



**Biennial Report regarding the Office of Violent Sex Offender Management  
December 1, 2012 – November 30, 2014**

**Prepared for the Office of the Governor, Lieutenant Governor, and Speaker of the  
House of Representatives  
Pursuant to Texas Government Code Section 420A.007**

## Table of Contents

Overview .....	1
OVSOM Executive Staff.....	1
Agency Mission, Philosophy, Objectives.....	2
Agency History.....	2
Civil Commitment Purpose and Process .....	5
Table: MDT Presentations, Referrals to SPU, and Civil Commitments by Fiscal Year .....	7
Case Management System: Supervision and Treatment .....	7
Supervision.....	7
Treatment.....	8
Monitoring Progress .....	9
Violations, Modifications, and Releases .....	10
OVSOM Fiscal Information .....	11
Size of Budget .....	11
Legislative Appropriations Request .....	11
Challenges in Making Projections.....	13
OVSOM Client Population.....	13
Historical Population Data .....	13
Table: OVSOM Client Population by Fiscal Year 2010 through 2014.....	14
Current Population Data .....	14
Locations of OVSOM Clients .....	14
Table: Location of OVSOM Clients in the Community.....	16
OVSOM Client Demographics.....	16
Table: OVSOM Client Ethnicity .....	17
Table: OVSOM Client Age .....	17
OVSOM Client Offense and Victim Information .....	18
OVSOM Client Recidivism.....	18
2013 Legislative Changes.....	19
Spring 2014 Controversy and Agency Changes.....	19
Policy Review and Revisions .....	21
Staff Training and Development .....	23
Program Review and Development.....	24
Transparency, Relationship-Building, and Public Trust.....	25
Financial Controls .....	26
Ongoing Issues .....	27
The Future .....	29

# Biennial Report regarding the Office of Violent Sex Offender Management<sup>1</sup>

## Overview

The Office of Violent Sex Offender Management (OVSOM) is a state agency tasked with the treatment and supervision of sexually violent predators through the case management system. OVSOM is governed by a three member board composed of the following three members appointed by the Governor:

1. One member experienced in the management of sex offenders;
2. One member experienced in the investigation or prosecution of sex offenses; and
3. One member experienced in counseling or advocating on behalf of victims of sexual assault.

OVSOM board members serve staggered, two-year terms. Two members' terms expire on February 1 of each even-numbered year and one member's term expires on February 1 of each odd-numbered year. The current members of the OVSOM board are:

Christy Jack, Chair  
Fort Worth, Texas

Katie McClure  
Kingwood, Texas

Roberto Dominguez  
Mission, Texas

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<sup>1</sup> While the current reporting period is December 1, 2012 through November 30, 2014, the OVSOM came under a new administration in May 2014. Unfortunately, upon taking office on May 3, 2014, the new administration found that there was a lack of files, records, or other materials. Accordingly, while some information regarding December 1, 2012 through May 3, 2014 is available it is much less detailed than the information and discussion regarding May 3, 2014 to the present.

## **Agency Mission, Philosophy, Objectives**

Currently, the mission, philosophy, and objectives of the OVSOM are under review and development by the agency's new administration. However, OVSOM recognizes that the civil commitment of sexually violent predators to long-term, comprehensive, and offense-specific supervision and treatment is necessary for the protection of the citizens of the State of Texas. The current OVSOM mission is to enhance public safety by developing and implementing strategic management policies to protect the citizens of Texas and enhance protection of victims and potential victims through research-based management of civilly committed sexually violent predators. As OVSOM's administration revamps the agency's mission, philosophy, and objectives the agency will be focused on the important responsibilities for public safety, supervision, and treatment.

## **Agency History**

OVSOM was created as a separate state agency in September 2011 to perform the functions relating to the outpatient sexually violent predator treatment program. Prior to the creation of the OVSOM, the Council on Sex Offender Treatment (CSOT) was responsible for the administration and implementation of Texas' civil commitment program.

In 1995, the 74<sup>th</sup> Texas Legislature first contemplated the sexually violent predator (SVP) act with HB 595 by Representatives Greenberg, Hochberg, Danburg, et al. but the bill did not pass out of the House Criminal Jurisprudence Committee.

In 1997, the 75<sup>th</sup> Texas Legislature considered SB 77 by Senator John Whitmire and Senator Florence Shapiro which would provide for the involuntary commitment of sexually violent predators. The measure died in committee, partly because of potential constitutional issues concerning similar laws and lack of appropriations (\$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.

In 1999, SB 365 by Senator J.E. Brown was amended with SB 29 by Senator Florence Shapiro and the Legislature determined that a small, but extremely dangerous group of sexually violent predators were being released from prison and that these individuals had a behavioral abnormality that was not amenable to traditional mental illness treatment modalities. The legislature further found that these individuals were likely to engage in repeated acts of predatory sexual violence. SB 365 expanded the duties of the Council on Sex Offender Treatment (CSOT) to include the administration and implementation of the Outpatient Sexually Violent Predator Treatment Program.

In 2003, SB 871 by Senator Florence Shapiro amended Chapter 841 of the Texas Health and Safety Code to require the court to appoint an attorney for a SVP if the State Counsel for Offenders was unable to represent the SVP. The bill further added an additional member from CSOT to the Multidisciplinary Team (MDT). SB 871 further increased the date by which a trial shall be conducted after filing a petition alleging a person is a SVP from 60 days to 270 days. SB 871 further amended Chapter 841 to clarify that subsequent convictions, judgments, or mental health commitments suspend the requirements under the chapter. The bill added that the behavioral abnormality is not due to unsound mind for purposes of Section 15-a, Article I, Texas Constitution, increased cost not to exceed \$2,500 for the trial, and added the judicial requirements of not only participation but compliance with treatment, tampering with GPS, and possession or use of alcohol, inhalants, or a controlled substance.

In 2005, the 79th Legislature SB 912 by Senator Florence Shapiro amended Health & Safety Code, Chapter 814 to add sexually violent offenses to include sexually motivated murder and capital murder. The bill transferred some of the Global Positioning Satellite (GPS) tracking responsibilities to case managers from the Department of Public Safety, required that the SVP shall reside in a facility under contract with CSOT and allowed SVPs to be housed in Mental Health/Mental Retardation facilities. Additionally, under HB 2292, the Texas Department of Health and the CSOT were consolidated into the Health and Human Services Commission (HHSC) umbrella in the Department of State Health Services (DSHS).

In 2007, during the 80th legislative session HB 2034 by Representative Kirk England with SB 1198 by Senator Florence Shapiro amended Health & Safety Code, Chapter 841 to provide that a judge is not subject to an objection other than an objection made under Section 74.053(d) of the Government Code and clarifies that 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 the violation trial and that failure to comply with civil commitment may be prosecuted in the county of violation or Montgomery County. House Bill 8 by Representative Debbie Riddle required SVPs to pay for the GPS tracking if the SVP was not indigent. SB 1951 by Senator Wentworth created the 435th Judicial District Court in Montgomery County for civil commitment proceedings under Chapter 841, Health & Safety Code and criminal cases involving 841.085, Health & Safety Code, and Article 62.203, Code of Criminal Procedures. SB 1741 (by Senator Florence Shapiro) filed the bill to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program that were performed by the CSOT. The bill died on the House floor prior to final readings.

