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Opinion No. 06-117

Responsibilities of Sex Offender Treatment Board

QUESTIONS

1. Does Tenn. Code Ann. §39-13-704(d) require the Sex Offender Treatment Board (SOTB) to:

a) develop a procedure that recommends behavior management monitoring for sex offenders;

b) develop and implement methods of intervention for sex offenders;

c) develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are placed on probation, parole or in community corrections; and

d) develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes?

2. What remedies exist if the SOTB fails to develop such guidelines and programs?

3. Does this delegation of statutory authority to the SOTB preclude the Board of Probation and Parole (Board) from developing its own guidelines and standards for monitoring offender behaviors and adherence to prescribed behavioral changes?

4. If the Board may develop its own guidelines and standards, must those guidelines and standards be approved by the SOTB?

OPINIONS

1. Yes, the SOTB is statutorily required to develop each of the procedures, methods, guidelines and standards, and systems listed.

2. The statute provides no remedy for the failure of the SOTB to meet its statutory obligations.

3. The Board of Probation and Parole is not statutorily required to utilize the system for monitoring offender behaviors and adherence to prescribed behavioral changes developed by the SOTB pursuant to Tenn. Code Ann. §39-13-704(d)(4). However, to the extent that the Board utilizes the evaluation and identification of a sex offender performed pursuant to Tenn. Code Ann. §39-13-704(d)(1) and that evaluation recommends specific items of behavior management monitoring, the Board is required to include those items of behavior management monitoring as conditions of parole.

4. If the Board of Probation and Parole develops a system for monitoring offender behaviors, the Board is not required to obtain the approval of the SOTB.

ANALYSIS

In 1995 the General Assembly adopted the Tennessee Standardized Treatment Program for Sex Offenders Act for the purpose of standardizing the evaluation, identification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior, and the protection of victims and potential victims will be enhanced. Chap. 353 of the Public Acts of 1995, §§2 & 3. The Act created the Sex Offender Treatment Board. The Act required the SOTB, among other things, to develop a procedure that recommends behavior management monitoring for sex offenders, to develop and implement methods of intervention for sex offenders, and to develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are placed on probation, parole or in community corrections. Tenn. Code Ann. §39-13-704(d)(1) & (2). These procedures, methods, guidelines and standards were to be developed prior to January 1, 1996. *Id.* Further, the SOTB was required to develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. Tenn. Code Ann. §39-13-704(d)(4).

As of January 1, 1996, each sex offender considered for probation or any other alternative sentencing is required to submit to an evaluation for treatment, risk potential, procedures required for monitoring of behavior to protect victims and potential victims, and an identification under the procedures developed pursuant to Tenn. Code Ann. §39-13-704(d)(1). Tenn. Code Ann. §39-13-705. Each sex offender sentenced for an offense committed on or after January 1, 1996, is required to undergo treatment based upon the recommendations of the evaluation and identification made pursuant to Tenn. Code Ann. §39-13-705 or any subsequent recommendation by the Department of Correction, the judicial branch or the Department of Children's Services. Tenn. Code Ann. §39-13-706(a). Each sex offender placed on parole on or after January 1, 1996, is required, as a condition of parole, to undergo treatment based upon the recommendations of the evaluation and identification pursuant to Tenn. Code Ann. §39-13-705 or any subsequent evaluation during the offender's incarceration or parole. Tenn. Code Ann. §39-13-706(b).

The statute contains no remedy for any failure by the SOTB to meet the above described statutory responsibilities. The members of the SOTB are appointed variously by the Commissioner of Correction, Chief Justice of the Supreme Court, Director of the Tennessee Bureau of Investigation

and Commissioner of Children's Services and serve at the pleasure of the official who appointed them. Tenn. Code Ann. §39-13-704(c)(1). Members can be replaced if unable to comply with their statutory responsibilities.

The Board of Probation and Parole has the duty to parole prisoners if "the board is of the opinion that there is reasonable probability that such prisoner, if released, will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society." Tenn. Code Ann. §40-28-117(a). The Board and only the Board can set terms and conditions on parole release. Tenn. Code Ann. §§ 40-28-104(a)(3), 40-28-116(b), 40-28-117(a). Further, it is for the Board to determine if those terms and conditions have been violated. Tenn. Code Ann. §40-28-118(c). As noted earlier, each sex offender placed on parole on or after January 1, 1996, is required, as a condition of parole, to undergo treatment based upon the recommendations of the evaluation and identification pursuant to Tenn. Code Ann. §39-13-704(d)(1) or any subsequent evaluation during the offender's incarceration or parole. Tenn. Code Ann. §§39-13-705 & 706(b). The statute does not require the Board to utilize the system for monitoring offender behaviors and offender adherence to prescribed behavioral changes that the SOTB is required to develop pursuant to Tenn. Code Ann. §39-13-704(d)(4), nor is the Board required to obtain the approval of the SOTB to develop its own system. However, to the extent that the Board utilizes the evaluation and identification of a sex offender performed pursuant to Tenn. Code Ann. §39-13-704(d)(1) and that evaluation recommends specific items of behavior management monitoring, the Board is required to include those items of behavior management monitoring as conditions of parole.

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