

texas tea newsletter

A home-brewed publisher devoted to exposing the secrets of the Texas Civil Commitment Center in Littlefield, Texas.



in this issue

What's Brewing This Month?

This month's tea

Want to Share Your Story?

Send any crucial documentation you want to share with us to texasteanewsletter@gmail.com or to P.O. Box 3226, San Marcos, Texas 78666 to allow us to enact change within the Texas Civil Commitment Center.

let's spill the tea

By the Editor

Greetings everyone, and welcome to another issue of the Texas Tea Newsletter!

As some of you may have noticed, there has been a lapse in our ability to provide timely newsletters to the public. This is due to many factors, but not limited to sudden health issues with both of us here at TTN. We deeply apologize for the upset or worry that this may have caused our faithful readers. But because of the current climate within our lives, it is with heavy hearts that we have decided to take a break from distributing our publications. But do not fret! This is only a temporary change that will end once things get back on track. Please keep your eyes peeled for future updates from us and our partners, as we will continue to advocate, attend meetings, and correspond with both state representatives, educated officials, and the men within the TCCC.

We anticipate picking up our newsletter publications sometime in November, so please, drink this piping hot tea until then!

Auditor: Agency Overseeing State's Worst Sexually Violent Predators Must Improve

By **Dallas Morning News
Editorial** | July 17, 2023



Some convicted of sex crimes are simply too dangerous to be let back on the streets even after they've completed prison sentences.

Texas law allows courts to label these offenders as "sexually violent predators" and commit them to a treatment facility aimed at trying to repair their deep-rooted behavioral abnormalities.

No longer called inmates, these state "clients" go directly from prisons to a lockup center northwest of Lubbock where most of them stay for years, housed safely away from the public behind razor-wire fences. About 450 men reside there today.

It's alarming, then, that a recent state audit found that the agency charged with overseeing these predators has mishandled its contract with the private vendor it hired to treat them.

The Texas State Auditor found that the Texas Civil Commitment Office wrongly extended its contract with the Utah-based Management & Training Corp., in violation of state procurement requirements.

Of particular concern is that the 2022 extension was made the same year that the TCCO failed to submit its required annual vendor performance report to the state comptroller. When it finally did this in May, after the auditor pointed out the lapse during its investigation, the TCCO gave the vendor only a "C" rating.

In its written response to the June audit, the TCCO sharply defended its actions, saying the contract extension, from five years, with options for another four, to 20 years, was allowed under exceptions to state requirements. As part of the extension, MTC agreed to expand the treatment facility in Littlefield, saving the state \$23 million in construction costs.

TCCO Deputy Director Jessica L. Marsh told us the expansion is necessary to accommodate the growing number of sexually violent predators being housed at the facility, which is at 98% capacity. About 34 clients are added each year, but only 18 have been released from commitment since 2016, she said.

Treatment takes a long time, said Marsh: "There is no magic pill or easy solution to address the years or decades of ingrained, deviant behaviors and thoughts."

As for that "C" rating, the audit found it was mostly because of a sharp decline in client attendance at required weekly group therapy sessions: from 98% in 2021 to 70% in 2022.

But Marsh said the contract extension, though not implemented until 2022, was actually negotiated in 2020, when MTC received a "B" rating. Also MTC's performance has improved so far in 2023, she said.

We get that oversight of sexually violent predators is a difficult balancing act of ensuring public safety, protecting client rights and adhering to state contracting requirements. But the TCCO must avoid such auditing problems in the future.

It doesn't need the distraction from its important mandate of overseeing this frightening and extremely dangerous population.



Wisconsin Supreme Court Ruling Gives Hope to Offenders on Lifetime GPS

By **Nicholas Garton** with **The
Cap Times** | July 3, 2023



Benjamin Braam has already decided a recent Wisconsin Supreme Court ruling means he can stop recharging an electronic tracking bracelet the state forced him to wear for the rest of his life.

The high court's decision involved a case unrelated to Braam, but it shot down the rationale that former Wisconsin Attorney General Brad Schimel used to justify the lifetime monitoring of one-time sexual offenders even after they completed their sentences and were no longer under court-ordered supervision.

Authorities from the state Department of Corrections "called me and said I had to charge it and I told them I would no longer be charging it," Braam said. "They need to remove it. They need to go through every case since Schimel made that opinion and reevaluate them."

Braam was discharged from prison in early 2018 without probation or parole, meaning he was completely free from the Department of Corrections. But in October that year, Braam joined more than 180 people who received a notice from the department that they had to wear GPS monitoring bracelets for as long as they lived. Braam said the notice gave him five days to put on the

GPS monitoring bracelet or he could be found non-compliant with the sex offender registry, which can carry penalties of up to six years in prison and a \$10,000 fine.

Leaders of the state Department of Corrections still haven't decided whether to call off their orders for Braam and the others in light of the recent decision.

"DOC is still reviewing the ruling and the potential impact," Corrections spokesperson John Beard told the Cap Times, weeks after the Supreme Court ruled May 23 that the state could not treat multiple counts of sexual assault in one conviction as repeat offenses. Braam said the DOC agents offered to come out to his house and put a newer model of the GPS bracelet on him. "I said no," he said. "I told them they're welcome to come take this one off, but I'm not putting the new one on. I made them aware of the court case and told them that's my reasoning."

Braam is a 45-year-old Racine man who was convicted on two counts of second-degree sexual assault of a minor under 16 from an incident that happened in 2000, when he was 21. The two counts both involved the same victim and occurred at the same time, and Braam was convicted of both counts in a single hearing.

