

By: Shapiro

S.B. No. 912

A BILL TO BE ENTITLED

AN ACT

relating to the civil commitment of sexually violent predators.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 841.002, Health and Safety Code, is amended by adding Subdivision (7-a) and amending Subdivision (8) to read as follows:

(7-a) "Sexually motivated conduct" means any conduct involving the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the person [~~defendant~~] committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person [~~defendant~~] committed the offense with the intent to commit an offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or

subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) [~~(D)~~] an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), [~~(C)~~], or (D);

(F) [~~(E)~~] an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), [~~(D)~~], or (E); or

(G) [~~(F)~~] an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), [~~(D)~~], or (E).

SECTION 2. Subsections (a) and (b), Section 841.021, Health and Safety Code, are amended to read as follows:

(a) Before the person's anticipated release date, the Texas Department of Criminal Justice shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who:

(1) is serving a sentence for:

(A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or

(B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(b) Before the person's anticipated discharge date, the

1 Texas Department of Mental Health and Mental Retardation shall give
2 to the multidisciplinary team established under Section 841.022
3 written notice of the anticipated discharge of a person who:

4 (1) is committed to the department after having been
5 adjudged not guilty by reason of insanity of:

6 (A) a sexually violent offense described by
7 Section 841.002(8)(A), (B), or (C); or

8 (B) what is, or as described by this chapter what
9 the department reasonably believes may be determined to be, a
10 sexually violent offense described by Section 841.002(8)(D); and

11 (2) may be a repeat sexually violent offender.

12 SECTION 3. Subsections (a) and (d), Section 841.082, Health
13 and Safety Code, are amended to read as follows:

14 (a) Before entering an order directing a person's
15 outpatient civil commitment, the judge shall impose on the person
16 requirements necessary to ensure the person's compliance with
17 treatment and supervision and to protect the community. The
18 requirements shall include:

19 (1) requiring the person to reside in a Texas
20 residential facility under contract with the council or at another
21 [particular] location or facility approved by the council;

22 (2) prohibiting the person's contact with a victim or
23 potential victim of the person;

24 (3) prohibiting the person's possession or use of
25 alcohol, inhalants, or a controlled substance;

26 (4) requiring the person's participation in and
27 compliance with a specific course of treatment;

1 (5) requiring the person to:

2 (A) submit to tracking under a particular type of
3 tracking service and to any other appropriate supervision; and

4 (B) refrain from tampering with, altering,
5 modifying, obstructing, or manipulating the tracking equipment;

6 (6) prohibiting the person from changing the person's
7 residence without prior authorization from the judge and from
8 leaving the state without that prior authorization;

9 (7) if determined appropriate by the judge,
10 establishing a child safety zone in the same manner as a child
11 safety zone is established by a judge under Section 13B, Article
12 42.12, Code of Criminal Procedure, and requiring the person to
13 comply with requirements related to the safety zone;

14 (8) requiring the person to notify the case manager
15 immediately but in any event within 24 hours of any change in the
16 person's status that affects proper treatment and supervision,
17 including a change in the person's physical health or job status and
18 including any incarceration of the person; and

19 (9) any other requirements determined necessary by the
20 judge.

21 (d) The court [~~Immediately after the case becomes final for~~
22 ~~purposes of appeal, the judge shall transfer jurisdiction of the~~
23 ~~case to a district court, other than a family district court, having~~
24 ~~jurisdiction in the county in which the person is residing, except~~
25 ~~that the judge~~] retains jurisdiction of the case with respect to a
26 civil commitment proceeding conducted under Subchapters F and G.

27 SECTION 4. Section 841.083, Health and Safety Code, is

amended by amending Subsections (c) and (d) and adding Subsections (c-1) and (c-2) to read as follows:

(c) The council shall enter into appropriate memoranda of understanding [~~an interagency agreement~~] with the Texas Department of Public Safety for the provision of a tracking service and for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.

