

By: Shapiro

S.B. No. 2037

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the sex offender civil commitment program and to the
3 creation of a state agency to perform the functions relating to the
4 sex offender civil commitment program that are currently performed
5 by the Council on Sex Offender Treatment.

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

7 SECTION 1. Subchapter F, Chapter 411, Government Code, is
8 amended by adding Section 411.1389 to read as follows:

9 Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD
10 INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. (a) The
11 Office of Violent Sex Offender Management is entitled to obtain
12 from the department criminal history record information that is
13 maintained by the department and that relates to a person who has
14 applied with the office to be:

15 (1) an employee of the office; or

16 (2) a contracted service provider with the office.

17 (b) Criminal history record information obtained by the
18 Office of Violent Sex Offender Management under Subsection (a) may
19 not be released or disclosed to any person or agency except on court
20 order or with the consent of the person who is the subject of the
21 information.

22 (c) The Office of Violent Sex Offender Management shall
23 destroy criminal history record information obtained under
24 Subsection (a) as soon as practicable after the date on which, as

1 applicable:

2 (1) the person's employment or contract with the
3 office terminates; or

4 (2) the office decides not to employ or contract with
5 the person.

6 SECTION 2. Subtitle B, Title 4, Government Code, is amended
7 by adding Chapter 420A to read as follows:

8 CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

9 Sec. 420A.001. DEFINITIONS. In this chapter:

10 (1) "Board" means the governing board of the Office of
11 Violent Sex Offender Management.

12 (2) "Office" means the Office of Violent Sex Offender
13 Management.

14 Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) The Office of
15 Violent Sex Offender Management is a state agency.

16 (b) The office is governed by a board composed of the
17 following three members appointed by the governor:

18 (1) one member experienced in the management of sex
19 offenders;

20 (2) one member experienced in the investigation or
21 prosecution of sex offenses; and

22 (3) one member experienced in counseling or advocating
23 on behalf of victims of sexual assault.

24 (c) Members of the board serve staggered two-year terms.
25 Two members' terms expire February 1 of each even-numbered year and
26 one member's term expires February 1 of each odd-numbered year.

27 (d) A member of the board is entitled to travel expenses

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

6 Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) The
7 governor shall designate a member of the board as presiding
8 officer. The presiding officer serves at the discretion of the
9 governor.

10 (b) The board shall meet at least quarterly and at other
11 times at the call of the presiding officer.

12 Sec. 420A.004. SUNSET PROVISION. The Office of Violent Sex
13 Offender Management is subject to Chapter 325 (Texas Sunset Act).
14 Unless continued in existence as provided by that chapter, the
15 office is abolished and this chapter expires September 1, 2021.

16 Sec. 420A.005. GRANTS AND DONATIONS. On behalf of the
17 state, the office may apply for and accept grants and donations from
18 any source to be used by the office in the performance of the duties
19 of the office.

20 Sec. 420A.006. PUBLIC INTEREST INFORMATION. The office
21 shall prepare information of public interest describing the
22 functions of the office and the procedures by which complaints are
23 filed with and resolved by the office. The office shall make the
24 information available to the public and appropriate state agencies.

25 Sec. 420A.007. BIENNIAL REPORT. Not later than December 1
26 of each even-numbered year, the office shall submit to the
27 governor, the lieutenant governor, and the speaker of the house of

1 representatives a report concerning the operation of the office.
2 The office may include in the report any recommendations that the
3 office considers appropriate.

4 Sec. 420A.008. STAFF. The office may select and employ a
5 general counsel, staff attorneys, and other staff necessary to
6 perform the office's functions.

7 Sec. 420A.009. SALARY CAREER LADDER FOR CASE MANAGERS.

8 (a) The board shall adopt a salary career ladder for case
9 managers. The salary career ladder must base a case manager's
10 salary on the manager's classification and years of service with
11 the office.

12 (b) For purposes of the salary schedule, the office shall
13 classify all case manager positions as Case Manager I, Case Manager
14 II, Case Manager III, Case Manager IV, or Case Manager V.