The Department of Corrections based the lifetime tracking on Schimel's interpretation of a 2006 state law, which classified people who had sex offense convictions on two or more separate occasions as "special bulletin notification" offenders — triggering notification of law enforcement when they change addresses.

In September 2017, Schimel issued a formal opinion in response to a request from then-Corrections Secretary Jon Litscher. Litscher had asked whether the "special bulletin notification" statute applies when a person has multiple criminal convictions that occur at the same time

or stem from the same criminal complaint.

Schimel, a Republican who was defeated in the 2018 election for attorney general by Democrat Josh Kaul, interpreted special bulletin offenders as anyone who has been convicted of multiple counts of an offense even if all of the convictions took place in the same hearing.



Former Wisconsin Attorney General Brad Schimel's interpretation of a 2006 law resulted in lifetime GPS tracking of more than 180 people who had completed their sentences and were no longer on probation or parole.

MICHELLE STOCKER

Most sex offenses and other violent offenses include multiple "counts." For example, a person convicted of battery in a bar fight might receive counts for all the times they punched someone, or a person charged with possession of child pornography might be convicted of a separate count for each photo they downloaded.

Traditionally, when that person is found guilty by a jury or judge of all the counts, they would be understood to have been convicted on one occasion in a single hearing on a single day. Schimel's interpretation conflicted with that traditional interpretation.

On May 23, the Wisconsin Supreme Court ruled in favor of a defendant named Corey T. Rector, who was challenging

an attempt by the Department of Corrections to have him register as a sex offender for life.

Rector was convicted in 2018 of five counts of child pornography. He was sentenced to eight years in prison and 10 years of extended supervision in Kenosha County. He was also required by the court to register as a sex offender for 15 years.

The Department of Corrections asked Kenosha Circuit Court Judge Jason A. Rossell to amend the sentence because the state believed Rector needed to register for life. Rossell denied the motion, saying Rector did not need to register for life because his convictions did not occur on separate occasions but rather during a single hearing on a single day.

The state agency, now led by Corrections Secretary Kevin Carr, appealed that decision and argued in October before the state Supreme Court that Rector having been convicted of child pornography on multiple occasions.

In its majority opinion, drafted by Justice Jill Karofsky, the Supreme Court wrote:

"We are tasked with interpreting the phrase 'separate occasions' and we determine that, in the context of this statute, the plain and ordinary meaning of 'separate occasions' does not refer solely to the number of convictions.

"Consequently, the circuit court did not err by ordering Rector to register as a sex offender for fifteen years rather than until his death because his five convictions for possession of child pornography were filed in a single case and occurred during the same hearing."

The court said that "the plain and unambiguous meaning of the phrase separate occasions ... means that convictions occurring during the same hearing do not constitute convictions on separate occasions."



Wisconsin Supreme Court Justice Jill Karofsky drafted a majority decision that said a person found guilty one time of multiple criminal counts was not considered to have been convicted on separate occasions.

JOHN HART, STATE JOURNAL ARCHIVES

GPS malfunctions lead to jail time. James Kempinski, who lives in Elkhorn, says he has been to jail four times as a result of malfunctions with his GPS monitoring bracelet.

Kempinski, who was convicted of two counts of second-degree sexual assault of a minor in 1998, was placed on lifetime GPS when he was released from prison in 2019. Kempinski said the DOC told him he had to wear the bracelet until he died because they considered his case to be multiple convictions, citing Schimel's interpretation as its logic.

As a result, he said, he's been incarcerated multiple times with no new crimes and no court orders.

"You end up getting booked and going to jail until your probation/parole officer comes and gets you out ... which can cause you to lose your job or miss medical appointments," Kempinski said. "Why doesn't DOC have an employee that goes and does repairs instead of of guys going to jail for something that is out of their control?"

A department spokesperson said the trips to jail are within the agency's policies and the law.

"When there's an interruption of a GPS device signal, DOC staff respond by either contacting the individual

wearing the device, the agent of record or law enforcement," said Kevin Hoffman, the spokesman contacted by the Cap Times in response to Kempinski's complaint. "If the person is on supervision, an apprehension request may be issued as the person is no longer being actively monitored."

Police are not responsible for determining whether the device is simply malfunctioning or has been tampered with, Hoffman said.

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Kempinski differs from Braam in that he is still on active community supervision. However, he similarly was placed on lifetime GPS retroactively with no such decision from a judge. He is expected to continue wearing the bracelet after his supervision ends, with no apparent recourse or review.

"My conviction was in 1998," Kempinski said. "I wasn't sentenced to this and this bracelet wasn't even thought of when I was incarcerated. I have one conviction but it was multiple counts. They used that to say that's why I needed to be on lifetime GPS."

For offenders like Braam, the prospect of lifetime GPS tracking is more questionable because they are no longer on active community supervision. Without the restrictions of probation or parole, he has no rules governing his whereabouts. It's unclear to him why he's being monitored.

Braam is hoping the Department of Corrections will decide to end his lifetime sanction, even if he's already taking matters into his own hands and letting his GPS device battery die.

"The ruling says that my case no longer

falls under the opinion from the old attorney general," he said, "so why am I still wearing it?"



We May Be Pausing Our Newsletter, but the Advocacy Continues!

If you have any relevant news stories and/or personal insights that you would like to share regarding TDCJ, TCCC, TCCO, or sexual offender treatment and backlash, please feel free to reach out to us at texasteanewsletter@gmail.com or to P.O. Box 3226, San Marcos, Texas 78666 so that we may view these pieces and spread the word!