

BILL ANALYSIS

Senate Research Center
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S.B. 1093
By: Shapiro
Criminal Justice
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DIGEST AND PURPOSE

The 76th Texas Legislature passed the Civil Commitment Act, which provides for the outpatient civil commitment of sexually violent predators. During the implementation of this Act, some minimal changes were identified. As proposed, S.B. 1093 adds the changes to the Civil Commitment Act.

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 Section 841.002(4), Health and Safety Code, to redefine "council."

SECTION 2. Amends Sections 841.005, 841.006, 841.007, Health and Safety Code, as follows:

(a) Requires the Office of State Counsel for Offenders to represent an indigent person subject to a civil commitment proceeding under this chapter, except as provided by Subsection (b). Makes nonsubstantive changes.

(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. Specifies that failure to give notice under Subchapters C or D does not create a cause for action.

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

SECTION 3. Amends 841.022, Health and Safety Code, as follows:

(a) Sets forth the composition of the multidisciplinary team.

(b) Authorizes the multidisciplinary team to request the assistance of other persons in making an assessment, rather than determination, under this section.

(c) Requires the team, not later than the 60th day, rather than not later than the 30th day, after the team receives notice under Section 841.021(a) or (b) to take certain actions. Makes conforming changes.

SECTION 4. Amends Section 841.023, Health and Safety Code, as follows:

(a) Makes conforming changes.

(b) Requires the Texas Department of Criminal Justice (TDCJ) or the Texas Department of Mental Health and Mental Retardation (MHMR), if as a result of the assessment, TDCJ or MHMR believes, rather than determines, that the person suffers from a behavioral abnormality, to give notice of that assessment, rather than determination, and provide corresponding documentation to the attorney representing the state by the 60th day, rather than the 30th day, after the date of a recommendation under Section 841.022(c).

SECTION 5. Amends Section 841.041(b), Health and Safety Code to require that a petition described by Subsection (a) be filed not later than the 90th day, rather than not later 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 6. 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 not later than the 60th day, after the petition is served on the person under Section 841.041, to conduct a trial to determine whether the person is a sexually violent predator.

(c) Requires all components of the examination to be completed not later than the 90th day before the date the trial begins. Makes a nonsubstantive change.

(d) Makes a conforming change.

(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. Provides 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 7. Amends Section 841.063, Health and Safety Code, to authorize the judge, if the person is not substantially prejudiced by the continuance, to continue a trial or hearing conducted under this chapter, rather than Section 841.061.

SECTION 8. 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. Makes nonsubstantive changes.

(b) Authorizes the 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 9. Amends Section 841.082, Health and Safety Code, as follows:

(a) Requires that the judge impose certain requirements, including prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization and requiring the person to notify the case manager immediately but in any event within 24 hours, rather than 48 hours, of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person, in order to ensure the person's compliance with treatment and supervision and to protect the community.

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

(c) Creates subsection from existing text.

(d) Requires the judge, immediately after the case becomes final for purposes of appeal, to transfer jurisdiction of the case to a district court, other than a family 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. Redesignates Subsection (c) as Subsection (d).

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

SECTION 10. Amends Sections 841.083(b), (c), and (d), Health and Safety Code, as follows:

(b) Makes nonsubstantives changes.

(c) Requires the Texas Department of Public Safety, if the equipment necessary to implement that service is available through a contract entered into by the Texas Building and Procurement Commission (TBPC), to acquire that equipment through that contract. Makes conforming and nonsubstantive changes.

(d) Requires the council to enter into an interagency agreement with TDCJ, rather than contract for any necessary housing. Requires the council to reimburse TDCJ for housing costs under this section.

SECTION 11. Amends Section 841.084, Health and Safety Code, as follows:

Sec. 841.084. New heading: STATUS REPORTS. Requires a treatment provider or tracking service personnel, rather than a supervision provider, other than the case manager, 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 tracking, rather than supervision, requirements, as applicable.

SECTION 12. Amends Section 841.141(a), Health and Safety Code, to require the council by rule to administer treatment and supervision under this chapter. Requires the rules adopted by the council under this section to be related to treatment and supervision under this chapter and related to the treatment and supervision under this chapter.

SECTION 13. Amends Sections 841.142(a), (c), and (d), Health and Safety Code, as follows:

(a) Provides that to protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(b) Makes a nonsubstantive change.

(c) Makes a conforming change.

(d) Makes a conforming change.

SECTION 14. Amends Section 841.144, Health and Safety Code, as follows:

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

counsel at all stages of the proceeding.

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

(b) Establishes that except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. Provides 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 to pay all costs associated with civil commitment proceeding conducted under Subchapter D, in an amount not to exceeding \$1,600. Requires the State of Texas to pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and to pay the reasonable costs of the person's outpatient treatment and supervision. Deletes text requiring the state to pay for any civil commitment proceeding conducted under this chapter.

SECTION 16. Amends Subchapter H, Chapter 841, Health and Safety Code, by adding Sections 841.1461-841.1463, 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. Provides 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. Establishes that the periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but 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) Provides that certain convictions, judgments, or verdicts do not affect an order of civil commitment under this chapter, except as provided by Subsection (b).

(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 17. 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 18. Provides that the change in law made by this Act applies to civil commitment proceedings initiated before, on, or after the effective date of this Act.

SECTION 19. Effective date: September 1, 2003.