

By: Shapiro

S.B. No. 2037

A BILL TO BE ENTITLED

AN ACT

1  
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. Subtitle B, Title 4, Government Code, is amended  
8 by adding Chapter 420A to read as follows:

9 CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

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

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

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

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

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

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

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

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

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

4       (d) A member of the board is entitled to travel expenses  
5 incurred in performing official duties and to a per diem equal to  
6 the maximum amount allowed on January 1 of that year for federal  
7 employees per diem for federal income tax purposes, subject to the  
8 same limitations provided for members of state boards and  
9 commissions in the General Appropriations Act.

10       Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) The  
11 governor shall designate a member of the board as presiding  
12 officer. The presiding officer serves at the discretion of the  
13 governor.

14       (b) The board shall meet at least once each month and at  
15 other times at the call of the presiding officer.

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

20       Sec. 420A.005. STAFF. The office may select and employ a  
21 general counsel, staff attorneys, and other staff necessary to  
22 perform the office's functions.

23       Sec. 420A.006. SALARY CAREER LADDER FOR CASE MANAGERS. (a)  
24 The board shall adopt a salary career ladder for case managers. The  
25 salary career ladder must base a case manager's salary on the  
26 manager's classification and years of service with the office.

27       (b) For purposes of the salary schedule, the office shall

1 classify all case manager positions as Case Manager I, Case Manager  
2 II, Case Manager III, Case Manager IV, or Case Manager V.

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

10 (1) the case manager's current annual salary; and

11 (2) the minimum annual salary of a case manager in the  
12 next highest classification.

13 Sec. 420A.007. POWERS AND DUTIES. The office shall perform  
14 appropriate functions related to the sex offender civil commitment  
15 program provided under Chapter 841, Health and Safety Code,  
16 including functions related to the provision of treatment and  
17 supervision to civilly committed sex offenders.

18 SECTION 2. Sections 841.002(3) and (4), Health and Safety  
19 Code, are amended to read as follows:

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

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

26 SECTION 3. Section 841.003(b), Health and Safety Code, is  
27 amended to read as follows:

1 (b) A person is a repeat sexually violent offender for the  
2 purposes of this chapter:

3 (1) if the person:

4 (A) is convicted of more than one sexually  
5 violent offense and a sentence is imposed for at least one of the  
6 offenses;

7 (B) is adjudicated to have more than once engaged  
8 in delinquent conduct constituting any of the following sexually  
9 violent offenses, if the person is committed to the Texas Youth  
10 Commission for at least one instance of that conduct, or is  
11 adjudicated more than once to have engaged in delinquent conduct  
12 constituting any of the following sexually violent offenses, if  
13 based on the most recent adjudication the person is committed to the  
14 Texas Youth Commission:

15 (i) an offense under Section 22.011 or  
16 22.021, Penal Code;

17 (ii) an offense under Section 20.04(a)(4),  
18 Penal Code, that is described by Section 841.002(8)(B);

19 (iii) an offense under Section 19.02 or  
20 19.03, Penal Code, that is described by Section 841.002(8)(D);

21 (iv) an attempt, conspiracy, or  
22 solicitation, as defined by Chapter 15, Penal Code, to commit an  
23 offense listed in Subparagraph (i), (ii), or (iii);

24 (v) an offense under prior state law that  
25 contains elements substantially similar to the elements of an  
26 offense listed in Subparagraph (i), (ii), (iii), or (iv); or

27 (vi) an offense under the law of another

1 state, federal law, or the Uniform Code of Military Justice that  
2 contains elements substantially similar to the elements of an  
3 offense listed in Subparagraph (i), (ii), (iii), or (iv); or

4 (C) for a person who is not otherwise described  
5 by Paragraph (B), is adjudicated to have three or more times engaged  
6 in delinquent conduct constituting any sexually violent offense, if  
7 the person is committed to the Texas Youth Commission for at least  
8 one instance of that conduct, or is adjudicated more than once to  
9 have engaged in delinquent conduct constituting any sexually  
10 violent offense if the conduct is composed of three or more  
11 instances of a sexually violent offense and if based on the most  
12 recent adjudication the person is committed to the Texas Youth  
13 Commission; or

