

BILL ANALYSIS

S.B. 2037
By: Shapiro
Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

This legislation relates to the creation of a state agency to perform the functions relating to the sex offender civil commitment program under Chapter 841, Health and Safety Code, that are currently performed by the Council on Sex Offender Treatment, a governor-appointed independent council administratively attached to the Department of State Health Services' Professional Licensing and Certification Unit.

S.B. 2037 creates the Office of Violent Sex Offender Management to perform appropriate functions related to the sex offender civil commitment program provided under Chapter 841, Health and Safety Code, including functions related to the provision of treatment and supervision to civilly committed sex offenders. The bill provides that the office would be a state agency, governed by a three-member governor-appointed board, serving staggered four-year terms, which will meet monthly. The bill grants rulemaking authority to the office under Chapter 841, Health and Safety Code.

S.B. 2037 amends current law relating to the sex offender civil commitment program and to the creation of a state agency to perform the functions relating to the sex offender civil commitment program that are currently performed by the Council on Sex Offender Treatment.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to Council on Sex Offender Treatment is transferred to the violent Sex Offender Management in SECTION 10 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

S.B. 2037 amends the Government Code to create the Office of Violent Sex Offender Management as a state agency governed by a board composed of the following three members appointed by the governor: one member experienced in the management of sex offenders; one member experienced in the investigation or prosecution of sex offenders; and one member experienced in counseling or advocating on behalf of victims of sexual assault. The bill requires the governor to appoint the members to the office as soon as possible after the effective date of the bill. The bill sets forth provisions regarding the terms of board members, and entitles a

member of the board to travel expenses incurred in performing official duties and to a per diem equal to the maximum amount allowed on January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations provided for members of the state boards and commissions in the General Appropriations Act.

S.B. 2037 requires the governor to designate a member of the board as a presiding officer who serves at the discretion of the governor and requires the board to meet at least quarterly and at other times at the call of the presiding officer. The bill provides that the office is subject to the Texas Sunset Act and establishes that, unless continued in existence, the office is abolished and provisions relating to the office expire September 1, 2021.

S.B. 2037 authorizes the office to apply for and accept grants and donations from any source to be used by the office in the performance of its duties and requires the office to prepare information of public interest describing the functions of the office and the procedures by which complaints are filed with and resolved by the office and to make the information available to the public and appropriate state agencies. The bill requires the office to submit to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than December 1 of each even-numbered year, a report concerning the operation of the office and authorizes the office to include in the report any recommendations that the office considers appropriate. The bill authorizes the office to select and employ a general counsel, staff attorneys, and other staff necessary to perform the office's functions.

S.B. 2037 sets forth provisions on a salary career ladder for case managers that the board is required to adopt.

S.B. 2037 requires the office to perform appropriate functions related to the sex offender civil commitment program including functions related to the provision of treatment and supervision to civilly committed sex offenders.

S.B. 2037 entitles the Office of Violent Sex Offender Management to obtain from the Department of Public Safety (DPS) criminal history record information that is maintained by DPS and that relates to a person who has applied with the office to be an employee of the office or a contracted service provider with the office. The bill prohibits the release or disclosure of criminal history record information obtained by the office to any person or agency except on court order or with the consent of the person who is the subject of the information. The bill requires the office to destroy criminal history record information obtained from DPS as soon as practicable after the date on which, as applicable, the person's employment or contract with the office terminates or the office decides not to employ or contract with the person.

S.B. 2037 transfers the following to the Office of Violent Sex Offender Management: the functions of the Council on Sex Offender Treatment that relate to the sex offender civil commitment program, the director of the Department of State Health Services (DSHS) who has jurisdiction over the sex offender civil commitment program, and the staff of the council whose primary duties include the operation of the sex offender civil commitment program. The bill requires the transfer of all functions relating to the sex offender civil commitment program from the Council on Sex Offender Treatment to the Office of Violent Sex Offender Management to be accomplished as soon as possible but not later than the 90th day after the date that the last member of the office qualifies for office and makes conforming changes to Health and Safety Code provisions. The bill requires the office, DSHS, and the council to coordinate the transfer of functions relating to the sex offender civil commitment program. The bill transfers all unexpended appropriations for functions relating to the sex offender civil commitment program that are made for use by DSHS or the council to the office.

S.B. 2037 requires the office to publish in the Texas Register the date on which the transfer of functions under the bill's provisions is accomplished. The bill requires the council, after the effective date of the bill, to continue to perform applicable functions until the transfer of

functions is completed, and continues in effect the laws providing for those functions for that purpose.

S.B. 2037 amends the Health and Safety Code to provide that the multidisciplinary team established by the executive commissioner of the Texas Department of Criminal Justice (TDCJ) and the commissioner of DSHS to review available records of a potential sexual predator being released from TDCJ must include one person, rather than two persons, from DSHS and adds one person from the Council on Sex Offender Treatment to the required members of the team. The bill specifies that the requirement imposed on a person by a judge before entering an order directing the person's outpatient civil commitment to participate in and comply with a specific course of treatment refers to a course of treatment provided by the office and compliance with all written requirements imposed by the case manager or otherwise by the office. The bill removes the requirement that a person notify the case manager immediately or within 24 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 from the requirements imposed on a person by a judge before entering an order directing the person's outpatient civil commitment.

S.B. 2037 increases from \$6,000 to \$10,000 the maximum amount of annual compensation a treatment provider is authorized to receive for providing treatment to a civilly committed sexual predator. The bill requires the office to enter into appropriate memoranda of understanding with local law enforcement authorities, in addition to DPS, for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person. The bill removes a provision requiring the council to provide through the case management system any supervision or tracking service required for persons residing in Dallas, Harris, or Tarrant County and to provide the tracking service through two employees of DSHS and removes the specification requiring any tracking personnel used by DSHS to be approved by the council. The bill removes a provision requiring DPS or the council, as appropriate, to acquire equipment necessary to implement a tracking service available through a contract entered into by the comptroller of public accounts if such equipment is available through such a contract.

S.B. 2037 requires a correctional facility, secure correctional facility, or secure detention center, as applicable, to notify in writing the case manager of a person who, at the time of the person's detention or confinement, was civilly committed as a sexually violent predator, of the anticipated date and time of the person's release not later than the day preceding the date the facility releases the person. The bill requires a case manager, on request, to provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for that notification. The bill makes these requirements relating to a notice of the release of a sexually violent predator applicable to a person who has been civilly committed and who is detained or confined in a correctional facility or secure detention facility as a result of violating a civil commitment requirement or a law of Texas.

S.B. 2037 defines "board," "office," "correctional facility," "secure correctional facility," and "secure detention facility."

EFFECTIVE DATE

September 1, 2009.