

**SUBJECT:** Licensing sex offender treatment providers, developing assessment tool

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 6 ayes — Madden, D. Jones, Haggerty, R. Allen, Hochberg, Noriega  
0 nays  
1 absent — McReynolds

**WITNESSES:** For — Lawrin Dean; Scott Siegel  
Against — None  
On — Maria Molett, Allison Taylor, Lisa Worry, Texas Council on Sex Offender Treatment

**BACKGROUND:** The duties of the Texas Council on Sex Offender Treatment, part of the Department of State Health Services, include maintaining a registry of sex offender treatment providers, as well as developing registration requirements and setting forth standards for providers in the registry. The council also develops strategies for treating, assessing, and managing sex offenders and disseminates information about the management of sex offenders.  
  
The council is composed of seven members appointed by the governor with the advice and consent of the Senate. Three are members of the general public and four are treatment providers.  
  
The council has about 360 treatment providers in its registry who live in about 200 of the state's counties.

**DIGEST:** CSHB 2036 would require that sex offender treatment providers be licensed by the Texas Council on Sex Offender Treatment and would require the council to implement a pilot program to develop and analyze a risk assessment tool for sex offenders.  
  
The bill would take effect September 1, 2005.

***Licensing of sex offender treatment providers.*** CSHB 2036 would prohibit someone from providing a rehabilitation service or acting as a sex offender treatment provider unless that person were licensed as a sex offender treatment provider by the state's Council on Sex Offender Treatment. Unless licensed, individuals would be prohibited from claiming to be sex offender treatment providers or using a similar title that implied they were. Those registered as sex offender treatment providers on the bill's effective date would be considered to hold a license under CSHB 2036.

The council would develop eligibility and procedural requirements for licensing sex offender treatment providers and maintain a list of treatment providers. The council could charge and collect a fee for licensure and license renewal.

Current requirements and authority for the council on registry members would extend to license applicants. They would include handling complaints, receiving criminal history information, waiving requirements for persons licensed in other states, and issuing license renewals and denials. CSHB 2036 also would continue the council's ability temporarily to suspend a license if it determined the continued practice by a person would constitute a continuing and imminent threat to the public welfare. The bill would continue allowing these disputes to go before the State Office of Administrative Hearings.

The council's authority to impose administrative penalties on registry members would be extended to licensees who violated the bill or a rule or order adopted under the bill. CSHB 2036 would establish the criteria used to determine the amount of a penalty and the procedures to be followed by both the council and the treatment provider for imposing and challenging administrative penalties.

The Texas Board of Criminal Justice and the Texas Youth Commission board could exempt their employees from specific licensing requirements if they determined that they caused financial or operational hardship on the agency.

Violations of the laws governing sex offender treatment providers would be raised from a class C misdemeanor (maximum fine of \$500) to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) and would apply to offenses committed on or after the bill's effective date.

***Dynamic risk assessment tool.*** The council would have to work with appropriate entities to develop and deploy dynamic risk assessment tools and protocols for use by sex offender treatment providers in counties with populations of 1 million or more. Judges would include the cost of the test with other treatment costs that they were required to have sex offenders pay, if they were financially able.

The council would report to the governor's criminal justice division on the progress of the pilot program by November 1, 2006, and would work with the Legislative Budget Board to study recidivism of sex offenders treated in the pilot program, including studying the risk assessment tools and protocols.

**SUPPORTERS  
SAY:**

HB 2036 is necessary to ensure that the state's sex offender treatment providers have the proper education and training to treat these offenders so that the public can be protected from them. The state Council on Sex Offender Treatment now has a registry of sex offender treatment providers, but the state does not have enough authority adequately to enforce the standards of practice so essential to protecting the public through successful sex offender treatment. HB 2036 would address this situation by requiring that sex offender treatment providers be licensed just as are other specialty counselors.

Successful sex offender treatment is important because most sex offenders eventually return to the community and many are ordered by the criminal justice system to seek treatment. Studies have shown that the right type of treatment can be successful in reducing sex offender recidivism.

