

1-1 By: Shapiro S.B. No. 1093
1-2 (In the Senate - Filed March 11, 2003; March 17, 2003, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 7, 2003, reported favorably by the following vote: Yeas 4,
1-5 Nays 0; May 7, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the civil commitment of sexually violent predators.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subdivision (4), Section 841.002, Health and
1-11 Safety Code, is amended to read as follows:

1-12 (4) "Council" means the [~~Interagency~~] Council on Sex
1-13 Offender Treatment.

1-14 SECTION 2. Sections 841.005, 841.006, and 841.007, Health
1-15 and Safety Code, are amended to read as follows:

1-16 Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS.

1-17 (a) Except as provided by Subsection (b), the [The] Office of
1-18 State Counsel for Offenders shall represent an indigent [a] person
1-19 subject to a civil commitment proceeding under this chapter.

1-20 (b) If for any reason the Office of State Counsel for
1-21 Offenders is unable to represent an indigent person described by
1-22 Subsection (a) at a civil commitment proceeding under this chapter,
1-23 the court shall appoint other counsel to represent the indigent
1-24 person.

1-25 Sec. 841.006. APPLICATION OF CHAPTER. This chapter does
1-26 not:

1-27 (1) prohibit a person committed under this chapter
1-28 from filing at any time a petition for release under this chapter;
1-29 or

1-30 (2) create for the committed person a cause of action
1-31 against another person for failure to give notice within a period
1-32 required by Subchapter B, C, or D.

1-33 Sec. 841.007. DUTIES OF [~~INTERAGENCY~~] COUNCIL ON SEX
1-34 OFFENDER TREATMENT. The [~~Interagency~~] Council on Sex Offender
1-35 Treatment is responsible for providing appropriate and necessary
1-36 treatment and supervision through the case management system.

1-37 SECTION 3. Section 841.022, Health and Safety Code, is
1-38 amended to read as follows:

1-39 Sec. 841.022. MULTIDISCIPLINARY TEAM. (a) The executive
1-40 director of the Texas Department of Criminal Justice and the
1-41 commissioner of the Texas Department of Mental Health and Mental
1-42 Retardation jointly shall establish a multidisciplinary team to
1-43 review available records of a person referred to the team under
1-44 Section 841.021. The team must include:

1-45 (1) two persons from the Texas Department of Mental
1-46 Health and Mental Retardation;

1-47 (2) two [three] persons from the Texas Department of
1-48 Criminal Justice, one of whom must be from the victim services
1-49 office of that department;

1-50 (3) one person from the Texas Department of Public
1-51 Safety; and

1-52 (4) two persons [~~one person~~] from the council or
1-53 council personnel.

1-54 (b) The multidisciplinary team may request the assistance
1-55 of other persons in making an assessment [~~a determination~~] under
1-56 this section.

1-57 (c) Not later than the 60th [~~30th~~] day after the date the
1-58 multidisciplinary team receives notice under Section 841.021(a) or
1-59 (b), the team shall:

1-60 (1) assess [~~determine~~] whether the person is a repeat
1-61 sexually violent offender and whether the person is likely to
1-62 commit a sexually violent offense after release or discharge;

1-63 (2) give notice of that assessment [~~determination~~] to
1-64 the Texas Department of Criminal Justice or the Texas Department of

Mental Health and Mental Retardation, as appropriate; and
(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

SECTION 4. Section 841.023, Health and Safety Code, is amended to read as follows:

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY.

(a) Not later than the 60th [~~30th~~] day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate, shall assess [~~determine~~] whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment [~~determination~~], the department required to make the assessment [~~determination~~] shall use an expert to examine the person. That department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment [~~the determination~~].

(b) If as a result of the assessment the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation believes [~~determines~~] that the person suffers from a behavioral abnormality, the department making the assessment [~~determination~~] shall give notice of that assessment [~~determination~~] and provide corresponding documentation to the attorney representing the state not later than the 60th [~~30th~~] day after the date of a recommendation under Section 841.022(c).

