

## **BILL ANALYSIS**

C.S.H.B. 2036  
By: Allen, Ray  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, a person does not have to be registered with the Council on Sex Offender Treatment in order to provide treatment to sex offenders. As a result, there are no governing rules or a standard of practice in the treatment of sex offenders. The treatment of sex offenders is a very specialized area. It differs from traditional psychotherapy in that the treatment is mandated, confrontational, structured, victim centered, and the treatment provider imposes values and limits on the offender.

CSHB 2036 creates a protected practice of sex offender treatment providers to standardize training and treatment. This bill also defines what constitutes information concerning the treatment of a sex offender and directs the Council on Sex Offender Treatment to conduct a pilot program to develop, implement, research and report a dynamic risk assessment.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Council on Sex Offenders in SECTION 8 and SECTION 14 of this bill.

### **ANALYSIS**

SECTION 1. Defines "licensed practitioner" in the Health and Safety Code to include a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

SECTION 2. Lists what constitutes information concerning the treatment of sex offenders to include: criminal history, the discharge summary, the official offense report, progress reports, test results, victim statements and any other additional information necessary for the treatment of the sex offender.

SECTION 3. Clarifies that "Executive director" means the executive director of the council.

SECTION 4-6. Conforming changes.

SECTION 7. Conforming Changes. Changes "inclusion in the council's registry" to "a license under this chapter".

SECTION 8. The council shall maintain a list of sex offender treatment providers and develop and implement by rule license requirements and procedures for sex offender treatment providers.

SECTION 9. Conforming Changes. Changes "registration and renewal fees" to "license and renewal fees".

SECTION 10. Conforming changes. Changes heading from "PUBLICATION OF REGISTRY" to "PUBLICATION OF LIST", and changes "list of registered sex offender treatment providers" to simply "list of sex offender treatment providers".

SECTION 11. Conforming changes. Changes "registration form" to "license form".

SECTION 12. Conforming changes. Changes heading from "SEX OFFENDER TREATMENT PROVIDER REGISTRY" to "SEX OFFENDER TREATMENT PROVIDER LICENSE".

SECTION 13. A person may not claim to be a sex offender treatment provider, or use the title "sex offender treatment provider" or a similar title or an abbreviation that implies the person is a sex offender treatment provider, unless the person is licensed under this chapter.

SECTION 14. The council by rule shall develop procedures and eligibility and other requirements for issuance of a license, including, if appropriate, requirements related to clinical practice experience and assessment, continuing education, and supervision. In developing the rules, the council shall coordinate with the Texas Department of Criminal Justice, The Texas Youth Commission, and the Texas Juvenile Probation Commission. The Texas Board of Criminal Justice or the governing board of the Texas Youth Commission may vote to exempt employees of the Texas Department of Criminal Justice or the Texas Youth commission, as appropriate, from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency.

SECTION 15-24. Conforming changes. Changes "registration" to "license".

SECTION 25. The council or a three-member committee of council members designated by the council shall temporarily suspend the license of a person if the council or committee determines that continued practice by the person would constitute a continuing and imminent threat to the public welfare. A license may be suspended without notice or hearing on the complaint if action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension and a hearing is held as soon as practicable. The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

SECTION 26. Subchapter J, ADMINISTRATIVE PENALTY, allows the council to impose an administrative penalty on a person licensed as a sex offender treatment provider, outlines the amount of the administrative penalty (between \$50 and \$5,000 per violation), and describes what the amount shall be based on. Subchapter J also describes how the executive director reports and makes notice of a violation and penalty, as well as the options (pay penalty or request a hearing) offered to the person charged with administrative penalty. This section goes on further to explain the protocol for a hearing if the person accused requests it, and describes the various determinations that can be made by the council following the hearing.

Section 26 also outlines options following the decision by the council (pay or appeal) and provides a detailed description of how the person charged can petition for judicial review. If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed. If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. It goes on to allow the attorney general to sue to collect the penalty if the person charged does not pay.

Lastly, this section describes the process for remittance of the penalty and interest if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court. A proceeding under subchapter J, ADMINISTRATIVE PENALTY, is a contested case under Chapter 2001, Government Code.

SECTION 27. Changes heading from "MISUSE OF TITLE" to "OFFENSE".

SECTION 28. If a person claims to be a sex offender treatment provider, uses that title, or a similar title or abbreviation, and is not licensed, the offense is a Class A misdemeanor.