15 (c) Under the salary career ladder adopted under Subsection
16 (a), a case manager to whom the schedule applies and who received an
17 overall evaluation of at least satisfactory in the case manager's
18 most recent annual evaluation is entitled to an annual salary
19 increase, during each of the case manager's first 10 years of
20 service in a designated case manager classification as described by
21 Subsection (b), equal to one-tenth of the difference between:

- 22 (1) the case manager's current annual salary; and
23 (2) the minimum annual salary of a case manager in the
24 next highest classification.

25 Sec. 420A.010. POWERS AND DUTIES. The office shall perform
26 appropriate functions related to the sex offender civil commitment
27 program provided under Chapter 841, Health and Safety Code,

1 including functions related to the provision of treatment and
2 supervision to civilly committed sex offenders.

3 SECTION 3. Subdivisions (3) and (4), Section 841.002,
4 Health and Safety Code, are amended to read as follows:

5 (3) "Case manager" means a person employed by or under
6 contract with the office [~~council~~] to perform duties related to
7 outpatient treatment and supervision of a person committed under
8 this chapter.

9 (4) "Office" [~~"Council"~~] means the Office of Violent
10 Sex Offender Management [~~Council on Sex Offender Treatment~~].

11 SECTION 4. Section 841.007, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 841.007. DUTIES OF OFFICE OF VIOLENT SEX OFFENDER
14 MANAGEMENT [~~COUNCIL ON SEX OFFENDER TREATMENT~~]. The Office of
15 Violent Sex Offender Management [~~Council on Sex Offender Treatment~~]
16 is responsible for providing appropriate and necessary treatment
17 and supervision through the case management system.

18 SECTION 5. Subsection (a), Section 841.022, Health and
19 Safety Code, is amended to read as follows:

20 (a) The executive director of the Texas Department of
21 Criminal Justice and the commissioner of the [~~Texas~~] Department of
22 State Health Services [~~Mental Health and Mental Retardation~~]
23 jointly shall establish a multidisciplinary team to review
24 available records of a person referred to the team under Section
25 841.021. The team must include:

26 (1) one person [~~two persons~~] from the [~~Texas~~]
27 Department of State Health Services [~~Mental Health and Mental~~

1 ~~Retardation~~];

2 (2) two persons from the Texas Department of Criminal
3 Justice, one of whom must be from the victim services office of that
4 department;

5 (3) one person from the ~~[Texas]~~ Department of Public
6 Safety; ~~and~~

7 (4) two persons from the office ~~[council]~~ or office
8 ~~[council]~~ personnel; and

9 (5) one person from the Council on Sex Offender
10 Treatment.

11 SECTION 6. Subsections (a) and (c), Section 841.082, Health
12 and Safety Code, are amended to read as follows:

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

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

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

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

25 (4) requiring the person's participation in and
26 compliance with a specific course of treatment provided by the
27 office and compliance with all written requirements imposed by the

1 case manager or otherwise by the office;

2 (5) requiring the person to:

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

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

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

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

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

20 ~~[(9)]~~ any other requirements determined necessary by
21 the judge.

22 (c) The judge shall provide a copy of the requirements
23 imposed under Subsection (a) to the person and to the office
24 ~~[council]~~. The office ~~[council]~~ shall provide a copy of those
25 requirements to the case manager and to the service providers.

26 SECTION 7. Section 841.083, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 841.083. TREATMENT; SUPERVISION. (a) The office
2 ~~[council]~~ shall approve and contract for the provision of a
3 treatment plan for the committed person to be developed by the
4 treatment provider. A treatment plan may include the monitoring of
5 the person with a polygraph or plethysmograph. The treatment
6 provider may receive annual compensation in an amount not to exceed
7 \$10,000 ~~[\$6,000]~~ for providing the required treatment.

8 (b) The case manager shall provide supervision to the
9 person. The provision of supervision must ~~[shall]~~ include a
10 tracking service and, if required by court order, supervised
11 housing.

12 (c) The office ~~[council]~~ shall enter into appropriate
13 memoranda of understanding with the ~~[Texas]~~ Department of Public
14 Safety for the provision of a tracking service and with the
15 Department of Public Safety and local law enforcement authorities
16 for assistance in the preparation of criminal complaints, warrants,
17 and related documents and in the apprehension and arrest of a
18 person.