In 2009, during the 81st legislative session, HB 2917 by Representative Jim McReynolds and Senator Florence Shapiro amended Government Code 411.110 to permit CSOT to obtain criminal history records of current and potential employees of the outpatient sexually violent predator treatment program. Senator Florence Shapiro re-filed the bill (SB 2037) to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program. The bill would have amended the Government Code by adding a new Chapter 420A titled “Office of Violent Sex Offender Management (OVSOM).” The bill died on the House floor prior to final readings.

In 2011, during the 82nd Legislature, Senator Florence Shapiro re-filed the bill (SB 166 and HB 236 by Representative Jerry Madden) to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program. The bill amended the Government Code by adding a new Chapter 420A titled “Office of Violent Sex Offender Management (OVSOM).” The bill was amended on the floor of the House of Representatives to administratively attach the new agency to the DSHS solely for administrative support as necessary to carry out the purpose of the OVSOM.

Additionally, the bill amended Health & Safety Code, Chapter 841 regarding the composition of the MDT to remove one member of the CSOT and one member from DSHS-Mental Health to add two members of OVSOM; requiring the person to comply with all written requirements imposed by the case manager or the office; increased the compensation for treatment providers not to exceed \$10,000 per OVSOM client; allows the office to enter into a memorandum of understanding with both DPS and local law enforcement for criminal complaints, warrants, apprehension, and arrest of the person; requires the office to contract with DPS for the provision of a tracking service; and requires a correctional facility or secure correctional facility to notify the case manager prior to releasing the person. On June 17, 2011 the bill was signed by Governor Rick Perry with the effective date of September 1, 2011.

### **Civil Commitment Purpose and Process**

In 1999, the Legislature found that a small, but extremely dangerous group of sexually violent predators existed and that those predators have a behavioral abnormality that makes them likely to engage in repeated predatory acts of sexual violence. The Legislature further found that the behavioral abnormality was not amenable to traditional mental illness treatment and existing involuntary commitment provisions were not sufficient to address the risk posed by these sexually violent predators. Accordingly, the Texas civil commitment program was created to provide supervision and treatment to those sexually violent predators suffering from a behavioral abnormality.

Approximately sixteen months prior to release, the Texas Department of Criminal Justice (TDCJ) reviews all offenders to determine whether the offender has more than one qualifying sexually violent offense. Sexually violent offenses are defined by Chapter 841 of the Health and Safety Code and includes the following offenses: continuous sexual abuse of a child; indecency with a child by contact; sexual assault; aggravated sexual assault; aggravated kidnapping with the intent to sexually abuse or violate the victim; burglary of a habitation with the intent to commit a sexual offense; murder or capital murder based upon sexually motivated conduct; and attempt, conspiracy, or solicitation to commit any of the listed offenses. Offenders with more than one sexually violent offense are then referred to and reviewed by a multidisciplinary team.

The multidisciplinary team is a seven member panel that reviews all offenders identified by TDCJ as potential sexually violent predators. The team is made up of one member from the Department of State Health Services, one member from the Department of Public Safety, one member from CSOT, two members from OVSOM, and two members from TDCJ to include one member from Victims' Services. A majority vote is required to recommend that the offender receive further evaluation to determine whether the offender suffers from a behavioral abnormality that makes the offender likely to engage in repeated predatory acts of sexual violence.

A behavioral abnormality assessment or evaluation includes a clinical interview, psychological testing, a review of risk assessments, a review of TDCJ records, a review of victim impact statements, institutional adjustment, and all relevant medical or psychiatric records or reports. The goal of the evaluation is to determine whether the offender meets the definition of a behavioral abnormality, as set forth in Section 841.002 of the Health and Safety Code. Section 841.002 defines a behavioral abnormality as 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.

If the evaluator determines that the offender suffers from a behavioral abnormality, the case is then referred to the SPU Civil Division for further evaluation and a decision whether to file a petition in Montgomery County alleging that the offender is a sexually violent predator. The SPU is currently funded for 50 trials per year. If the SPU moves forward to filing a petition and trial, the offender is represented by the State Counsel for Offenders (SCFO) and both SPU and the SCFO obtain an additional evaluation of the offender. The offender can enter into an agreed judgment and admit that he or she is a sexually violent predator or the offender can move forward to trial. If the case goes to trial, the offender has the right to a jury trial but can waive that right and elect for a bench trial. At trial, the SPU must prove beyond a reasonable doubt that the offender 1) is a repeat sexually violent offender and 2) suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. If the jury, or judge in a bench trial, determines that the offender meets the two criteria of an SVP, then the judge shall commit the person for outpatient treatment and supervision to be coordinated by the OVSOM.



*Table: MDT Presentations, Referrals to SPU, and Civil Commitments by Fiscal Year*

<b>Fiscal Year</b>	<b>Presented to MDT</b>	<b>Referred to SPU</b>	<b>Civilly Committed</b>
2010	528	84	37
2011	560	74	47
2012	640	89	43
2013	816	130	44
2014	1062	159	43

An order of civil commitment and final judgment are then signed by the judge. The order of civil commitment, pursuant to Section 841.082 of the Health and Safety Code, imposes requirements upon the person to ensure the civilly committed sex offender's compliance with treatment and supervision. The order of civil commitment requires that: the SVP reside in a residential facility under contract with OVSOM; the SVP attend a sex offender treatment program; refrain from contact with victims or potential victims; refrain from entering child safety zones; register as a sex offender as required under Chapter 62 of the Code of Criminal Procedure; is prohibited from using or possessing alcohol or illegal drugs; submit to constant monitoring using a global positioning satellite (GPS); and follow all written requirements of the OVSOM case manager and treatment provider.

### **Case Management System: Supervision and Treatment**

While the order of civil commitment is immediately effective, the SVP's supervision and treatment does not begin until the SVP is released. Once an SVP is released and becomes an OVSOM client, OVSOM is responsible for providing appropriate and necessary treatment and supervision. OVSOM employs case managers to provide appropriate supervision and contracts with licensed sex offender treatment providers to provide appropriate treatment.

### **Supervision**

Prior to 2005, OVSOM clients were permitted to reside in the community in private residences. However, in 2005 the 79th Legislature passed SB 912 requiring civilly committed sex offenders to reside in a facility under contract with the agency. Accordingly, OVSOM clients now reside in community residential facilities or halfway houses that are located in El Paso, Austin, Dallas, Fort Worth, and Houston. OVSOM case managers meet with each of their clients for a home visit at least once per week and also conduct surveillance when clients are outside the halfway house for approved appointments and movements. Each week, OVSOM case managers prepare and approve a daily activity schedule listing all of a client's approved movements for the week. The client and halfway house receive a copy of that schedule. The client is required to wear a GPS monitoring bracelet, which offers real-time tracking of the client's movement twenty-four hours a day, seven days a week and alerts the OVSOM case manager if the client tampers with the bracelet or has deviated from the approved schedule. When a GPS alert is received, the OVSOM case manager is responsible for researching and clearing the alert. In instances in which the client has violated the requirements of civil commitment or program rules, the case manager is responsible for processing an incident report and issuing progressive sanctions as necessary.