SECTION 29. Establishes an adult dynamic risk assessment pilot program which applies only to adult sex offenders who are treated in a county with a population of one million or more. The council will develop, implement, research, and deploy dynamic risk assessment tools and protocols for use by persons licensed as sex offender treatment providers. Cost incurred by this pilot program shall be included with costs required to be paid under Section 11(i), Article 42.12, Code of Criminal Procedure. Additionally, not later than November 1, 2006, the council shall report its progress of implementing the pilot program to the criminal justice division of the governor's office. The report must include information on the program's use of all dynamic risk assessment tools, including plethysmograph and visual reaction time assessments and the use of dynamic risk assessment protocols. After filing the report, the council shall work with the Legislative Budget board to study the recidivism of sex offenders treated under the pilot program, including a study comparing the various dynamic risk assessment tools and protocols.

This subchapter expires December 1, 2009.

SECTION 30. Conforming changes. The "Interagency Council on Sex Offender Treatment" is changed to "Council on Sex Offender Treatment". "Registered" is changed to "licensed".

SECTION 31. The following are repealed:

- (1) Section 110.001(4), Occupations Code;
- (2) Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003; and
- (3) Sections 42.01 and 42.02, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 32. The changes in law made by this Act apply only to a member appointed on or after the effective date of this Act.

SECTION 33. A person who holds a registration issued under Chapter 110, Occupations Code, on the effective date of this Act is considered to hold a license under Chapter 110, Occupations Code.

SECTION 34. The change in law made under SECTION 34, regarding offense as a class A misdemeanor, applies only to an offense committed on or after the effective date of this Act. An offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 35. To the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 36. Effective date.

#### **EFFECTIVE DATE**

September 1, 2005

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSHB 2036 altered the original definition of "licensed practitioner" to remove the requirement that a sex offender treatment provider be certified in the use of penile plethysmography.

The substitute clarifies that "executive director" means the executive director of the council.

The substitute removes language from the original regarding the exemption from licensing for the employees of the institutional division of the Texas Department of Criminal Justice. Instead, it adds that the Texas Board of Criminal Justice or the governing board of the Texas Youth Commission may vote to exempt these employees, or employees of the Texas Youth Commission, from a specific licensing requirement if it is determined that the requirement causes financial or operational hardship on the agency.

The substitute makes many conforming changes that the original failed to do by changing "listed in the registry" or "registration" to "licensed under this chapter" or "license".

The substitute adds language directing the council to coordinate with the Texas Department of Criminal Justice, The Texas Youth Commission, and the Texas Juvenile Probation Commission in developing the procedures, eligibility, and other requirements for issuance of a license.

The substitute added the language found in CSHB 2036 SECTION 25 regarding emergency suspension of a license by the council or a three-member committee of council members designated by the council.

In addition to changing the name of the pilot program from "Adult Forensic Assessment Pilot Program" to "Adult Dynamic Risk Assessment Pilot Program", the substitute made the following changes to the original, regarding the pilot program:

- (1) Amended the pilot program area from "offenders who are treated in a municipality with a population of 1,150,000 or more" to a "county with a population of one million or more".
- (2) Clarifies that the pilot program causes no additional cost to the counties or to the state.
- (3) Requires the council to report to the criminal justice division of the governor's office on the progress of implementing the pilot program, outlines what the report shall include, and requires

the council to work with the Legislative Budget Board to study recidivism rates and dynamic risk assessment tools and protocols upon completion of the report.

(4) Changes the expiration date of SUBCHAPTER K from September 1, 2007 to December 1, 2009.

(5) Removes language previously added to SUBCHAPTER K regarding presentencing assessment, content of psychosexual assessment, and sexual history polygraph.

The substitute repeals the following:

(1) Section 110.001(4), Occupations Code;

(2) Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003; and

(3) Sections 42.01 and 42.02, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003.

The substitute added the language found in CSHB 2036 SECTION 26 regarding administrative penalty.

The substitute amends Section 110.401 (b), Occupation Code, and makes the offense for claiming to be a sex offender treatment provider without being licensed punishable as a Class A misdemeanor, rather than a Class C misdemeanor.

The substitute adds language to the original to clarify that changes in law made by this Act apply only to a member appointed on or after the effective date of this Act and that a person who holds a registration issued under Chapter 110, Occupations Code, on the effective date of this Act is considered to hold a license under Chapter 110, Occupations Code.

The substitute adds language stating that to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.