

1-1 By: Shapiro S.B. No. 2037
1-2 (In the Senate - Filed March 12, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 5, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 5, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2037 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the sex offender civil commitment program and to the
1-11 creation of a state agency to perform the functions relating to the
1-12 sex offender civil commitment program that are currently performed
1-13 by the Council on Sex Offender Treatment.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subchapter F, Chapter 411, Government Code, is
1-16 amended by adding Section 411.1389 to read as follows:

1-17 Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD
1-18 INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. (a) The
1-19 Office of Violent Sex Offender Management is entitled to obtain
1-20 from the department criminal history record information that is
1-21 maintained by the department and that relates to a person who has
1-22 applied with the office to be:

1-23 (1) an employee of the office; or

1-24 (2) a contracted service provider with the office.

1-25 (b) Criminal history record information obtained by the
1-26 Office of Violent Sex Offender Management under Subsection (a) may
1-27 not be released or disclosed to any person or agency except on court
1-28 order or with the consent of the person who is the subject of the
1-29 information.

1-30 (c) The Office of Violent Sex Offender Management shall
1-31 destroy criminal history record information obtained under
1-32 Subsection (a) as soon as practicable after the date on which, as
1-33 applicable:

1-34 (1) the person's employment or contract with the
1-35 office terminates; or

1-36 (2) the office decides not to employ or contract with
1-37 the person.

1-38 SECTION 2. Subtitle B, Title 4, Government Code, is amended
1-39 by adding Chapter 420A to read as follows:

1-40 CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

1-41 Sec. 420A.001. DEFINITIONS. In this chapter:

1-42 (1) "Board" means the governing board of the Office of
1-43 Violent Sex Offender Management.

1-44 (2) "Office" means the Office of Violent Sex Offender
1-45 Management.

1-46 Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) The Office of
1-47 Violent Sex Offender Management is a state agency.

1-48 (b) The office is governed by a board composed of the
1-49 following three members appointed by the governor:

1-50 (1) one member experienced in the management of sex
1-51 offenders;

1-52 (2) one member experienced in the investigation or
1-53 prosecution of sex offenses; and

1-54 (3) one member experienced in counseling or advocating
1-55 on behalf of victims of sexual assault.

1-56 (c) Members of the board serve staggered two-year terms.
1-57 Two members' terms expire February 1 of each even-numbered year and
1-58 one member's term expires February 1 of each odd-numbered year.

1-59 (d) A member of the board is entitled to travel expenses
1-60 incurred in performing official duties and to a per diem equal to
1-61 the maximum amount allowed on January 1 of that year for federal
1-62 employees per diem for federal income tax purposes, subject to the
1-63 same limitations provided for members of state boards and

2-1 commissions in the General Appropriations Act.

2-2 Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) The
 2-3 governor shall designate a member of the board as presiding
 2-4 officer. The presiding officer serves at the discretion of the
 2-5 governor.

2-6 (b) The board shall meet at least quarterly and at other
 2-7 times at the call of the presiding officer.

2-8 Sec. 420A.004. SUNSET PROVISION. The Office of Violent Sex
 2-9 Offender Management is subject to Chapter 325 (Texas Sunset Act).
 2-10 Unless continued in existence as provided by that chapter, the
 2-11 office is abolished and this chapter expires September 1, 2021.

2-12 Sec. 420A.005. GRANTS AND DONATIONS. On behalf of the
 2-13 state, the office may apply for and accept grants and donations from
 2-14 any source to be used by the office in the performance of the duties
 2-15 of the office.

2-16 Sec. 420A.006. PUBLIC INTEREST INFORMATION. The office
 2-17 shall prepare information of public interest describing the
 2-18 functions of the office and the procedures by which complaints are
 2-19 filed with and resolved by the office. The office shall make the
 2-20 information available to the public and appropriate state agencies.

2-21 Sec. 420A.007. BIENNIAL REPORT. Not later than December 1
 2-22 of each even-numbered year, the office shall submit to the
 2-23 governor, the lieutenant governor, and the speaker of the house of
 2-24 representatives a report concerning the operation of the office.
 2-25 The office may include in the report any recommendations that the
 2-26 office considers appropriate.

2-27 Sec. 420A.008. STAFF. The office may select and employ a
 2-28 general counsel, staff attorneys, and other staff necessary to
 2-29 perform the office's functions.

2-30 Sec. 420A.009. SALARY CAREER LADDER FOR CASE MANAGERS.
 2-31 (a) The board shall adopt a salary career ladder for case
 2-32 managers. The salary career ladder must base a case manager's
 2-33 salary on the manager's classification and years of service with
 2-34 the office.