The case manager is also responsible for coordinating services for the client such as referral to a MHMR, VA hospital, or for local health care. Case managers also refer clients for substance abuse testing on a periodic basis or as-needed. Finally, case managers are responsible for maintaining contact with a client's collateral contacts such as family members and approving collateral contacts or chaperones for the client. Overall, the case manager is tasked with taking a holistic view of the client to manage that client as he works towards rehabilitation and release from civil commitment.

## **Treatment**

Each OVSOM client is assigned to a treatment provider for group and individual treatment sessions. There are five treatment phases: 1) eligibility and intake; 2) treatment; 3) transitional; 4) aftercare; and 5) release from the program. In order to be eligible for treatment, OVSOM clients must have been civilly committed as a SVP and must express a willingness to participate in treatment. Factors which may disqualify a client from treatment include: refusal to participate; the existence of an overt, uncontrolled psychosis; or the existence of a medical or mental health problem that prohibits participation. However, if a client initially presents with a disqualifying

condition such as overt psychosis but the condition is treated, the client may be referred back to treatment.

An assessment will be conducted within the first sixty days once a client has been assigned to a treatment provider and begins treatment. The treatment assessment includes a client interview, a review of collateral information such as police reports or TDCJ file material, formal testing such as personality testing, and a risk assessment. The treatment provider documents the assessment and provides that documentation to OVSOM. The treatment provider is also responsible for developing an individual treatment plan for each client.

Clients are required to participate in two group treatment sessions per week each lasting at least ninety minutes and two sixty-minute individual treatment sessions per month. In between treatment sessions, clients are assigned homework and materials to complete. Clients then present those assignments during group sessions. Treatment groups are limited to ten clients per group. For clients with family support, six family sessions per year are offered by OVSOM treatment providers. Clients also undergo annual polygraph and penile plethysmograph testing as part of treatment.

### **Monitoring Progress**

Clients' progress in treatment is continually monitored by the case management team, which consists of the treatment provider, the case manager, other OVSOM staff, the client's parole or probation officer (if applicable), law enforcement, and halfway house staff. Each month, case managers issue progress reports to the client to discuss the client's progress and behavior. Similarly, treatment providers issue monthly progress reports to discuss the client's progress in treatment. These progress reports and any other issues relevant to the client are discussed during monthly case management team meetings.

Further, every two years each client is entitled to a biennial review. A biennial review includes an examination by and report from a mental health professional, other than the client's treatment provider, to determine whether a behavioral abnormality exists. The biennial examiner's report, accompanied by a report from the client's case manager and a report from the client's treatment

provider, is submitted to the court for review. If the court determines there is probable cause to believe that the client no longer suffers from a behavioral abnormality, then the court is required to schedule a hearing.

### **Violations, Modifications, and Releases**

Pursuant to Section 841.085 of the Texas Government Code, it is a third degree felony to violate a civil commitment requirement. Civil commitment requirements are listed in Section 841.082 and incorporate OVSOM program rules and treatment rules. Accordingly, if a client has violated a civil commitment requirement or program rule, he may be charged with a third degree felony and prosecuted.

The order of civil commitment issued in each OVSOM client's case requires the issuance of a court order for any modification of a requirement of civil commitment and requires the court's written authorization for any address change by an OVSOM client. The law does not specify a specific procedure for a hearing or the approval of an address change. However, OVSOM is currently undergoing the process of requesting an address change for a client who has purchased a home and wishes to move from the halfway house to the private residence. The information requested by the court in this case will hopefully be instructive in future cases.

Once an individual has been civilly committed, a court order from the court of commitment or a higher court is required in order to release that person from civil commitment. If an appellate court overturns the district court's decision committing an individual as an SVP, OVSOM has a policy and procedure in place to release that individual. The court of commitment can also issue an order to release a client from civil commitment. Chapter 841 envisions two procedures by which an individual could be released from civil commitment: the biennial review process and through a petition for release. If, during a biennial review hearing, the SPU fails to meet its burden to prove that the individual continues to meet the two criteria to be civilly committed as an SVP then the court would issue an order releasing the SVP from civil commitment. Further, an OVSOM client has the right to file an unauthorized petition for release with the court alleging that he no longer suffers from a behavioral abnormality and should be released from civil commitment.

## OVSOM Fiscal Information

### Size of Budget

The OVSOM was established as an independent agency in 2011 to perform the functions related to the sex offender civil commitment program. Since then, the size of the agency budget has grown as the number of sexually violent predators and sex offenders committed to this program have increased. The following chart shows the agency's General Appropriations Act authorized budget and FTEs during the last four fiscal years as well as the number of SVPs provided services.

	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
Appropriated Funds	\$ 4,037,687	\$ 4,766,511	\$ 6,029,249	\$ 6,902,262
FTEs	22.5	26	29	33
Number of SVPs Provided Treatment	139	164	221	253

The OVSOM's budget is 100% funded by General Revenue. Currently, 70% of the agency's budget is spent on outsourced services for treatment, housing, electronic monitoring, transportation and other program services provided for SVPs. An additional 23% of the agency's budget is spent on intensive case management of SVPs by experienced case managers. Only 7% of the agency's budget is spent on agency administration and support. Overall, the OVSOM is spending an average of \$27,861 annually on each SVP.

### Legislative Appropriations Request

As specified in the General Appropriations Act, the OVSOM is an independent agency that is administratively attached to the DSHS. As a result, OVSOM does not submit a Legislative Appropriations Request, but instead is a part of the DSHS request and is presented in Strategy G.1.1. Office of Violent Sex Offender Management. The following is a summary of the OVSOM 2016-2017 Baseline and Exceptional Item request:

### **BASELINE REQUEST**

FY 2016      \$ 6,493,670

FY 2017	\$ 6,493,670
	\$12,987,340

The baseline level of funding maintains current operations and supports the existing SVP caseload, but it does not fund the expected increase in residential facility costs for SVPs and the projected 43% increase in the number of clients committed to the sexually violent predator civil commitment program. In June 2014, the OVSOM was notified by its two largest Residential Housing vendors that they no longer wanted to provide housing for the agency’s SVPs. OVSOM completed an RFP for Residential Housing services. The proposal/bid received included a 300% increase in housing costs. To fund the increase in residential facility costs and increase in caseload, the OVSOM has requested Exceptional Item funding in its appropriations request.

**EXCEPTIONAL ITEM REQUEST**

FY 2016	\$ 4,765,005
<u>FY 2017</u>	<u>\$ 6,666,593</u>
Exceptional Item	\$11,431,598

The \$11,431,598 in additional funds for the 2016-2017 biennium will fund an increase in Residential Housing bed costs from \$44 per day per SVP, to \$75 per day per SVP. The additional funds will increase the average amount spent on each SVP to \$39,639 annually. Any increase in Residential Housing costs above \$75 per day will require the OVSOM to revise its Exceptional Item estimate and request additional funds. As a result of the notice from our Residential Housing vendors and the expected significant increase in Residential Housing costs, the OVSOM is exploring other Residential Housing options for SVPs.

