

## BILL ANALYSIS

Senate Research Center

S.B. 871  
By: Shapiro  
Criminal Justice  
7/30/2003  
Enrolled

### DIGEST AND PURPOSE

S.B. 871 adds clarifying language stating that the Texas Department of Public Safety (DPS) shall determine which local law enforcement agency serves as the primary registration authority for a person required to register as a sex offender and directs DPS of notify the sex offender of his/her primary local law enforcement registration authority.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 62.01, Code of Criminal Procedure, by adding Subdivisions (8) and (9) to define “public or private institution of higher education” and “authority for campus security.”

SECTION 2. Amends Chapter 62, Code of Criminal Procedure, by adding Article 62.0102, as follows:

Art. 62.0102. DETERMINATION REGARDING PRIMARY REGISTRATION AUTHORITY. (a) Requires the Department of Public Safety (DPS) to determine, for each person subject to registration under this chapter, which local law enforcement authority serves as the person's primary registration authority based on the municipality or county in which the person resides or, as provided by Article 62.061, as added by Chapters 1193 and 1415, Acts of the 76th Legislature, Regular Session, 1999, the municipality or county in which the person works or attends school.

(b) Requires the DPS to notify each person subject to registration under this chapter of the person's primary registration authority in a timely manner.

SECTION 3. Amends Article 62.011, Code of Criminal Procedure, as follows:

(a) Provides that a person is employed or carries on a vocation for purposes of this chapter if the person works or volunteers on a full-time or part-time basis for a consecutive period exceeding 14 days or for an aggregate period exceeding 30 days in a calendar year. Specifies that a person works for purposes of this subsection regardless of whether the person works for compensation or for governmental or educational benefit.

(b) Provides that a person is a student for purposes of this chapter if the person enrolls on a full-time or part-time basis in any educational facility, including a public or private primary or secondary school, including a high school or alternative learning center; or a public or private institution of higher education. Deletes text providing that a person is a student for purposes of this chapter if the person enrolls on a full time or part time basis in any educational facility, including a college, university, community college, or technical or trade institute.

SECTION 4. Amends Articles 62.02(b), (c), and (g), Code of Criminal Procedure, as follows:

(b) Requires DPS to provide the Texas Department of Criminal Justice (TDJC), the Texas Youth Commission (TYC), the Texas Juvenile Probation Commission (TJPC), and each local law enforcement authority, authority for campus security, county jail, and court with a form for registering persons required by this chapter to register. Requires the registration form to include certain information, including an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution.

(c) Requires the local law enforcement authority with whom the person registered to send a copy of the registration form to the department and, if the person resides on the campus of a public or private institution of higher education, to any authority for campus security for that institution, not later than the third day after a person's registering.

(g) Requires the person, if the person is employed, carries on a vocation, or is a student at a public or private institution of higher education in another state and if an authority for campus security exists at the institution, to also register with that authority not later than the 10th day after the date on which the person begins to work or attend school.

SECTION 5. Amends Articles 62.03(a), (e), and (h), Code of Criminal Procedure, as follows:

(a) Makes conforming changes.

(e) Requires the authority to immediately publish a notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county, except as provided by Article 62.031. Requires the authority, if the authority publishes notice under this subsection, to publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. Requires the local law enforcement authority to immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate, in accordance with Article 62.032. Deletes text requiring the local enforcement authority to verify the age of a person subject to registration. Deletes text referencing Section 25.02, Penal Code.

(h) Requires an official of the penal institution to inform a releasee subject to registration of certain requirements, before the person is due to be released from a penal institution in this state.

SECTION 6. Amends Chapter 62, Code of Criminal Procedure, by adding Articles 62.031 and 62.032, as follows:

Art. 62.031. Art. 62.031. LIMITATIONS ON NEWSPAPER PUBLICATION. (a) Prohibits a local law enforcement authority from publishing a notice in a newspaper under Article 62.03(e) or 62.04(f) if the basis on which the person is subject to registration is an adjudication of delinquent conduct; or a conviction or a deferred adjudication for an offense under Section 25.02 (Prohibited Sexual Conduct), Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under Section 25.02, Penal Code, if the victim was at the time of the offense a child younger than 17 years of age.

(b) Prohibits a local law enforcement authority, in addition to the prohibition on

publication established under Subsection (a), from publishing notice in a newspaper under Article 62.04(f) if the person subject to registration is assigned a numeric risk level of one.

Art. 62.032. CIRCUMSTANCES REQUIRING NOTICE TO SUPERINTENDENT OR SCHOOL ADMINISTRATOR. (a) Requires a local law enforcement authority, under certain conditions, to provide notice to the superintendent and each administrator under Article 62.03(e) or 62.04(f).