14 (2) if:

15 (A) [~~(1)~~] the person:

16 (i) [~~(A)~~] is convicted of a sexually  
17 violent offense, regardless of whether the sentence for the offense  
18 was ever imposed or whether the sentence was probated and the person  
19 was subsequently discharged from community supervision;

20 (ii) [~~(B)~~] enters a plea of guilty or nolo  
21 contendere for a sexually violent offense in return for a grant of  
22 deferred adjudication;

23 (iii) [~~(C)~~] is adjudged not guilty by  
24 reason of insanity of a sexually violent offense; or

25 (iv) [~~(D)~~] is adjudicated by a juvenile  
26 court in this state, or by a juvenile court in another jurisdiction  
27 under a law described by Section 841.002(8)(G), as having engaged

1 in delinquent conduct constituting a sexually violent offense and  
2 is committed, as applicable, to the Texas Youth Commission under  
3 Section 54.04(d)(3) or (m), Family Code, or a functionally  
4 equivalent secure juvenile correctional facility in another  
5 jurisdiction in a manner that is functionally equivalent to a  
6 commitment under Section 54.04(d)(3) or (m), Family Code; and

7 (B) [~~2~~] after the date on which under Paragraph  
8 (A) [~~Subdivision (1)~~] the person is convicted, receives a grant of  
9 deferred adjudication, is adjudged not guilty by reason of  
10 insanity, or is adjudicated by a juvenile court as having engaged in  
11 delinquent conduct, the person commits or engages in delinquent  
12 conduct constituting a sexually violent offense for which the  
13 person:

14 (i) [~~A~~] is convicted, but only if the  
15 sentence for the offense is imposed;

16 (ii) receives a determinate sentence under  
17 Section 54.04(d)(3) or (m), Family Code, and is transferred to the  
18 Texas Department of Criminal Justice; or

19 (iii) [~~B~~] is adjudged not guilty by  
20 reason of insanity.

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

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

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

3 (a) The executive director of the Texas Department of  
4 Criminal Justice and the commissioner of the [~~Texas~~] Department of  
5 State Health Services [~~Mental Health and Mental Retardation~~]  
6 jointly shall establish a multidisciplinary team to review  
7 available records of a person referred to the team under Section  
8 841.021. The team must include:

9 (1) two persons from the [~~Texas~~] Department of State  
10 Health Services [~~Mental Health and Mental Retardation~~];

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

14 (3) one person from the Texas Department of Public  
15 Safety; and

16 (4) two persons from the office [~~council~~] or office  
17 [~~council~~] personnel.

18 SECTION 6. Section 841.062, Health and Safety Code, is  
19 amended by adding Subsection (c) to read as follows:

20 (c) A determination that a person is a sexually violent  
21 predator must be supported by the testimony of two experts if the  
22 person is a repeat sexually violent offender described by Section  
23 841.003(b)(1)(B) or (C).

24 SECTION 7. Sections 841.082(a) and (c), Health and Safety  
25 Code, are amended to read as follows:

26 (a) Before entering an order directing a person's  
27 outpatient civil commitment, the judge shall impose on the person

1 requirements necessary to ensure the person's compliance with  
2 treatment and supervision and to protect the community. The  
3 requirements shall include:

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

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

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

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

13 (5) requiring the person to:

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

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

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

21 (7) if determined appropriate by the judge,  
22 establishing a child safety zone in the same manner as a child  
23 safety zone is established by a judge under Section 13B, Article  
24 42.12, Code of Criminal Procedure, and requiring the person to  
25 comply with requirements related to the safety zone;

26 (8) requiring the person to notify the case manager  
27 immediately but in any event within 24 hours of any change in the



1 person's status that affects proper treatment and supervision,  
2 including a change in the person's physical health or job status and  
3 including any incarceration of the person; and

4 (9) any other requirements determined necessary by the  
5 judge.