The Legislative Appropriations Request asks for authority to utilize the GPS tracking fees OVSOM recovers from SVPs, as a method-of-finance for the agency. OVSOM staff currently recovers 25% of the GPS monitoring costs from SVPs. During FY 2013, OVSOM recovered \$55,107.40 in GPS monitoring costs and in FY 2014, OVSOM recovered \$61,898.71 in GPS monitoring costs. Over the course of the 2016 – 2017 biennium, OVSOM expects to recover

\$124,000 from clients for GPS monitoring costs. Utilizing the recovered fees to fund the OVSOM reduces the burden on General Revenue and allows SVP's to pay for a portion of their GPS monitoring costs. To provide flexibility the request also includes the following addition to OVSOMs existing Rider:

*“Appropriation: Unexpended Balances for Increased Offender Populations. In order to fund programs and services necessary for increased offender population under the office's supervision, unexpended balances from appropriations made to the Office of Violent Sex Offender Management as of August 31, 2016 are hereby appropriated for the same purpose for use during the fiscal year beginning September 1, 2016.”*

### **Challenges in Making Projections**

There are several factors beyond OVSOM's control which create challenges in making projections for necessary funding but affect the OVSOM caseload. One such factor is the difficulty in projecting when an OVSOM client will be released from prison which is dependent upon parole board decisions and maximum sentence dates. The date on which a client is released determines when a client will start to utilize OVSOM resources in the form of residential placement and treatment. A second factor involves OVSOM clients that are subject to prosecution for violations. These clients are subject to prosecutorial and judicial discretion which affects the amount of time a client is away from a residential facility in a county jail and thus not receiving OVSOM-funded housing or treatment.

### **OVSOM Client Population**

#### **Historical Population Data**

Following the creation of the Texas civil commitment program, the first OVSOM clients were civilly committed in fiscal year (FY) 2001. From FY 2001 through FY 2007, there were seven to fourteen new civil commitments per year. At the end of fiscal year 2010, the OVSOM client population was a total of 175 civilly committed sex offenders with 81 OVSOM clients incarcerated and 94 OVSOM clients in the community. In FY 2011, SPU received additional funding for civil

commitment trials and the number of new commitments per year increased. Fiscal year 2011 brought an increase of 45 additional civilly committed sex offenders for a 25.7% increase in the OVSOM client population and a total of 220 civilly committed sex offenders, with 98 incarcerated OVSOM clients and 122 OVSOM clients living in the community. Fiscal year 2012 brought an increase of 43 additional civilly committed sex offenders for a 19.5% increase in the OVSOM client population for a total of 263 civilly committed sex offenders. Of those 263 civilly committed sex offenders, 105 were incarcerated and 158 were living in the community.

*Table: OVSOM Client Population by Fiscal Year 2010 through 2014*

<b>Fiscal Year</b>	<b>Community Clients</b>	<b>Percent Increase</b>	<b>Incarcerated Clients</b>	<b>Percent Increase</b>	<b>Total Clients</b>	<b>Total Percentage Increase</b>
2010	94	-	81	-	175	-
2011	122	29.8%	98	21.0%	220	25.7%
2012	158	29.5%	105	7.1%	263	19.50%
2013	181	14.6%	124	18.1%	305	16%
2014	174	-3.9%	174	40.3%	348	14.1%

### **Current Population Data**

As of November 15, 2014, there were 347 active civilly committed sex offenders and twelve civil commitments that are no longer in the program. The twelve civil commitments that are no longer in the program are composed of nine deceased SVPs and three SVPs whose civil commitments were overturned by a higher court and were not retried by the SPU.

### **Locations of OVSOM Clients**

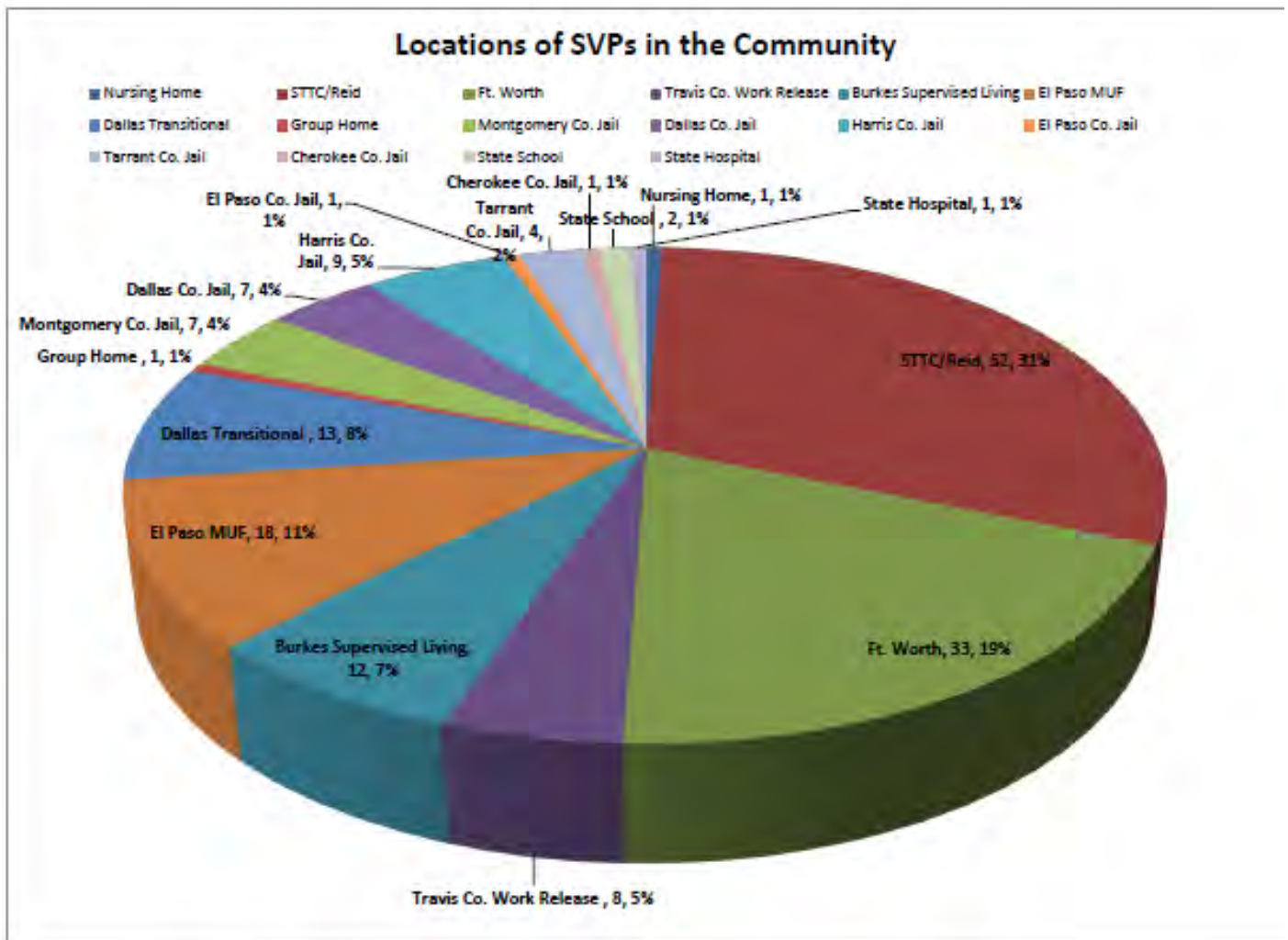
Of the 347 civilly committed sex offenders, 170 are OVSOM clients living in the community and 177 remain incarcerated. The 170 OVSOM clients residing in the community are largely housed in halfway houses with some clients housed in county jails pending resolution of charges, in state hospitals, in state schools, one in a nursing home, and one in a group home.