19 ~~[(c-1) Notwithstanding Subsection (c) or any other~~
20 ~~provision of this subchapter, the council shall provide through the~~
21 ~~case management system any supervision or tracking service required~~
22 ~~under this chapter for persons residing in Dallas, Harris, or~~
23 ~~Tarrant County. The council shall provide the tracking service~~
24 ~~under this subsection through two employees of the Department of~~
25 ~~State Health Services. Any tracking personnel used by the~~
26 ~~department for purposes of this chapter must be approved by the~~
27 ~~council.~~

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

5 (d) The office ~~[council]~~ shall enter into appropriate
6 memoranda of understanding for any necessary supervised housing.
7 The office ~~[council]~~ shall reimburse the applicable provider for
8 housing costs under this section. The committed person may not be
9 housed for any period of time in a mental health facility, state
10 school, or community center, unless the placement results from a
11 commitment of the person to that facility, school, or center by
12 governmental action. In this subsection:

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

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

17 (3) "State school" has the meaning assigned by Section
18 531.002.

19 (e) The case manager shall:

20 (1) coordinate the outpatient treatment and
21 supervision required by this chapter, including performing a
22 periodic assessment of the success of that treatment and
23 supervision;

24 (2) make timely recommendations to the judge on
25 whether to allow the committed person to change residence or to
26 leave the state and on any other appropriate matters; and

27 (3) provide a report to the office ~~[council]~~,

1 semiannually or more frequently as necessary, which must include:

2 (A) any known change in the person's status that
3 affects proper treatment and supervision; and

4 (B) any recommendations made to the judge.

5 SECTION 8. Section 841.084, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding
8 Section 841.146(c), a civilly committed person who is not indigent
9 is responsible for the cost of the tracking service required by
10 Section 841.082 and monthly shall pay to the office [~~council~~] the
11 amount that the office [~~council~~] determines will be necessary to
12 defray the cost of operating the service with respect to the person
13 during the subsequent month. The office [~~council~~] immediately
14 shall transfer the money to the appropriate service provider.

15 SECTION 9. Section 841.101, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 841.101. BIENNIAL EXAMINATION. (a) A person
18 committed under Section 841.081 shall receive a biennial
19 examination. The office [~~council~~] shall contract for an expert to
20 perform the examination.

21 (b) In preparation for a judicial review conducted under
22 Section 841.102, the case manager shall provide a report of the
23 biennial examination to the judge. The report must include
24 consideration of whether to modify a requirement imposed on the
25 person under this chapter and whether to release the person from all
26 requirements imposed on the person under this chapter. The case
27 manager shall provide a copy of the report to the office [~~council~~].

1 SECTION 10. Section 841.141, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 841.141. RULEMAKING AUTHORITY. (a) The office
4 [~~council~~] by rule shall administer this chapter. Rules adopted by
5 the office [~~council~~] under this section must be consistent with the
6 purposes of this chapter.

7 (b) The office [~~council~~] by rule shall develop standards of
8 care and case management for persons committed under this chapter.

9 SECTION 11. Subsections (c) and (d), Section 841.142,
10 Health and Safety Code, are amended to read as follows:

11 (c) On the written request of any attorney for another state
12 or for a political subdivision in another state, the Texas
13 Department of Criminal Justice, the office [~~council~~], a service
14 provider contracting with one of those agencies, the
15 multidisciplinary team, and the attorney representing the state
16 shall release to the attorney any available information relating to
17 a person that is sought in connection with an attempt to civilly
18 commit the person as a sexually violent predator in another state.

19 (d) To protect the public and to enable an assessment or
20 determination relating to whether a person is a sexually violent
21 predator or to enable the provision of supervision and treatment to
22 a person who is a sexually violent predator, the Texas Department of
23 Criminal Justice, the office [~~council~~], a service provider
24 contracting with one of those agencies, the multidisciplinary team,
25 and the attorney representing the state may exchange any available
26 information relating to the person.

27 SECTION 12. Section 841.147, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 841.147. IMMUNITY. The following persons are immune
3 from liability for good faith conduct under this chapter:

4 (1) an employee or officer of the Texas Department of
5 Criminal Justice, the Department of State Health Services, the
6 Department of Aging and Disability Services, or the office
7 ~~[council]~~;

8 (2) a member of the multidisciplinary team established
9 under Section 841.022;

10 (3) an employee of the civil division of the special
11 prosecution unit charged with initiating and pursuing civil
12 commitment proceedings under this chapter; and

13 (4) a person providing, or contracting, appointed, or
14 volunteering to perform, a tracking service or another service
15 under this chapter.