2-35 (b) For purposes of the salary schedule, the office shall
 2-36 classify all case manager positions as Case Manager I, Case Manager
 2-37 II, Case Manager III, Case Manager IV, or Case Manager V.

2-38 (c) Under the salary career ladder adopted under Subsection
 2-39 (a), a case manager to whom the schedule applies and who received an
 2-40 overall evaluation of at least satisfactory in the case manager's
 2-41 most recent annual evaluation is entitled to an annual salary
 2-42 increase, during each of the case manager's first 10 years of
 2-43 service in a designated case manager classification as described by
 2-44 Subsection (b), equal to one-tenth of the difference between:

2-45 (1) the case manager's current annual salary; and
 2-46 (2) the minimum annual salary of a case manager in the
 2-47 next highest classification.

2-48 Sec. 420A.010. POWERS AND DUTIES. The office shall perform
 2-49 appropriate functions related to the sex offender civil commitment
 2-50 program provided under Chapter 841, Health and Safety Code,
 2-51 including functions related to the provision of treatment and
 2-52 supervision to civilly committed sex offenders.

2-53 SECTION 3. Subdivisions (3) and (4), Section 841.002,
 2-54 Health and Safety Code, are amended to read as follows:

2-55 (3) "Case manager" means a person employed by or under
 2-56 contract with the office [~~council~~] to perform duties related to
 2-57 outpatient treatment and supervision of a person committed under
 2-58 this chapter.

2-59 (4) "Office" [~~"Council"~~] means the Office of Violent
 2-60 Sex Offender Management [~~Council on Sex Offender Treatment~~].

2-61 SECTION 4. Section 841.007, Health and Safety Code, is
 2-62 amended to read as follows:

2-63 Sec. 841.007. DUTIES OF OFFICE OF VIOLENT SEX OFFENDER
 2-64 MANAGEMENT [~~COUNCIL ON SEX OFFENDER TREATMENT~~]. The Office of
 2-65 Violent Sex Offender Management [~~Council on Sex Offender Treatment~~]
 2-66 is responsible for providing appropriate and necessary treatment
 2-67 and supervision through the case management system.

2-68 SECTION 5. Subsection (a), Section 841.022, Health and
 2-69 Safety Code, is amended to read as follows:

3-1 (a) The executive director of the Texas Department of
 3-2 Criminal Justice and the commissioner of the ~~[Texas]~~ Department of
 3-3 State Health Services ~~[Mental Health and Mental Retardation]~~
 3-4 jointly shall establish a multidisciplinary team to review
 3-5 available records of a person referred to the team under Section
 3-6 841.021. The team must include:

3-7 (1) one person ~~[two persons]~~ from the ~~[Texas]~~
 3-8 Department of State Health Services ~~[Mental Health and Mental~~
 3-9 ~~Retardation]~~;

3-10 (2) two persons from the Texas Department of Criminal
 3-11 Justice, one of whom must be from the victim services office of that
 3-12 department;

3-13 (3) one person from the ~~[Texas]~~ Department of Public
 3-14 Safety; ~~and]~~

3-15 (4) two persons from the office ~~[council]~~ or office
 3-16 ~~[council]~~ personnel; and

3-17 (5) one person from the Council on Sex Offender
 3-18 Treatment.

3-19 SECTION 6. Subsections (a) and (c), Section 841.082, Health
 3-20 and Safety Code, are amended to read as follows:

3-21 (a) Before entering an order directing a person's
 3-22 outpatient civil commitment, the judge shall impose on the person
 3-23 requirements necessary to ensure the person's compliance with
 3-24 treatment and supervision and to protect the community. The
 3-25 requirements shall include:

3-26 (1) requiring the person to reside in a Texas
 3-27 residential facility under contract with the office ~~[council]~~ or at
 3-28 another location or facility approved by the office ~~[council]~~;

3-29 (2) prohibiting the person's contact with a victim or
 3-30 potential victim of the person;

3-31 (3) prohibiting the person's possession or use of
 3-32 alcohol, inhalants, or a controlled substance;

3-33 (4) requiring the person's participation in and
 3-34 compliance with a specific course of treatment provided by the
 3-35 office and compliance with all written requirements imposed by the
 3-36 case manager or otherwise by the office;

3-37 (5) requiring the person to:
 3-38 (A) submit to tracking under a particular type of
 3-39 tracking service and to any other appropriate supervision; and

3-40 (B) refrain from tampering with, altering,
 3-41 modifying, obstructing, or manipulating the tracking equipment;