Of the 177 clients that are incarcerated, there are two clients which OVSOM discovered are incarcerated in other states. These two clients' existence was discovered by the current OVSOM



administration in September 2014 during a reconciliation of caseload statistics which compared all civil commitments on OVSOM's caseload to all individuals reported by TDCJ to be civilly committed. That reconciliation revealed two SVPs that were listed by TDCJ as out of state. Further review showed that both of those clients were civilly committed by agreed order on the stipulation that they would leave the state immediately upon release from TDCJ, report to the SPU every 90 days, and undergo sex offender treatment in their new states. These agreed judgments did not involve OVSOM as a party and did not require that the SVP become a part of the OVSOM case management system. OVSOM research in September 2014 revealed that both of these individuals were incarcerated in their new states as a result of having committed new sex offenses. Upon discovering these two SVPs, OVSOM immediately worked with SPU to ensure that they would transfer to OVSOM supervision at the completion of their lengthy prison sentences in their respective states. OVSOM immediately entered the two SVPs into the case management database to include in caseload statistics and reporting.

Table: Location of OVSOM Clients in the Community



### OVSOM Client Demographics

Although Chapter 841 of the Health and Safety Code does not preclude female sex offenders from being referred for civil commitment, at present all OVSOM clients are men. The majority, 55%, of OVSOM clients are Caucasian men with the remaining 45% split relatively evenly between African-American and Hispanic men. OVSOM clients range in age from 26 years old to 85 years old with an average age of 52.15 years.

Table: OVSOM Client Ethnicity

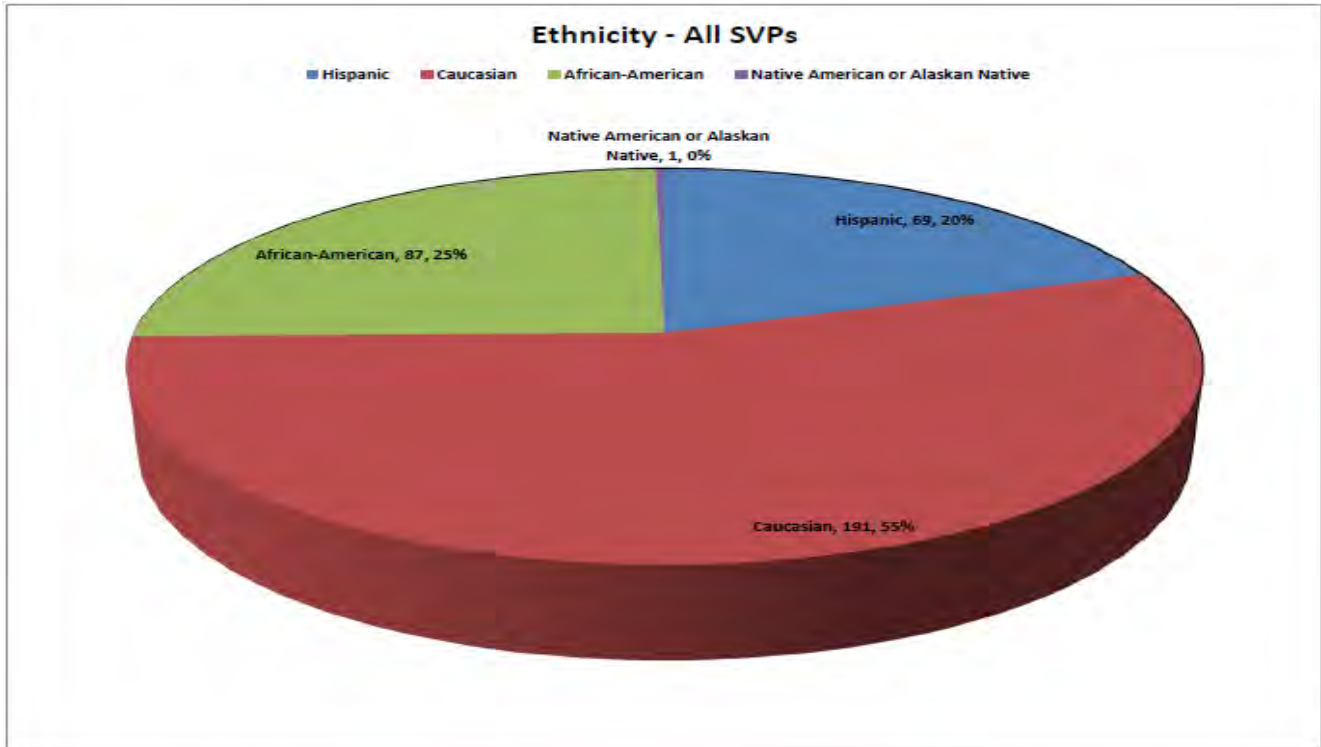
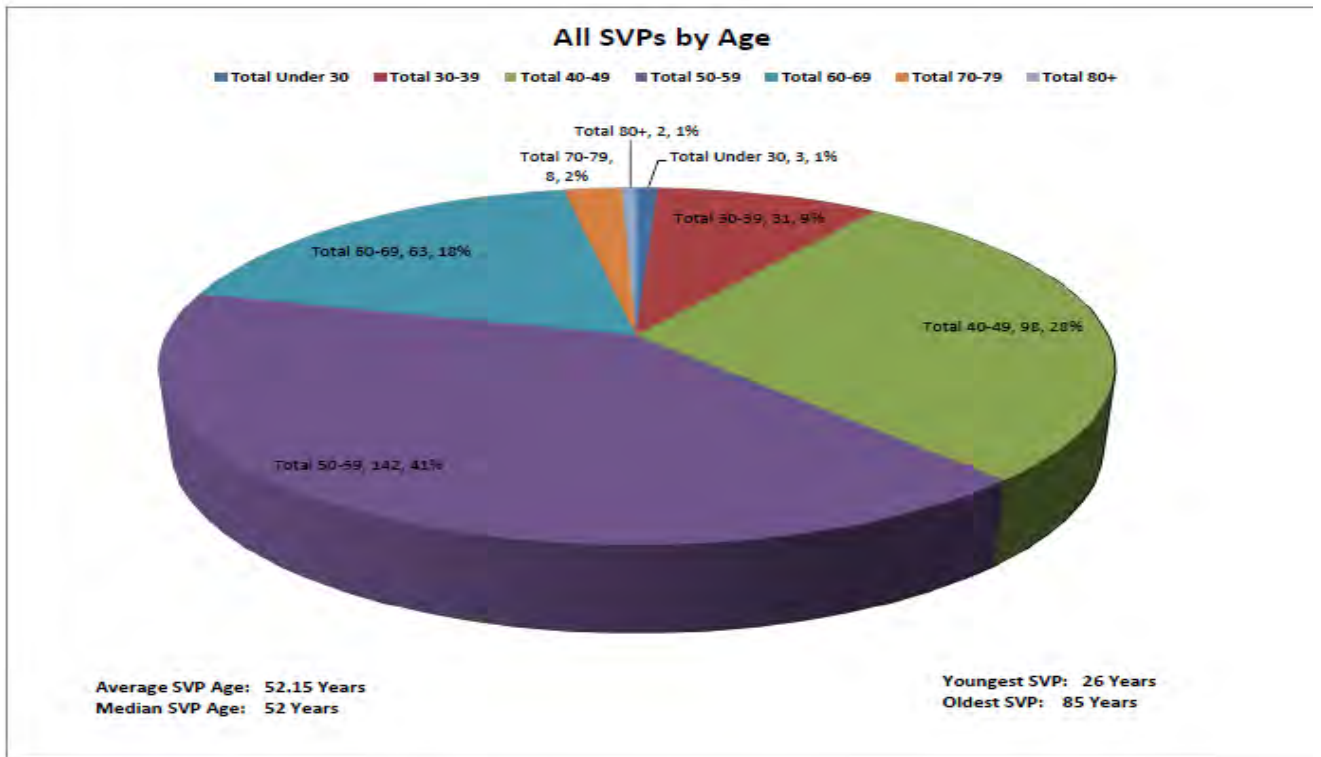