SECTION 5. Subsection (b), Section 841.041, Health and Safety Code, is amended to read as follows:

(b) A petition described by Subsection (a) must be:

(1) filed not later than the 90th [~~60th~~] day after the date the person is referred to the attorney representing the state; and

(2) served on the person as soon as practicable after the date the petition is filed.

SECTION 6. Section 841.061, Health and Safety Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (f) to read as follows:

(a) Not later than the 270th [~~60th~~] day after the date a petition is served on the person [~~filed~~] under Section 841.041, the judge shall conduct a trial to determine whether the person is a sexually violent predator.

(c) The person and the state are each entitled to an immediate examination of the person by an expert. All components of the examination must be completed not later than the 90th day before the date the trial begins.

(d) Additional rights of the person at the trial include the following:

(1) the right to appear at the trial;

(2) except as provided by Subsection (f), the right to present evidence on the person's behalf;

(3) the right to cross-examine a witness who testifies against the person; and

(4) the right to view and copy all petitions and reports in the court file.

(f) 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. A person who fails to submit to expert examination on the state's behalf as required by this subsection is subject to the following consequences:

(1) the person's failure to participate may be used as evidence against the person at trial;

(2) the person may be prohibited from offering into evidence the results of an expert examination performed on the person's behalf; and

(3) the person may be subject to contempt proceedings if the person violates a court order by failing to submit to an expert examination on the state's behalf.

SECTION 7. Section 841.063, Health and Safety Code, is amended to read as follows:

Sec. 841.063. CONTINUANCE. The judge may continue a trial or hearing conducted under this chapter [~~Section 841.061~~] if the person is not substantially prejudiced by the continuance and:

- (1) on the request of either party and a showing of good cause; or
- (2) on the judge's own motion in the due administration of justice.

SECTION 8. Section 841.081, Health and Safety Code, is amended to read as follows:

Sec. 841.081. CIVIL COMMITMENT OF PREDATOR. (a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the [The] outpatient treatment and supervision begins [must begin] on the person's release from a secure correctional facility or discharge from a state hospital and continues [must continue] 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) At any time after entry of a commitment order under Subsection (a), the case manager may 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. Section 841.082, Health and Safety Code, is amended to read as follows:

Sec. 841.082. COMMITMENT REQUIREMENTS. (a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

- (1) requiring the person to reside in a particular location;
- (2) prohibiting the person's contact with a victim or potential victim of the person;
- (3) prohibiting the person's use of alcohol or a controlled substance;
- (4) requiring the person's participation in a specific course of treatment;
- (5) requiring the person to submit to tracking under a particular type of tracking service and to any other appropriate supervision;
- (6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;
- (7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone;
- (8) requiring the person to notify the case manager immediately but in any event within 24 [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; and
- (9) any other requirements determined necessary by the judge.

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

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the council. The council shall provide a copy of those requirements to the case manager and to the service providers.

(d) [~~(c)~~] Immediately after the case becomes final for purposes of appeal [person's commitment], the judge shall transfer jurisdiction of the case to a district court, other than a family

4-1 district court, having jurisdiction in the county in which the
 4-2 person [defendant] is residing, except that the judge retains
 4-3 jurisdiction of the case with respect to a civil commitment
 4-4 proceeding conducted under Subchapters F and G.

4-5 (e) The requirements imposed under Subsection (a) may be
 4-6 modified at any time after notice to each affected party to the
 4-7 proceedings and a hearing.

4-8 SECTION 10. Subsections (b), (c), and (d), Section 841.083,
 4-9 Health and Safety Code, are amended to read as follows:

4-10 (b) The case manager shall provide supervision to the
 4-11 person. The provision of supervision shall include a tracking
 4-12 service [services] and, if required by court order, supervised
 4-13 housing.