6 (c) The judge shall provide a copy of the requirements  
7 imposed under Subsection (a) to the person and to the office  
8 [~~council~~]. The office [~~council~~] shall provide a copy of those  
9 requirements to the case manager and to the service providers.

10 SECTION 8. Section 841.083, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 841.083. TREATMENT; SUPERVISION. (a) The office  
13 [~~council~~] shall approve and contract for the provision of a  
14 treatment plan for the committed person to be developed by the  
15 treatment provider. A treatment plan may include the monitoring of  
16 the person with a polygraph or plethysmograph. The treatment  
17 provider may receive annual compensation in an amount not to exceed  
18 \$6,000 for providing the required treatment.

19 (b) The case manager shall provide supervision to the  
20 person. The provision of supervision shall include a tracking  
21 service and, if required by court order, supervised housing.

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

27 (c-1) Notwithstanding Subsection (c) or any other provision

1 of this subchapter, the office [~~council~~] shall provide through the  
2 case management system any supervision or tracking service required  
3 under this chapter for persons residing in Dallas, Harris, or  
4 Tarrant County. The office [~~council~~] shall provide the tracking  
5 service under this subsection through two employees of the  
6 Department of State Health Services. Any tracking personnel used  
7 by the department for purposes of this chapter must be approved by  
8 the office [~~council~~].

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

14 (d) The office [~~council~~] shall enter into appropriate  
15 memoranda of understanding for any necessary supervised housing.  
16 The office [~~council~~] shall reimburse the applicable provider for  
17 housing costs under this section. The committed person may not be  
18 housed for any period [~~of time~~] in a mental health facility, state  
19 school, or community center, unless the placement results from a  
20 commitment of the person to that facility, school, or center by  
21 governmental action. In this subsection:

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

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

26 (3) "State school" has the meaning assigned by Section  
27 531.002.

1 (e) The case manager shall:

2 (1) coordinate the outpatient treatment and  
3 supervision required by this chapter, including performing a  
4 periodic assessment of the success of that treatment and  
5 supervision;

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

9 (3) provide a report to the office [~~council~~],  
10 semiannually or more frequently as necessary, which must include:

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

13 (B) any recommendations made to the judge.

14 SECTION 9. Section 841.084, Health and Safety Code, is  
15 amended to read as follows:

16 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding  
17 Section 841.146(c), a civilly committed person who is not indigent  
18 is responsible for the cost of the tracking service required by  
19 Section 841.082 and monthly shall pay to the office [~~council~~] the  
20 amount that the office [~~council~~] determines will be necessary to  
21 defray the cost of operating the service with respect to the person  
22 during the subsequent month. The office [~~council~~] immediately  
23 shall transfer the money to the appropriate service provider.

24 SECTION 10. Section 841.101, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 841.101. BIENNIAL EXAMINATION. (a) A person  
27 committed under Section 841.081 shall receive a biennial

1 examination. The office [~~council~~] shall contract for an expert to  
2 perform the examination.

3 (b) In preparation for a judicial review conducted under  
4 Section 841.102, the case manager shall provide a report of the  
5 biennial examination to the judge. The report must include  
6 consideration of whether to modify a requirement imposed on the  
7 person under this chapter and whether to release the person from all  
8 requirements imposed on the person under this chapter. The case  
9 manager shall provide a copy of the report to the office [~~council~~].

10 SECTION 11. Section 841.141, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 841.141. RULEMAKING AUTHORITY. (a) The office  
13 [~~council~~] by rule shall administer this chapter. Rules adopted by  
14 the office [~~council~~] under this section must be consistent with the  
15 purposes of this chapter.

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

18 SECTION 12. Sections 841.142(c) and (d), Health and Safety  
19 Code, are amended to read as follows:

20 (c) On the written request of any attorney for another state  
21 or for a political subdivision in another state, the Texas  
22 Department of Criminal Justice, the office [~~council~~], a service  
23 provider contracting with one of those agencies, the  
24 multidisciplinary team, and the attorney representing the state  
25 shall release to the attorney any available information relating to  
26 a person that is sought in connection with an attempt to civilly  
27 commit the person as a sexually violent predator in another state.