Table: OVSOM Client Age



## **OVSOM Client Offense and Victim Information**

In November 2014, OVSOM conducted a review of the offenses committed by the 347 currently active OVSOM clients including the victims' age, gender, and relationship to the OVSOM client.

With regard to the 170 OVSOM clients in the community, OVSOM found that those 170 individuals were convicted of 538 total offenses. Several of the 170 clients committed an offense against more than one type of victim. However, of those 170 clients, 65 clients committed at least one sex offense against a family member, 116 clients committed at least one sex offense against an acquaintance, and 68 clients committed at least one sex offense against a stranger. With regard to the 177 OVSOM clients in prison, OVSOM found that those 177 individuals were convicted of 517 offenses. Similar to the clients in the community, the 177 incarcerated clients committed an offense against more than one type of victim. However, of those 177 clients, 37 clients committed at least one sex offense against a family member, 127 clients committed at least one sex offense against an acquaintance, and 86 clients committed at least one sex offense against a stranger.

In sum, 50.19% of the victims of the 347 civil commitment clients were acquaintances while 21.25% were family members and 28.56% were strangers. The victims of the 347 civil commitment clients range in age from 2 years old to 87 years old with 73% of the victims being female and 27% of the victims being male.

## **OVSOM Client Recidivism**

From September 2001 to present, OVSOM clients that were under the case management system, have been convicted of 256 new offenses. Those 256 new convictions include 243 convictions for civil commitment rule violations; nine convictions for failure to register as a sex offender; one conviction for misdemeanor assault which was originally charged as a civil commitment rule violation; one conviction for misdemeanor displaying obscene material which was originally charged as a civil commitment rule violation; one conviction for attempted obstruction; and one conviction for aggravated assault on a public servant. These 256 total new offenses were committed by 189 OVSOM clients. These offenses represent a 53% recidivism rate for clients under OVSOM supervision. However, 95% of those new convictions were for civil commitment

rule violations. No client under OVSOM supervision has been convicted of a new sex offense. In summer 2014, an OVSOM client residing in a state hospital due to severe mental illness was indicted for a sex offense allegedly occurring at the state hospital but the case has not yet gone to trial.

The only convictions for new sex offenses result from the two out of state SVPs that were not under the OVSOM case management system. One of those two SVPs was convicted of Aggravated Sexual Abuse of a Child and is serving a 15 year sentence in the Utah Department of Corrections and the other was convicted of Rape and is serving a 30 year sentence in the Virginia Department of Corrections. These two SVPs represent a 100% recidivism rate and a 100% rate of new sex offenses for SVPs **not** under OVSOM supervision.

### **2013 Legislative Changes**

During the 83th Legislative Session, Section 841.003 of the Health and Safety Code was amended to remove reference to the Texas Youth Commission and replace it with reference to the Texas Juvenile Justice Department. There were no substantive changes to Chapter 841 and there were no amendments to Chapter 420A of the Government Code.

### **Spring 2014 Controversy and Agency Changes**

During the spring of 2014, the previous OVSOM executive administration made a series of choices which garnered a great deal of negative publicity and harmed the agency's credibility with taxpayers, partner agencies, and other stakeholders in State government.

In February 2014, the previous administration moved a number of sexually violent predators into a group home in Harris County without providing notice to local leadership or elected officials at a statewide level. Rather, residents of the neighborhood were notified of the clients' presence indirectly as the OVSOM clients completed sex offender registration the Department of Public Safety mailed notification postcards to the surrounding addresses. The OVSOM clients were relocated out of the group home in April 2014. Also in the spring of 2014, OVSOM underwent a

request for proposal (RFP) and entered into a short-lived contract with the sole bidder of that RFP to build a residential facility in Liberty County, again without notice to the public or elected officials.

As a result of these two controversies, investigations into the OVSOM and its administration were ordered by the State Auditor's Office, Texas Rangers, HHSC Office of Inspector General, and Travis County Public Integrity Unit. Further, the following members of the OVSOM administration resigned: Board Chair Dan Powers, Executive Director Allison Taylor, General Counsel Celeste Blackburn, and Deputy Director Deborah Morgan. On May 3, 2014 the current executive director was appointed by the OVSOM Board and immediately started a top to bottom review of the entire agency to work to repair the agency's reputation and regain the trust of the public and state leadership.

Immediately, it became apparent that there was a total lack of basic office infrastructure. All senior staff worked from home, including the Executive Director, and most of that staff was headquartered in the Montgomery/Harris County area rather than near the central office in Austin. Further, there were few documents, files, and records present in the central office and few documents were recovered when resigning staff was instructed to return any documents in their possession. Several positions which were previously work-from-home, remote positions were transferred to the central office including: Deputy Director, General Counsel, and Court Services Coordinator. Each of these positions has been filled within the last six months and works from the central office in Austin. Prior to May 3, 2014, two administrative staff members worked in the central office but that office lacked basic office infrastructure such as phones that could be transferred from one line to another or adequate space. The new administration immediately secured appropriate office space and obtained basic infrastructure such as connected phone lines, access to the HHSC vehicle fleet, and the ability to post meeting notices with the Texas Register. Within a month of taking office the new administration, in coordination with HHSC's purchasing department, issued a comprehensive RFP which met all state procurement guidelines and sought residential housing for OVSOM clients.

The OVSOM administration has also used existing vacancies to create several new positions, all housed in the central office. These positions were created to correct a specific gap in OVSOM's staffing and to address specific deficiencies. A budget manager position was created to address the lack of financial controls put in place by the previous administration. An operations monitor position was put in place to audit and monitor the work of individuals or entities under contract to provide services to the OVSOM. Finally, a program director position was created to ensure a thorough review of the agency's programming and ensure that programming complies with best practices in the field of sex offender treatment. Each of these positions is based in the central office.

### **Policy Review and Revisions**

The new administration and senior staff has begun a review of all OVSOM policies and procedures to ensure alignment between practice and policy as well as to ensure that policies are based on sound judgment and case management principles. While all OVSOM policies are under consideration, the office has worked to prioritize those policies which need immediate attention and re-draft those as quickly as possible. Further, where OVSOM has identified an immediate need for a change in practice, action has been taken accordingly and policy revisions will follow.