4-14 (c) The council shall enter into an interagency agreement
 4-15 with the Texas Department of Public Safety for the provision of a
 4-16 tracking service [services]. If the equipment necessary to
 4-17 implement that service is available through a contract entered into
 4-18 by [The Department of Public Safety shall contract with] the Texas
 4-19 Building and Procurement [General Services] Commission, the
 4-20 Department of Public Safety shall acquire that equipment through
 4-21 that contract [for the equipment necessary to implement those
 4-22 services].

4-23 (d) The council shall enter into an interagency agreement
 4-24 with the Texas Department of Criminal Justice [contract] for any
 4-25 necessary supervised housing. The council shall reimburse that
 4-26 department for housing costs under this section. The committed
 4-27 person may not be housed for any period of time in a mental health
 4-28 facility, state school, or community center. In this subsection:

4-29 (1) "Community center" means a center established
 4-30 under Subchapter A, Chapter 534.

4-31 (2) "Mental health facility" has the meaning assigned
 4-32 by Section 571.003.

4-33 (3) "State school" has the meaning assigned by Section
 4-34 531.002.

4-35 SECTION 11. Section 841.084, Health and Safety Code, is
 4-36 amended to read as follows:

4-37 Sec. 841.084. [PROVIDER] STATUS REPORTS. A treatment
 4-38 provider or tracking service personnel [a supervision provider]
 4-39 other than the case manager shall submit, monthly or more
 4-40 frequently if required by the case manager, a report to the case
 4-41 manager stating whether the person is complying with treatment or
 4-42 tracking [supervision] requirements, as applicable.

4-43 SECTION 12. Subsection (a), Section 841.141, Health and
 4-44 Safety Code, is amended to read as follows:

4-45 (a) The council by rule shall administer treatment and
 4-46 supervision under this chapter. Rules adopted by the council under
 4-47 this section must be:

4-48 (1) related to treatment and supervision under this
 4-49 chapter; and

4-50 (2) consistent with the purposes of this chapter.

4-51 SECTION 13. Subsections (a), (c), and (d), Section 841.142,
 4-52 Health and Safety Code, are amended to read as follows:

4-53 (a) To protect the public and to enable an assessment or [a]
 4-54 determination relating to whether a person is a sexually violent
 4-55 predator, any entity that possesses relevant information relating
 4-56 to the person shall release the information to an entity charged
 4-57 with making an assessment or [a] determination under this chapter.

4-58 (c) On the written request of any attorney for another state
 4-59 or for a political subdivision in another state, the Texas
 4-60 Department of Criminal Justice, the council, a service provider
 4-61 contracting with one of those agencies, the multidisciplinary team,
 4-62 and the attorney representing the state shall release to the
 4-63 attorney any available information relating to a person that is
 4-64 sought in connection with an attempt to civilly commit the person as
 4-65 a sexually violent predator in another state.

4-66 (d) To protect the public and to enable an assessment or [a]
 4-67 determination relating to whether a person is a sexually violent
 4-68 predator or to enable the provision of supervision and treatment to
 4-69 a person who is a sexually violent predator, the Texas Department of

5-1 Criminal Justice, the council, a service provider contracting with
 5-2 one of those agencies, the multidisciplinary team, and the attorney
 5-3 representing the state may exchange any available information
 5-4 relating to the person.

5-5 SECTION 14. Section 841.144, Health and Safety Code, is
 5-6 amended to read as follows:

5-7 Sec. 841.144. COUNSEL. (a) Immediately after the filing
 5-8 of a petition under Section 841.041 [At all stages of the civil
 5-9 commitment proceedings under this chapter], a person subject to a
 5-10 civil commitment proceeding under this chapter is entitled to the
 5-11 assistance of counsel at all stages of the proceeding.

5-12 (b) If the person is indigent, the court shall appoint
 5-13 counsel as appropriate under Section 841.005 [~~through the Office of~~
 5-14 ~~State Counsel for Offenders]~~ to assist the person.

5-15 SECTION 15. Subsections (b) and (c), Section 841.146,
 5-16 Health and Safety Code, are amended to read as follows:

5-17 (b) Except as otherwise provided by this subsection, a [A]
 5-18 civil commitment proceeding is subject to the rules of procedure
 5-19 and appeal for civil cases. To the extent of any conflict between
 5-20 this chapter and the rules of procedure and appeal for civil cases,
 5-21 this chapter controls.