CSHB 2036 would ensure that sex offender treatment was provided only by qualified people who adhered to evidence-based research treatments and industry best practice essential to this kind of treatment, but that are not necessarily the same as those used in other types of therapy. Sex offender treatment is mandated, confrontational, structured, and victim centered and imposes values and limits on the offender. Sex offender treatment also uses polygraphs and other techniques not used in traditional therapy. In sex offender treatment, because the primary client is the community and public safety is a primary goal, traditional confidentiality requirements do not apply. If a sex offender treatment provider knows that a sex offender has committed another offense, the provider notifies law enforcement authorities. Currently, if someone with a general counseling license were treating a sex offender and did not follow this practice by

contacting law enforcement authorities, it would be difficult for the state to discipline the counselor or revoke a license because the standards of practice under which the counselor was licensed may not have been violated.

CSHB 2036 would not exclude anyone who was qualified and experienced or willing to obtain the necessary education and training from providing sex offender treatment. CSHB 2036 would grandfather in those already in the council's registry. The council also would implement a tiered system under which persons who did not meet all of the licensing requirements could work as affiliates or under an internship title until full licensure. This would be similar to the way licensing for other professions, such as counselors and social workers, has worked. The many counselors, social workers, psychologists, and others throughout the state could become licensed. Any regulatory duties placed on licensees would not be burdensome and would be similar to those imposed on other groups and professions licensed by the state.

Obtaining the necessary education should not be a problem for any professional who wanted to become licensed as a sex offender treatment provider no matter where they lived in Texas. The council offers two seminars each year, and other educational opportunities are offered throughout Texas by national organizations and local probation departments. The council also could offer special education classes throughout the state, if needed.

The need to ensure that sex offenders receive the proper treatment and that the public is protected outweighs concerns that an individual who is providing sex offender treatment would not be able to continue. If a provider is experienced and educated in this field, that person should be able to get a license or to qualify under one of the other tiers, and if not, the bill would ensure that person got the necessary training before providing any more sex offender treatment.

Many of the provisions in CSHB 2036 would put sex offender treatment licensure on par with similar licensing procedures. The bill would raise penalties to class A misdemeanors, the same penalty imposed for other professional licenses.

CSHB 2036 would authorize the council to develop and test a dynamic risk assessment tool because the current tool can be misleading and does

not take advantage of some of the more recently developed tests. The current assessment tool is a static tool that uses the answers to 10 questions to assign a risk to offenders, and it can misclassify offenders. Juveniles who have not been married or not held a permanent job might appear to be a high risk, while a married, older offender who has held the same job for years could come out as a low risk. The pilot program established by the bill would allow the council to develop new tools and test them in one or two large counties so that more accurate assessments could be made and so the state's resources could be allocated better for the protection of the public. The bill would allow judges to order offenders to pay the cost of using any new assessment tool.

The council would be the right entity to develop the assessment tool. They are recognized as the state's experts in the assessment and treatment of sex offenders, and no other state entity has the experience to develop and evaluate an assessment tool. It appears that there is no national entity or research specialist developing such a tool, and other states and researchers look to the council for information about sex offender treatment.

**OPPONENTS  
SAY:**

Imposing licensure requirements for sex offender treatment providers would run the risk of excluding someone from the practice who is qualified and who has been providing successful sex offender treatment. State licensing also inevitably becomes expensive for licensees, and the weight of regulatory oversight can be burdensome for them. For example, a requirement that a sex offender treatment provider attend specialized continuing education hours could be a problem for providers in rural areas or the border region.

**OTHER  
OPPONENTS  
SAY:**

The council on sex offender treatment might not be the right entity to develop a dynamic assessment tool. This type of research might be better done by a university or national organization rather than the council which, under the bill, would focus on licensing treatment providers and which has an important role in the state's process for the civil commitment of sex offenders.

**NOTES:**

The committee substitute made several changes to original bill, including changing references from registry members to licensees, changing the way that TDCJ or TYC employees may become exempt from specific licensing

requirements, adding information about license suspension procedures, changing the areas in which the assessment tool can be tested, and eliminating requirements that sex offenders undergo specific assessments.