(b) Prohibits a local law enforcement authority from providing notice to the superintendent or any administrator under Article 62.03(e) or 62.04(f) if the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 25.02, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under that section.

SECTION 7. Amends Articles 62.04 (a), (b), (e), and (f), Code of Criminal Procedure, as follows:

(a) Makes a conforming change.

(b) Makes a conforming change.

(e) Requires the person, if a person who reports to a local law enforcement authority under Subsection (a) does not move on or before the anticipated move date or does not move to the new address provided to the authority, to take certain actions, including not later than the seventh day after the anticipated move date, reporting to the local law enforcement authority designated as the person's primary registration authority by DPS, rather than with whom the person last registered not later than the seventh day after the anticipated move date, and provide an explanation to the authority regarding any changes in anticipated move date and intended residence.

(f) Deletes text providing for the local law enforcement authority to take certain actions, if the victim is a child younger than 17 years of age or the person subject to the registration is 17 years of age or older and a student enrolled in a public or private secondary school, regardless of the basis on which the person is subject to registration or the person's numeric risk level. Makes conforming changes.

SECTION 8. Amends Article 62.05, Code of Criminal Procedure, as follows:

Art. 62.05. New heading: STATUS REPORT BY SUPERVISING OFFICER OR LOCAL LAW ENFORCEMENT AGENCY. (a) Requires the supervising officer, not later than the seventh day after the date the supervising officer receives relevant information, to notify the local law enforcement authority of any change in the person's job or educational status in which the person becomes employed, begins to carry on a vocation or becomes a student at a particular public or private institution of higher education, or terminates the person's status in that capacity. Makes conforming and nonsubstantives changes.

(b) Requires the local law enforcement authority, not later than the seventh day after the date it receives the relevant information, to notify DPS of any change in the person's job or educational status in which the person becomes employed, begins to carry on a vocation, or becomes a student at a particular public or private institution of higher education or terminates the person's status in that capacity. Makes conforming changes.

SECTION 9. Amends Articles 62.06 (a), (b) and (d), Code of Criminal Procedure, to make conforming changes.

SECTION 10. Amends Article 62.061(a), Code of Criminal Procedure, as added by Chapter 444, Acts of the 76th Legislature, Regular Session, 1999, to make a conforming change.

SECTION 11. Amends Chapter 62, Code of Criminal Procedure, by adding Article 62.064, as follows:

Art. 62.064. REGISTRATION OF WORKERS OR STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION. (a) Provides that not later than the seventh day after the date on which the person begins to work or attend school, a person required to register under Article 62.061, as added by Chapters 1193 and 1415, Acts of the 76th Legislature, Regular Session, 1999, or any other provisions of this chapter who is employed, carries on a vocation, or is a student at a public or private institution of higher education in this state shall report that fact to the authority for campus security for that institution; or, if an authority for campus security for that institution does not exist, the local law enforcement authority of: the municipality in which the institution is located or the county in which the institution is located, if the institution is not located in a municipality.

(b) Requires a person described by Subsection (a) to provide the authority for campus security or the local law enforcement authority with all information the person is required to provide under Article 62.02(b).

(c) Requires a person described by Subsection (a) to notify the authority for campus security or the local law enforcement authority not later than the seventh day after the date of termination of the person's status as a worker or student at the institution.

(d) Requires the authority for campus security or the local law enforcement authority to promptly forward to the administrative office of the institution any information received from the person under this article and any information received from the department under Article 62.08.

(e) Provides that Subsection (a)(2) does not require a person to register at a local law enforcement authority if the person is otherwise required by this chapter to register at that authority.

(f) Provides that this article does not impose the requirements of public notification or notification to public or private primary or secondary schools on an authority for campus security or a local law enforcement authority, if those requirements relate to a person about whom the authority is not otherwise required by this chapter to make notifications.

(g) Establishes that the requirements of this article supersede those of Article 62.062 for a person required to register under both this article and Article 62.062, notwithstanding Article 62.062.

(h) Provides that regardless of the date on which the person began to work or attend school, a person described by Subsection (a) who is employed, carrying on a vocation, or is a student at a public or private institution of higher education in this state on September 1, 2003, shall report that fact not later than October 1, 2003, to the appropriate authority as described by Subsection (a). Provides that this subsection expires September 1, 2004.

SECTION 12. Amends Article 62.08, Code of Criminal Procedure, by amending Subsection (b) and adding Subsections (h) and (i), as follows:

(b) Makes a conforming change.

(h) Requires DPS, not later than the third day after the date on which the applicable information becomes available through the person's registration or verification of registration or under Article 62.05, to send notice of any person required to register under this chapter who is or will be employed, carrying on a vocation, or a student at a public or private institution of higher education in this state to certain entities.