One of the first policies to be revised was the OVSOM client grievance policy. The previous version of the client grievance policy provided for all grievances to be answered by the executive director with no appeal and no requirement for investigation of the allegations. The updated policy provides for a two-step grievance process with the first step answered by a region manager following investigation of the grievance and the availability of a second-step appeal to be answered by the executive director or the director's designee. Significantly, clients were provided with a copy of the policy for the first time.

A client cell phone policy has also been written and signed which allows for OVSOM clients who have progressed sufficiently in treatment to obtain a personal cell phone that can be used to communicate with employers, the case management team, and approved contacts. Clients must pay for their cell phones and related service and must be current on any GPS fees prior to obtaining approval for a cell phone. The policy includes specifications which the cell phone and cell phone

plan must meet, such as no data or internet usage capability is permitted nor is the capability to take, send, or receive photos or videos. Finally, the policy requires that OVSOM be able to gain access to all logs of incoming and outgoing calls.

OVSOM has also completed a GPS protocol to centralize the management of GPS alerts. OVSOM is currently working with its GPS provider, 3M, to implement a system by which alerts are initially handled at a call center. The call center is fully staffed twenty-four hours a day, seven days a week with individuals trained to review and respond to GPS alerts. As alerts come in, the call center can contact the client's case manager or an on-call case manager to staff alerts which may require investigation.

At present, OVSOM clients are transported by halfway house staff or by transportation drivers under contract with OVSOM. However, there was no evidence in the files available to the new administration that the drivers had ever been required to provide proof of insurance or a valid driver's license. The new administration has remedied this oversight and has required all drivers to provide a copy of their current driver's license and proof of insurance coverage. Further, OVSOM has drafted a transportation driver policy to provide procedures to be followed by transport drivers. This policy is currently undergoing the review process.

A policy which is not yet finalized but has been drafted and is undergoing the review process is a policy regarding the interventions and sanctions to be used when an OVSOM client has violated program rules or a civil commitment requirement. The prior OVSOM policy allowed for case managers to request a warrant be issued by law enforcement authorities for any violation of the requirements of civil commitment or program rules and did not require any utilization of progressive sanctions. Upon reviewing the types of cases which were proceeding to a warrant request, OVSOM issued an immediate directive to all staff that no warrant is to be requested unless it has been specifically approved by the executive director. Since that directive was issued, staff has worked to use progressive sanctions aimed at correcting client behavior while maintaining the client's ability to continue with treatment rather than requesting warrants. The use of progressive sanctions is in line with the practices of a treatment program and reserves the use of the harshest



sanction available, a warrant request and subsequent prosecution, for only the most serious behavior problems or criminal actions.

In consideration of two clients' requests to move to their own private residence, OVSOM has reviewed the safety and security concerns of a client moving from a halfway house that is staffed twenty-four hours a day, seven days a week and has implemented a policy for supervision of clients on an approved home plan. This policy, signed in October 2014, requires increased contacts between the client and case manager including surprise visits to the client's home at night, on weekends, and on holidays. The policy also allows for changes in supervision requirements once the client has a proven track record of compliance with program rules while living in a private residence or for OVSOM to revoke the client's authorization to reside in a private residence if the client is not in compliance with program rules.

### **Staff Training and Development**

One area of opportunity for improvement that OVSOM has identified is the training of case management staff. The agency had focused largely on supervision rather than treatment and the case management staff has been composed largely of former parole and probation officers with a background solely in supervision without any training or encouragement to manage the clients' entire case to include treatment and progress. The result of the former administration's vision and the lack of training of case management staff is that 53% of OVSOM clients have been returned to prison at least once and of those returned to prison, 95% were returned as a result of a violation of civil commitment requirements. Further, clients returning to prison result in fluctuations in the number of clients residing in the community which affects OVSOM's ability to make projections for future budgetary needs. As an example, at the end of Fiscal Year 2013 there were 181 clients residing in the community. However, by the end of January 2014 that number had dropped to 166 clients residing in the community. At the end of FY 2014, that number had risen back to 174 clients residing in the community.

Accordingly, OVSOM plans to engage in a re-training process of current case management staff to understand the purpose of case management as well as to balance the dual goals of supervision

and long-term sex offender treatment and rehabilitation. In order to renew focus on the civil commitment program as a treatment program rather than merely a supervision program, OVSOM has applied for and received grant funding to engage case management experts to conduct detailed training for all OVSOM case management staff. These trainers will provide expertise in managing all aspects of a client's case and prepare the OVSOM case management staff to truly coordinate the client's care with partner agencies such as local MHMR authorities, VA hospitals, the Department of State Health Services, the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, TDCJ, and local service providers such as resources for community care or mental health support.

### **Program Review and Development**

The previous executive administration lacked an adequate system to review the agency's programming to ensure that the treatment and supervision programs utilize evidence-based best practices for long-term sex offender treatment and supervision. It appears that there have been minimal changes to the treatment curriculum over the last several years and a lack of consideration of the types of programming that have survived legal challenges in other states. Due to the lack of files or review materials, there is no evidence that the OVSOM's treatment program has ever been reviewed to assess the adequacy of the program based on evidence-based sex offender treatment programs.

OVSOM has begun the process of reviewing all programming by communicating with our peers in other states to review the types of treatment programs used by other civil commitment programs. OVSOM has opened a line of communication with our peers in other states to determine what types of programming have proven to be successful and unsuccessful and what other states have learned from programming that did not prove to be successful. OVSOM officials have made a site visit to the Washington State Special Commitment Center which houses the majority of Washington State's civilly committed sex offender population. To further that process, OVSOM has applied for and received grant funding to engage program and treatment experts to assist with an assessment of the current program and redesign of the program based on research and evidence based programs. OVSOM intends to develop a program model which includes long-term sex

offender treatment, progressive sanctions and interventions, a tiered model for client progression, and ongoing training for case management staff.

At present, there are few opportunities for progressive client movement along a continuum from more to less restrictive alternatives when a client has complied with treatment or as a sanction when a client has failed to comply with treatment. OVSOM's review of other states has shown that a lack of opportunities for progressive client movement has resulted in liability to the state and lengthy injunctions against the state. In Texas, the lack of opportunity for progressive sanctions and client movement to a more restrictive alternative leads to increased costs to the state as OVSOM clients have been incarcerated for failure to comply with civil commitment requirements.

### **Transparency, Relationship-Building, and Public Trust**

A goal of the new OVSOM administration is to restore the public's trust in the agency and repair the agency's credibility.

As part of that endeavor, OVSOM has required that potential all vendors provide adequate notification to the community in which clients would be housed. This includes notification to elected officials serving the community in which clients would be housed. Further, OVSOM has received and complied with several Public Information Act requests for various types of information related to the agency. The new administration has promptly provided all requested information well within the deadlines set forth by Chapter 552 of the Texas Government Code and will continue to do so to ensure access to public information.

Finally, OVSOM has opened lines of communication and worked to build relationships with our partner agencies throughout the state, with defense attorneys, and with elected officials. OVSOM has had productive meetings with the DSHS and HHSC in order to repair lines of communication that had broken down under the previous administration and ensure a healthy working relationship. OVSOM is currently working with HHSC and DSHS to provide for a career-ladder policy that meets OVSOM's obligations under Chapter 420A of the Government Code while also comporting with HHSC Human Resources Policy. OVSOM has also had several meetings with the SPU to

discuss future goals for the program and ensure a steady, free exchange of information as both agencies review the status of civil commitment to determine if the individuals being civilly committed are appropriate.

