for prisoners who have progressed significantly in Tier 4 and are being considered for Tier 5. This environment emphasizes an increase in independent living skills and personal responsibility that is similar to community living. The goals of Tier Four include: being financially and emotionally responsible and developing a discharge and safety plan for community living.

Tier 4 privileges include less restrictive movement from the housing dorm to all authorized areas and activities, open access to recreation yard during open recreational times, and continuous participation in paid work program.

Additional approved personal property includes: Approved rechargeable small electronic games, 1 additional approved newspaper (3 total), 1 additional approved magazine (4 total), 25 additional approved loose photographs (100 total), 15 additional approved DVDs or CDs (45 total), 1 additional board games (5 total), and 2 additional approved completed art projects (5 total).

In addition Tier 4 prisoners can receive 3 approved packages from vendors or family members quarterly, 1 extra package anytime during the year with approval, purchase approved movies & video games from

approved vendors, may order up to \$220 per month in commissary, purchase food from local food establishments on special occasions plus once each month as determined by the Facility Administrator and approved by TCCO. (Special occasions can involve the entire Center or just the Tier 4s), participate in movie night with pizza party (at the prisoner's expense) 2 times per month, possess a bulletin board in the room, have one approved musical instrument, possess one dorm library with approved literature, and order personal bed linens at the client's expense.

#### *Tier Five – Community Treatment.*

Prisoners who have completed all of the goals in Tiers 1 through 4 of the “sex offender program” or the equivalent and have been approved to live in less restrictive housing in the community are placed in Tier 5. The prisoner's placement in Tier 5 must be in the best interest of the prisoner; certain conditions shall be imposed that adequately protect the community (Policy 4.1 Page 3 of 7 conditions). “Sex offender treatment” will continue in Tier 5 utilizing a cognitive behavioral model that incorporates the “Good Lives” and “Risk-Need-Responsivity” models. Those in Tier 5 will continue to receive treatment and supervision that will reinforce the skills learned in treatment. The goals for Tier 5 are for the client to continue to build healthy relationships and social support systems, identify high-risk situations, and to be a productive citizen who is free from offending behavior with the ultimate goal of no more victims.

In reality, the few who make it to this final tier will likely face difficulties in getting released. The (TCCO) admits “finding safe, affordable housing for clients entering Tier 5” is “not without significant challenges,” particularly local residency restrictions (“child safety zones” which apply to all registrants) and an unwillingness to approve housing in areas they believe to be unhealthy, such as “a high-crime area to include locations with known prostitution or drug trafficking, would not be an appropriate residence for a client due to the nature of the environment and risks posed by the surrounding activities.” The residence must also contain access to transportation, access to the registration office, and access to medical and other necessary services. Furthermore, civilly committed persons cannot leave Texas.<sup>126</sup>

“The difficulty in finding housing for TCCO's clients has increased significantly since the COVID19 pandemic. While it has never been easy to locate housing, the number of locations willing to accept TCCO's clients has reduced greatly. Previously, we were able to locate privately owned apartment complexes that were willing to accept TCCO's clients; however, since 2020, many of those privately owned buildings have been sold to corporations or apartment companies. We have found that the majority of apartment complexes that are owned by corporations have policies that either expressly prohibit sex offenders from residing in the complex or have policies which would prohibit our clients. Additionally, most privately owned rentals that are managed by a property management company will not accept registered sex offenders. In our experience, more privately owned rentals are being managed by property management companies than there were previously.”<sup>127</sup>

Strict rules dictate whether a prisoner can be released to the homes of loved ones. “Whether a client can reside with a family member depends on a number of factors to include whether that family member is an

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<sup>126</sup> “Texas Civil Commitment Office Housing Process and FAQ.” TCCO. Accessed 9 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/tcco-housing-process-and-faq.pdf>

<sup>127</sup> Ibid.

approved chaperone, whether the client's victim resides in or visits the home, whether the home is an appropriate situation for the client, and the impact that residing with family will have on the client's treatment. All household members need to be prepared to hold the client accountable for maintaining compliance with all commitment requirements and must understand that the entire household would need to follow many of the client's commitment requirements such as no internet access, no streaming services/cable TV, no visitors without authorization, no alcohol or drugs in the home, and agree to unannounced daytime and nighttime home inspections by the case manager.”<sup>128</sup>

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Those in the civil commitment program must abide by the long list of rules listed below:<sup>129</sup>

Criminal penalties under Section 841.085 of the Texas Health and Safety Code may apply to violations of the following rules:

1. I agree to reside where instructed by TCCO. I understand that failure to do so may result in criminal prosecution.
2. I agree not to leave the state without TCCO permission. I understand that failure to do so may result in criminal prosecution.
3. I agree to submit to monitoring via a wearable global positioning satellite (GPS) monitoring system twenty-four hours a day, seven days a week. I understand that failure to submit to GPS monitoring, removing my GPS monitoring, or attempting to tamper with, alter, or destroy the GPS monitor or its functionality may result in criminal prosecution.
4. I agree not to contact, directly or indirectly, any victim of my offenses. I understand that doing so may result in criminal prosecution.