16 SECTION 13. Subchapter H, Chapter 841, Health and Safety
17 Code, is amended by adding Section 841.151 to read as follows:

18 Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT
19 PREDATOR. (a) In this section:

20 (1) "Correctional facility" has the meaning assigned
21 by Section 1.07, Penal Code.

22 (2) "Secure correctional facility" and "secure
23 detention facility" have the meanings assigned by Section 51.02,
24 Family Code.

25 (b) This section applies to a person who has been civilly
26 committed under this chapter and who is detained or confined in a
27 correctional facility, secure correctional facility, or secure

1 detention facility as a result of violating:

2 (1) a civil commitment requirement imposed under
3 Section 841.082; or

4 (2) a law of this state.

5 (c) Not later than the day preceding the date a correctional
6 facility, secure correctional facility, or secure detention
7 facility releases a person who, at the time of the person's
8 detention or confinement, was civilly committed under this chapter
9 as a sexually violent predator, the facility shall notify the
10 person's case manager in writing of the anticipated date and time of
11 the person's release.

12 (d) A case manager, on request, shall provide a correctional
13 facility, a secure correctional facility, or a secure detention
14 facility with the case manager's appropriate contact information
15 for notification under Subsection (c).

16 SECTION 14. The following are transferred to the Office of
17 Violent Sex Offender Management:

18 (1) the functions of the Council on Sex Offender
19 Treatment that relate to the sex offender civil commitment program;

20 (2) the director of the Department of State Health
21 Services who has jurisdiction over the sex offender civil
22 commitment program; and

23 (3) the staff of the council whose primary duties
24 include the operation of the sex offender civil commitment program.

25 SECTION 15. As soon as possible after the effective date of
26 this Act, the governor shall appoint three members to the Office of
27 Violent Sex Offender Management.

1 SECTION 16. (a) The Office of Violent Sex Offender
2 Management, the Department of State Health Services, and the
3 Council on Sex Offender Treatment shall coordinate the transfer of
4 functions relating to the sex offender civil commitment program as
5 required by this Act.

6 (b) The transfer of all functions relating to the sex
7 offender civil commitment program to the Office of Violent Sex
8 Offender Management shall be accomplished as soon as possible but
9 not later than the 90th day after the date that the last member of
10 the Office of Violent Sex Offender Management qualifies for office.

11 (c) The transfer required by this Act includes the transfer
12 of all assets, duties, powers, obligations, and liabilities,
13 including contracts, leases, real or personal property, funds,
14 employees, furniture, computers and other equipment, and files and
15 related materials used by the Department of State Health Services
16 and the Council on Sex Offender Treatment in performing the
17 functions relating to the sex offender civil commitment program
18 that are transferred by this Act. For purposes of this subsection,
19 "employees" includes the executive director of the Council on Sex
20 Offender Treatment and administrative technicians and program
21 specialists employed by the council.

22 (d) A form, rule, or procedure adopted by the Health and
23 Human Services Commission or the Department of State Health
24 Services in relation to the Council on Sex Offender Treatment that
25 is in effect on the effective date of this Act remains in effect on
26 and after that date as if adopted by the Office of Violent Sex
27 Offender Management until amended, repealed, withdrawn, or

1 otherwise superseded by that office.

2 (e) All unexpended appropriations for functions relating to
3 the sex offender civil commitment program that are made for use by
4 the Department of State Health Services or the Council on Sex
5 Offender Treatment are transferred to the Office of Violent Sex
6 Offender Management.

7 (f) The Office of Violent Sex Offender Management shall
8 publish in the Texas Register the date on which the transfer of
9 functions under this Act is accomplished.

10 SECTION 17. After the effective date of this Act, the
11 Council on Sex Offender Treatment shall continue to perform
12 applicable functions until the transfer of functions required by
13 this Act is completed, and the laws providing for those functions
14 are continued in effect for that purpose.

15 SECTION 18. This Act takes effect September 1, 2009.