## **Financial Controls**

An area of significant concern noted by OVSOM staff as well as by the State Auditor's Office was the need for appropriate financial controls. The current administration found there were no fundamental policies and procedures in place to ensure compliance with state fiscal standards and practices. Necessary staff skills were non-existent. Prior to the summer of 2014, OVSOM did not employ any staff with state financial management training or experience. Rather, the agency's responsibility of managing its budget, paying its bills, collecting revenue, authorizing and processing agency travel, procuring goods and services, contracting for goods and services, managing its financial systems and data, and establishing internal controls were left to a program specialist with no financial management experience or training. Program and administrative services were obtained without following state procurement laws, rules, regulations, policies, and procedures. State contracting standards were not followed and in some cases, program services were purchased from vendors without contracts and payments for services were based on what the vendor billed, which varied up to 50% from vendor to vendor for the same service. There were no policies or procedures in place for the review of invoices that were submitted by vendors to ensure accuracy, timely submission of work product, or that the services rendered and amounts invoiced were in accordance with the agreed upon services and rate.

The need for fundamental change in financial management is considerable, but it has begun. OVSOM has hired a Financial Manager with more than twenty years of state financial management experience and an experience operations monitor. OVSOM has also begun to evaluate its business processes and procedures. In October 2014 OVSOM instituted a policy for the review of all invoices that are submitted for accuracy and propriety and is involving numerous staff members in those reviews. As an example, under the updated procedure, treatment providers' invoices are reviewed by case management staff to ensure that clients received the invoiced services.

OVSOM is also working to correct the lack of appropriate procurement and contracting for necessary services. For its housing providers, OVSOM has utilized a series of memoranda of understanding (MOUs) rather than formal contracts. These MOUs do not comply with state contract management guidelines, do not provide the agency with any authority to monitor or oversee the agreement, and do not provide any rights or recourse to the OVSOM in order to protect the State's interests. For treatment providers, drivers, and biennial examiners, OVSOM has utilized a contract but the contracts are quite informal and do not include the majority of the essential clauses under state contract management guidelines. None of these services were procured through a formal procurement process such as a RFP.

At present, OVSOM has alerted its housing providers that any renewal or amendment of the MOUs will require a more formal agreement that complies with state contract management guidelines. As discussed in more detail below, OVSOM has twice undergone the RFP process for housing vendors. Once a housing vendor has been secured and the agency has more information regarding the program design and the geographic area in which the services will be provided, OVSOM intends to go through a formal procurement process for treatment providers, polygraphers, biennial examiners and other necessary services.

### **Ongoing Issues**

While OVSOM's new administration has made great strides towards bringing the agency back in line with its original mission and goals, there are still challenges and issues being identified by the office.

An ongoing issue of primary concern is OVSOM's search for safe, affordable housing for the client population. In the last year, OVSOM has twice gone through the RFP process for housing with neither RFP resulting in the placement of any clients or the development of new contracts with the state. Further, OVSOM's two primary housing vendors have both submitted notice of termination of their contracts and have expressed the desire to have all OVSOM clients moved from their facilities as quickly as possible. OVSOM attempted, during the summer of 2014, to seek placements of OVSOM clients on an emergency basis throughout the state. The search for emergency beds did not lead to the placement of any OVSOM clients or the development of new

relationships with vendors at a cost that is reasonable for the state. A crucial part of OVSOM's program and ability to have a tiered program model is the acquisition of appropriate housing to meet the needs of OVSOM clients from intensive treatment through transition to the community.

Further complicating OVSOM's housing situation, is that Chapter 841 as it is presently written and the orders of civil commitment issued under Chapter 841, require the prior written authorization of the court for any OVSOM client to change address. At present all civil commitment cases, biennial reviews, petitions for release, requests for address change, and requests for modification are presented to and heard before a single court and a single judge in Montgomery County. On July 3, 2014, OVSOM requested authorization for a client to change address. That request is still pending before the court and the court has expressed the desire to hold a hearing on the issue despite a lack of provision in the law for any such hearing. Additionally, OVSOM clients, advocates, and defense attorneys have all raised significant concern with this concentration of authority in a single judicial official. This has led to numerous motions to recuse the judge from hearing civil commitment cases, biennial reviews, or modifications which has created a large backlog of cases and also requires that additional state resources be expended when visiting judges must be brought in to hear motions or cases.

OVSOM also continues to identify challenges in placing and providing services to clients with special needs. There are a number of OVSOM clients with physical disabilities, developmental disabilities, or severe mental illness. These clients may not be appropriate for placement in a halfway house setting; however, OVSOM has had a very difficult time in locating alternate placements for these clients. To date, coordinating these clients' care has been difficult and there has been limited support available from local MHMR authorities. OVSOM clients have been refused services at MHMR authorities as a result of their status as sex offenders. This is an area in which OVSOM intends to continue to build relationships and obtain support from local MHMR authorities as well as to partner with HHSC agencies to obtain necessary services for OVSOM clients with special needs.

At present, OVSOM is named as a defendant in several lawsuits challenging the constitutionality of the program. These lawsuits have been filed by civilly committed sex offenders and challenge

a number of aspects of the program including the type and amount of treatment provided, the type of supervision provided, the intent of the previous administration in its style of supervision, and the lack of opportunity for client movement through programming. OVSOM is represented by the Office of the Attorney General in each of these cases and is continually working to identify trends in litigation and address possible issues that are brought to light through litigation. OVSOM expects these cases to continue through FY 2015 but does not have an immediate expectation of any adverse judgments or verdicts against the agency.

Finally, OVSOM is cooperating fully with each of the four investigations that are currently underway. OVSOM has worked very closely with the State Auditor's Office on its review of the office and its operations and expects a draft report in December 2014 with a final report to be published in January 2015. Through our discussions and work with the State Auditor's Office, OVSOM is already aware of a number of the types of findings that will be issued such as a lack of financial controls and has already taken corrective action as outlined above to improve those deficiencies. When a final report is issued, OVSOM will work to correct any remaining deficiencies and bring the agency into full compliance as quickly as possible.

## **The Future**

Over the next biennium, OVSOM looks forward to continuing to restore the agency's reputation while maintaining public safety. One of the most significant challenges OVSOM faces moving forward is housing. Currently, OVSOM faces a housing crisis and the lack of safe, affordable housing for OVSOM clients. OVSOM has requested assistance from state leadership to work on solutions to this housing crisis. At the same time, OVSOM is working with legislative staff to revamp Chapter 841 to align the law with the agency's vision for the Texas Civil Commitment Program, including a proposal to change the agency's name to the Texas Civil Commitment Office. The agency envisions a tiered treatment program which is not labeled as an inpatient program or an outpatient program but rather allows for client movement through programming tiers based on their progress in treatment. As part of this vision, OVSOM is revamping the clinical program to ensure that the treatment provided meets constitutional standards, meets the needs of the OVSOM clients, and protects the public to prevent future victimization. OVSOM looks

forward to reaping the benefits of a revamped treatment program such as additional treatment provided to clients, client progress and movement to less restrictive alternatives, fewer lawsuits, cost savings to the State through reduced recidivism, and most importantly, increased public safety.