(i) Requires DPS, on the written request of an institution of higher education described by Subsection (h) that identifies an individual and states that the individual has applied to work or study at the institution, to release any information described by Subsection (a) to the institution.

SECTION 13. Amends Articles 62.09(a) and (d), Code of Criminal Procedure, to make conforming changes.

SECTION 14. Reenacts Article 62.12(a), Code of Criminal Procedure, as amended by Chapters 211 and 1297, Acts of the 77th Legislature, Regular Session, 2001, and amends it by deleting text referencing Chapter 1193, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 15. Amends Article 62.13, Code of Criminal Procedure, by amending Subsections (k), (o), (q) and (r) and adding Subsection (q-1), as follows:

(k)-(o) Makes conforming changes.

(q) Requires a copy of court orders, if the court grants the motion, to be sent to each public or private agency or organization that the court determines may be in possession of sex offender registration information pertaining to the person required to register under this chapter and, at the request of the person required to register under this chapter, each public or private agency or organization that at any time following the initial dissemination of the order under Subdivision (1) gains possession of sex offender registration information pertaining to that person, if the agency or organization did not otherwise receive a copy of the order under Subdivision (1).

(q-1) Requires an order under Subsection (g) to require the recipient to conform its records to the court's orders either by deleting the sex offender registration information or changing its status to nonpublic, as the order requires. Prohibits a public or private institution of higher education from being required to delete the sex offender registration information under this subsection.

(r) Makes a conforming change.

SECTION 16. Amends Subdivision (4), Section 841.002, Health and Safety Code, to redefine "council."

SECTION 17. Amends Sections 841.005, 841.006, and 841.007, Health and Safety Code, as follows:

Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS. (a) Requires the Office of State Counsel for Offenders to represent an indigent person subject to civil commitment proceeding under this chapter, except as provided by Subsection (b).

(b) Requires the court, if for any reason the Office of State Counsel for Offenders is unable to represent an indigent person described by Subsection (a) at a civil commitment proceeding under this chapter, to appoint other counsel to represent the indigent person.

Sec. 841.006. APPLICATION OF CHAPTER. Provides that this chapter does not create for the committed person a cause of action against another person for failure to give notice

within a period required by Subchapter B, C, or D.

Sec. 841.007. New heading: DUTIES OF COUNCIL ON SEX OFFENDER TREATMENT. Provides that the Council on Sex Offender Treatment is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION 18. Amends Section 841.022, Health and Safety Code, as follows:

- (a) Requires the multi-disciplinary team (team) to be composed of certain individuals.
- (b) Authorizes the team to request the assistance of other persons in making an assessment, rather than a determination, under this section.
- (c) Requires the team, not later than the 60th day, rather than the 30th day, after the date the team receives notice under Section 841.021(a) or (b) to take certain actions. Makes conforming changes.

SECTION 19. Amends Section 841.023, Health and Safety Code, as follows:

- (a) Requires the expert to make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid DPS in its assessment, rather than determination. Makes conforming changes.
- (b) Makes conforming changes.

SECTION 20. Amends Section 841.041(b), Health and Safety Code, to require a petition to be filed not later than the 90th day, rather than the 60th day, after the person is referred to the attorney representing the state and served on the person as soon as practicable after the date the petition is filed.

SECTION 21. Amends Section 841.061, Health and Safety Code, by amending Subsections (a), (c), and (d) and adding Subsection (f), as follows:

- (a) Requires the judge, not later than the 270th day, rather than the 60th day, after the date a petition is served on the person, rather than filed, under Section 841.041, to conduct a trial to determine whether the person is sexually violent predator.
- (c) Provides that the person and the state are each entitled to an immediate examination of the person by an expert. Requires all components of the examination to be completed not later than the 90th day before the date of the trial.
- (d) Provides that Subsection (f) is an exception to additional rights of the person at the trial.
- (f) Provides that a person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert examinations that are required or permitted of the state to prepare for the person's trial. Specifies that a person who fails to submit to expert examination on the state's behalf as required by this subsection is subject to certain consequences.

SECTION 22. Amends Section 841.063, Health and Safety Code, to authorize the judge to continue a trial or hearing conducted under this chapter, rather than under Section 841.061, if the person is not substantially prejudiced by the continuance.

SECTION 23. Amends Section 841.081, Health and Safety Code, as follows:

(a) Provides that the commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or discharge from a state hospital and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) Authorizes a case manager, at any time after the entry of a commitment order under Subsection (a), to provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

SECTION 24. Amends Section 841.082, Health and Safety Code, as follows:

(a) Sets forth requirements regarding a person's outpatient civil commitment.