1 (d) To protect the public and to enable an assessment or  
2 determination relating to whether a person is a sexually violent  
3 predator or to enable the provision of supervision and treatment to  
4 a person who is a sexually violent predator, the Texas Department of  
5 Criminal Justice, the office [~~council~~], a service provider  
6 contracting with one of those agencies, the multidisciplinary team,  
7 and the attorney representing the state may exchange any available  
8 information relating to the person.

9 SECTION 13. Section 841.147, Health and Safety Code, is  
10 amended to read as follows:

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

13 (1) an employee or officer of the Texas Department of  
14 Criminal Justice, the Department of State Health Services, the  
15 Department of Aging and Disability Services, or the office  
16 [~~council~~];

17 (2) a member of the multidisciplinary team established  
18 under Section 841.022;

19 (3) an employee of the civil division of the special  
20 prosecution unit charged with initiating and pursuing civil  
21 commitment proceedings under this chapter; and

22 (4) a person providing, or contracting, appointed, or  
23 volunteering to perform, a tracking service or another service  
24 under this chapter.

25 SECTION 14. Subchapter H, Chapter 841, Health and Safety  
26 Code, is amended by adding Section 841.151 to read as follows:

27 Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT

1 PREDATOR. (a) In this section:

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

4 (2) "Secure correctional facility" and "secure  
5 detention facility" have the meanings assigned by Section 51.02,  
6 Family Code.

7 (b) This section applies to a person who has been civilly  
8 committed under this chapter and who is detained or confined in a  
9 correctional facility, secure correctional facility, or secure  
10 detention facility as a result of violating:

11 (1) a civil commitment requirement imposed under  
12 Section 841.082; or

13 (2) a law of this state.

14 (c) Not later than the day preceding the date a correctional  
15 facility, secure correctional facility, or secure detention  
16 facility releases a person who, at the time of the person's  
17 detention or confinement, was civilly committed under this chapter  
18 as a sexually violent predator, the facility shall notify the  
19 person's case manager in writing of the anticipated date and time of  
20 the person's release.

21 (d) A case manager, on request, shall provide a correctional  
22 facility, a secure correctional facility, or a secure detention  
23 facility with the case manager's appropriate contact information  
24 for notification under Subsection (c).

25 SECTION 15. The functions of the Council on Sex Offender  
26 Treatment that relate to the sex offender civil commitment program  
27 are transferred to the Office of Violent Sex Offender Management.

1           SECTION 16. As soon as possible after the effective date of  
2 this Act, the governor shall appoint three members to the Office of  
3 Violent Sex Offender Management.

4           SECTION 17. (a) The Office of Violent Sex Offender  
5 Management and the Council on Sex Offender Treatment shall  
6 coordinate the transfer of functions relating to the sex offender  
7 civil commitment program as required by this Act.

8           (b) The transfer of all functions relating to the sex  
9 offender civil commitment program to the Office of Violent Sex  
10 Offender Management shall be accomplished as soon as possible but  
11 not later than the 45th day after the date that the last member of  
12 the Office of Violent Sex Offender Management qualifies for office.

13           (c) The transfer required by this Act includes the transfer  
14 of all assets, duties, powers, obligations, and liabilities,  
15 including contracts, leases, real or personal property, funds,  
16 employees, furniture, computers and other equipment, and files and  
17 related materials used by the Council on Sex Offender Treatment in  
18 performing the functions relating to the sex offender civil  
19 commitment program that are transferred by this Act.

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

27           (e) All unexpended appropriations for functions relating to

1 the sex offender civil commitment program that are made for use by  
2 the Council on Sex Offender Treatment are transferred to the Office  
3 of Violent Sex Offender Management.

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

7 SECTION 18. After the effective date of this Act, the  
8 Council on Sex Offender Treatment shall continue to perform  
9 applicable functions until the transfer of functions required by  
10 this Act is completed, and the laws providing for those functions  
11 are continued in effect for that purpose.

12 SECTION 19. This Act takes effect September 1, 2010.