Violations of the following rules may result in a reduction of my supervision level or tier or return to a more restrictive environment:

5. I agree to abide by a child safety zone such that I shall not be within 1,000 feet of a perimeter of a location where children commonly gather including a school, day-care facility, video arcade, youth center, public swimming pool, or playground unless approved by TCCO.
6. I agree to live a responsible lifestyle; obey all local, state and federal laws and regulations; follow all requirements of my residential facility; and follow all supervision and treatment rules. I understand that a violation of local, state, or federal law may result in criminal prosecution pursuant to that law's guidelines.
7. I agree not to drink alcohol or use drugs and to submit to random alcohol and drug testing.
8. I agree not to use verbal or physical aggression towards myself or others and not to communicate with others in a manner that could be considered threatening, harassing, or obscene.
9. I agree to cooperate with authority figures including TCCO officials, law enforcement authorities, and staff at residential facilities.

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<sup>128</sup> Ibid.

<sup>129</sup> “Civil Commitment Rules.” TCCO. Accessed 9 June 2022 at <https://tcco.texas.gov/sites/tcco/files/documents/plans-reports-rules/civil-commitment-rules.pdf>

10. I agree not to possess a driver's license or operator permit or to possess, own, or drive a motor vehicle without TCCO approval.
11. I agree not to possess, own, or operate photographic equipment, computer equipment, a cellular telephone, or any internet-capable equipment without TCCO approval.
12. I agree not to contact children under the age of eighteen or possess or display pictures of children without TCCO approval.
13. I agree to take prescribed medications as directed by the health care provider.
14. I understand that all contacts, including in person contact, telephone contact, and mail contact, must be approved by TCCO and that all mail, except legal or governmental mail, addressed to me will be reviewed by TCCO or facility personnel. I understand that my contacts may be required to attend training sessions with my treatment provider or to speak with my treatment provider and case manager.
15. I will report and disclose all sources of income, goods, and services to TCCO.
16. I will disclose all bank accounts to TCCO and provide statements to TCCO at minimum on a monthly basis or more frequently upon request.
17. I will not open new credit accounts without TCCO authorization. I will disclose all existing credit accounts and provide statements to TCCO at minimum on a monthly basis or more frequently upon request.
18. I will not use fictitious names or aliases.
19. I understand that I must charge my GPS monitor as instructed by TCCO.
20. I agree to permit TCCO and/or my residential facility's staff to inspect my wearable GPS monitor and charging station and to immediately contact my case manager if my wearable GPS monitor becomes damaged or inoperable for any reason or if my wearable GPS monitor vibrates.
21. I agree to participate in and complete the treatment program. I understand that if I fail to make progress in treatment, I may be discharged from the program. I further understand that if I choose not to participate in treatment, my progress through the program may be hindered.
22. I agree to follow treatment rules made by the treatment provider or TCCO and to disclose and discuss all rule violations in treatment.
23. I agree to submit to testing as requested by my treatment provider including polygraph examinations and penile plethysmograph examinations.
24. I agree to attend other types of treatment as referred by my treatment provider or TCCO such as Anger Management or Substance Abuse Treatment and understand that I will be required to sign a release permitting that therapist to communicate with my TCCO treatment provider and other TCCO officials.
25. I agree not to reveal the identity of program participants or to discuss information learned during group treatment sessions with my family, friends, contacts or other TCCO clients outside of group treatment sessions.
26. I understand and agree that there will be open communication between my treatment provider(s), case manager(s), other TCCO officials, courts, medical or mental health authorities, law enforcement agencies, and my contacts or family. I understand that information regarding my treatment and progress will be discussed with all professionals and agencies involved in my treatment and supervision or civil commitment.

27. I understand that what I discuss in individual treatment sessions may be discussed during group treatment sessions and that if I am discharged from the group, am arrested, or if I abscond my absence will be discussed with other group members.
28. I agree not to record any sessions, conversations, telephone calls, or other contacts with the treatment provider or clients in the program.
29. I agree not to engage in sexual behavior other than healthy sexual behavior and not to engage in deviant sexual behavior including deviant fantasies, deviant masturbation, cruising, voyeurism, pornography, sexual talk or jokes, sexual harassment, sexual following, flirting, fetishism, troilism, manipulation, obscene calls, adultery, domination, casual sex, multiple partners, internet sex, sadism or masochism, cross-dressing or role play, elimination, bestiality, and topless bars.
30. I agree that prior to engaging in sexual contact with a person with whom I have an established, committed, monogamous relationship I will inform the person of my sexual offenses and sex offender treatment and permit my treatment provider and case manager to communicate with my partner.
31. I shall not unlawfully possess, use, sell, or have under my control any weapon or unlawful weapon.
32. I shall pay the established fees for GPS, treatment, and housing.

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Advancement in the program can largely be summed up as completing every assignment, never angering the staff, and pray that they think you're sincerely trying to reform. That last part is out of the prisoner's hands. But a prisoner "who demonstrates a regression in treatment or behavior may be reduced in tier as determined by the Treatment Team." In addition, a prisoner is not guaranteed a tier level increase after completing treatment as they are subject to staff approval to advance. If a staff member members feels a prisoner still has an unresolved issue, tier advancement can be withheld.