5-22 (c) In an amount not to exceed \$1,600, the State of Texas
 5-23 [~~state]~~ shall pay all [the] costs associated with [of] a civil
 5-24 commitment proceeding conducted under Subchapter D. The State of
 5-25 Texas [For any civil commitment proceeding conducted under this
 5-26 chapter, the state] shall pay the reasonable costs of state or
 5-27 appointed counsel or experts for any other civil commitment
 5-28 proceeding conducted under this chapter and shall pay the
 5-29 reasonable costs of the person's outpatient treatment and
 5-30 supervision.

5-31 SECTION 16. Subchapter H, Chapter 841, Health and Safety
 5-32 Code, is amended by adding Sections 841.1461, 841.1462, 841.1463,
 5-33 and 841.150 to read as follows:

5-34 Sec. 841.1461. CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR
 5-35 CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR. A person who
 5-36 suffers from a behavioral abnormality as determined under this
 5-37 chapter is not because of that abnormality a person of unsound mind
 5-38 for purposes of Section 15-a, Article I, Texas Constitution.

5-39 Sec. 841.1462. PRIVILEGE FOR PERSONAL INFORMATION THAT
 5-40 IDENTIFIES VICTIM. Personal information, including a home address,
 5-41 home telephone number, and social security account number, that
 5-42 identifies the victim of a person subject to a civil commitment
 5-43 proceeding under this chapter is privileged from discovery by that
 5-44 person.

5-45 Sec. 841.1463. FAILURE TO GIVE NOTICE WITHIN RELEVANT
 5-46 PERIOD NOT JURISDICTIONAL ERROR. The periods within which notice
 5-47 must be given under this chapter are binding on all appropriate
 5-48 persons as provided by this chapter, but a failure to give notice
 5-49 within the relevant period is not a jurisdictional error.

5-50 Sec. 841.150. EFFECT OF CERTAIN SUBSEQUENT CONVICTIONS,
 5-51 JUDGMENTS, OR VERDICTS ON ORDER OF CIVIL COMMITMENT. (a) Except
 5-52 as provided by Subsection (b), the following convictions,
 5-53 judgments, or verdicts do not affect an order of civil commitment
 5-54 under this chapter:

5-55 (1) a conviction for a felony if a sentence is not
 5-56 imposed;

5-57 (2) a conviction for a misdemeanor, regardless of
 5-58 whether a sentence is imposed; and

5-59 (3) a judgment or verdict of not guilty by reason of
 5-60 insanity for any offense absent a corresponding commitment to the
 5-61 Texas Department of Mental Health and Mental Retardation.

5-62 (b) The statutory duties imposed by this chapter are
 5-63 suspended for the duration of any confinement of a person who
 5-64 receives a conviction described by Subsection (a)(2).

5-65 SECTION 17. Section 841.147, Health and Safety Code, is
 5-66 amended to read as follows:

5-67 Sec. 841.147. IMMUNITY. The following persons are immune
 5-68 from liability for good faith conduct under this chapter:

5-69 (1) an employee or officer of the Texas Department of

6-1 Criminal Justice, the Texas Department of Mental Health and Mental
6-2 Retardation, the Texas Department of Health, or the council;

6-3 (2) a member of the multidisciplinary team established
6-4 under Section 841.022;

6-5 (3) an employee of the division of the prison
6-6 prosecution unit charged with initiating and pursuing civil
6-7 commitment proceedings under this chapter [~~the attorney~~
6-8 ~~representing the state~~]; and

6-9 (4) a person contracting, appointed, or volunteering
6-10 to perform a service under this chapter.

6-11 SECTION 18. The change in law made by this Act applies to
6-12 civil commitment proceedings initiated before, on, or after the
6-13 effective date of this Act.

6-14 SECTION 19. This Act takes effect September 1, 2003.

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