(b) Authorizes the judge to request assistance from the council in determining appropriate residence for the person.

(c) Redesignated from existing Subsection (b).

(d) Redesignated from existing Subsection (c). Requires the judge, immediately after the case becomes final for purposes of appeal, rather than immediately after the person's commitment, to transfer the jurisdiction of the case to a district court, having jurisdiction in the county in which the person, rather than defendant, is residing, except that the judge retains jurisdiction of the case with respect to a civil commitment proceeding conducted under Subchapters F and G.

(e) Authorizes the requirements imposed under Subsection (a) to be modified at any time after the notice to each affected party to the proceedings and a hearing.

SECTION 25. Amends Sections 841.083(b), (c), and (d), Health and Safety Code, as follows:

(b) Makes a nonsubstantive change.

(c) Requires DPS, if the equipment necessary to implement that service is available through a contract entered into by the Texas Building and Procurement Commission, to acquire that equipment through that contract, rather than for the equipment necessary to implement those services.

(d) Requires the council to enter into an interagency agreement with TDJC for any necessary supervised housing. Requires the council to reimburse TDJC for housing costs under this section.

SECTION 26. Amends Section 841.084, Health and Safety Code, as follows:

Sec. 841.084. New heading: STATUS REPORTS AND OTHER INFORMATION. (a) Requires a treatment provider or a supervision provider, other than the case manager or tracking service personnel, to submit, monthly or more frequently if required by the case manager, a report to the case manager stating whether the person is complying with treatment or supervision requirements, as applicable.

(b) Authorizes the tracking service personnel to provide to the case manager specific information relating to the person, including the person's compliance with a tracking requirement or involvement in criminal activity, if the council and DPS have entered into a memorandum of understanding governing the release of the information by the tracking personnel; and the use or dissemination of the information by the case manager; and the release, use, or dissemination is not prohibited by other law or

agreement.

SECTION 27. Amends Sections 841.142(a), (c), and (d), Health and Safety Code, to make conforming changes.

SECTION 28. Amends Section 841.144, Health and Safety Code, as follows:

(a) Specifies that a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceedings, immediately after the filing of a petition under Section 841.041, rather than at all stages of the civil commitment proceeding this chapter.

(b) Requires the court, if the person is indigent, to appoint counsel as appropriate under Section 841.005, rather than through the Office of State Counsel for Offenders, to assist the person.

SECTION 29. Amends Sections 841.146(b) and (c), Health and Safety Code, as follows:

(b) Provides that except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. Establishes that to the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.

(c) Requires the State of Texas, in amount not to exceed \$2,500, rather than \$1,600, to pay all costs associated with a civil commitment proceeding conducted under Subchapter D. Requires the State of Texas to pay the reasonable costs of state or appointed counsel or expert for any other civil commitment proceeding conducted under this chapter and requires to pay the reasonable cost of the person's outpatient treatment and supervision. Deletes text requiring the State of Texas to pay the cost for any civil commitment proceeding under this chapter.

SECTION 30. Amends Subchapter H, Chapter 841, Health and Safety Code, by adding Sections 841.1461, 841.1462, 841.1463, and 841.150, as follows:

Sec. 841.1461. **CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR.** Provides that a person who suffers from a behavioral abnormality as determined under this chapter is not because of that abnormality a person of unsound mind for purposes of Section 15-a, Article I, Texas Constitution.

Sec. 841.1462. **PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM.** Establishes that personal information, including a home address, home telephone number, and social security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

Sec. 841.1463. **FAILURE TO GIVE NOTICE WITHIN RELEVANT PERIOD NOT JURISDICTIONAL ERROR.** Provides that the periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but a failure to give notice within the relevant period is not a jurisdictional error.

Sec. 841.150. **EFFECT OF CERTAIN SUBSEQUENT CONVICTIONS, JUDGMENTS, OR VERDICTS ON ORDER OF CIVIL COMMITMENT.** (a) Establishes that except as provided by Subsection (b), certain convictions, judgments, or verdicts do not affect an order of civil commitment under this chapter.

(b) Provides that the statutory duties imposed by this chapter are suspended for the



duration of any confinement of a person who receives a conviction described by Subsection (a)(2).

SECTION 31. Amends Section 841.147, Health and Safety Code, to provide that certain persons are immune from liability for good faith conduct under this chapter.

SECTION 32. Makes application of Chapter 841, Health and Safety Code, as amended by this Act, prospective.

SECTION 33. (a) Requires DPS to establish the procedures required by Subsections (h) and (i), Article 62.08, Code of Criminal Procedure, as added by this Act, not later than October 1, 2003.

(b) Makes application of Chapter 62, Code of Criminal Procedure, prospective.

SECTION 34. Effective date: September 1, 2003.