(c-1) Notwithstanding Subsection (c) or any other provision of this subchapter, the council shall provide through the case management system any supervision or tracking service required under this chapter for persons residing in Bexar, Dallas, Harris, Tarrant, or Travis County. The council shall provide the tracking service under this subsection through the Department of State Health Services. Any tracking personnel used by the department for purposes of this chapter must be approved by the council.

(c-2) If the equipment necessary to implement the tracking [~~that~~] service is available through a contract entered into by the Texas Building and Procurement Commission, the Department of Public Safety or the council, as appropriate, shall acquire that equipment through that contract.

(d) The council shall enter into appropriate memoranda of understanding [~~an interagency agreement with the Texas Department of Criminal Justice~~] for any necessary supervised housing. The council shall reimburse the applicable provider [~~that department~~] for housing costs under this section. The committed person may not be housed for any period of time in a mental health facility, state school, or community center, unless the placement results from a

1 commitment of the person to that facility, school, or center by
2 governmental action under other law, including a proceeding
3 initiated under Article 46.03 or Chapter 46B, Code of Criminal
4 Procedure. In this subsection:

5 (1) "Community center" means a center established
6 under Subchapter A, Chapter 534.

7 (2) "Mental health facility" has the meaning assigned
8 by Section 571.003.

9 (3) "State school" has the meaning assigned by Section
10 531.002.

11 SECTION 5. Subsections (a) and (b), Section 841.145, Health
12 and Safety Code, are amended to read as follows:

13 (a) At the person's own expense, a [A] person who is
14 examined under this chapter may retain an expert to perform an
15 examination or participate in a civil commitment proceeding on the
16 person's behalf, including a biennial examination or other civil
17 commitment proceeding to assess the person's status as a sexually
18 violent predator.

19 (b) On the request of an indigent person examined under this
20 chapter, the judge shall determine whether expert services for the
21 person are necessary. If the judge determines that the services are
22 necessary, the judge shall appoint an expert to perform an
23 examination or participate in a civil commitment proceeding on the
24 person's behalf and shall approve compensation for the expert as
25 appropriate under Subsection (c).

26 SECTION 6. Section 841.150, Health and Safety Code, is
27 amended to read as follows:

Sec. 841.150. EFFECT OF ~~[CERTAIN]~~ SUBSEQUENT COMMITMENT OR CONFINEMENT ~~[CONVICTIONS, JUDGMENTS, OR VERDICTS]~~ ON ORDER OF CIVIL COMMITMENT. (a) ~~[Except as provided by Subsection (b), the following convictions, judgments, or verdicts do not affect an order of civil commitment under this chapter:~~

~~[(1) a conviction for a felony if a sentence is not imposed;~~

~~[(2) a conviction for a misdemeanor, regardless of whether a sentence is imposed; and~~

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

~~[(b)]~~ The ~~[statutory]~~ duties imposed by this chapter are suspended for the duration of any confinement of a person, or any commitment of a person to a community center, mental health facility, or state school, by governmental action under other law, including a proceeding initiated under Article 46.03 or Chapter 46B, Code of Criminal Procedure ~~[who receives a conviction described by Subsection (a)(2)]~~.

(b) In this section:

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

(2) "Mental health facility" has the meaning assigned by Section 571.003.

(3) "State school" has the meaning assigned by Section 531.002.

SECTION 7. The following provisions are repealed:

1 (1) Subsection (b), Section 841.082, Health and Safety
2 Code; and

3 (2) Section 841.084, Health and Safety Code.

4 SECTION 8. The change in law made by this Act applies only
5 to an individual who on or after September 1, 2005, is serving a
6 sentence in the Texas Department of Criminal Justice or is
7 committed to the Texas Department of Mental Health and Mental
8 Retardation for an offense committed before, on, or after the
9 effective date of this Act.

10 SECTION 9. This Act takes effect September 1, 2005.