3-42 (6) prohibiting the person from changing the person's
 3-43 residence without prior authorization from the judge and from
 3-44 leaving the state without that prior authorization;

3-45 (7) if determined appropriate by the judge,
 3-46 establishing a child safety zone in the same manner as a child
 3-47 safety zone is established by a judge under Section 13B, Article
 3-48 42.12, Code of Criminal Procedure, and requiring the person to
 3-49 comply with requirements related to the safety zone; and

3-50 (8) ~~[requiring the person to notify the case manager~~
 3-51 ~~immediately but in any event within 24 hours of any change in the~~
 3-52 ~~person's status that affects proper treatment and supervision,~~
 3-53 ~~including a change in the person's physical health or job status and~~
 3-54 ~~including any incarceration of the person; and~~

3-55 ~~[(9)]~~ any other requirements determined necessary by
 3-56 the judge.

3-57 (c) The judge shall provide a copy of the requirements
 3-58 imposed under Subsection (a) to the person and to the office
 3-59 ~~[council]~~. The office ~~[council]~~ shall provide a copy of those
 3-60 requirements to the case manager and to the service providers.

3-61 SECTION 7. Section 841.083, Health and Safety Code, is
 3-62 amended to read as follows:

3-63 Sec. 841.083. TREATMENT; SUPERVISION. (a) The office
 3-64 ~~[council]~~ shall approve and contract for the provision of a
 3-65 treatment plan for the committed person to be developed by the
 3-66 treatment provider. A treatment plan may include the monitoring of
 3-67 the person with a polygraph or plethysmograph. The treatment
 3-68 provider may receive annual compensation in an amount not to exceed
 3-69 \$10,000 ~~[\$6,000]~~ for providing the required treatment.

4-1 (b) The case manager shall provide supervision to the
4-2 person. The provision of supervision must [~~shall~~] include a
4-3 tracking service and, if required by court order, supervised
4-4 housing.

4-5 (c) The office [~~council~~] shall enter into appropriate
4-6 memoranda of understanding with the [~~Texas~~] Department of Public
4-7 Safety for the provision of a tracking service and with the
4-8 Department of Public Safety and local law enforcement authorities
4-9 for assistance in the preparation of criminal complaints, warrants,
4-10 and related documents and in the apprehension and arrest of a
4-11 person.

4-12 [~~(c-1) Notwithstanding Subsection (c) or any other~~
4-13 ~~provision of this subchapter, the council shall provide through the~~
4-14 ~~case management system any supervision or tracking service required~~
4-15 ~~under this chapter for persons residing in Dallas, Harris, or~~
4-16 ~~Tarrant County. The council shall provide the tracking service~~
4-17 ~~under this subsection through two employees of the Department of~~
4-18 ~~State Health Services. Any tracking personnel used by the~~
4-19 ~~department for purposes of this chapter must be approved by the~~
4-20 ~~council.~~

4-21 [~~(c-2) If the equipment necessary to implement the tracking~~
4-22 ~~service is available through a contract entered into by the~~
4-23 ~~comptroller, the Department of Public Safety or the council, as~~
4-24 ~~appropriate, shall acquire that equipment through that contract.]~~

4-25 (d) The office [~~council~~] shall enter into appropriate
4-26 memoranda of understanding for any necessary supervised housing.
4-27 The office [~~council~~] shall reimburse the applicable provider for
4-28 housing costs under this section. The committed person may not be
4-29 housed for any period of time in a mental health facility, state
4-30 school, or community center, unless the placement results from a
4-31 commitment of the person to that facility, school, or center by
4-32 governmental action. In this subsection:

4-33 (1) "Community center" means a center established
4-34 under Subchapter A, Chapter 534.

4-35 (2) "Mental health facility" has the meaning assigned
4-36 by Section 571.003.

4-37 (3) "State school" has the meaning assigned by Section
4-38 531.002.

4-39 (e) The case manager shall:

4-40 (1) coordinate the outpatient treatment and
4-41 supervision required by this chapter, including performing a
4-42 periodic assessment of the success of that treatment and
4-43 supervision;

4-44 (2) make timely recommendations to the judge on
4-45 whether to allow the committed person to change residence or to
4-46 leave the state and on any other appropriate matters; and

4-47 (3) provide a report to the office [~~council~~],
4-48 semiannually or more frequently as necessary, which must include:

4-49 (A) any known change in the person's status that
4-50 affects proper treatment and supervision; and

4-51 (B) any recommendations made to the judge.

4-52 SECTION 8. Section 841.084, Health and Safety Code, is
4-53 amended to read as follows:

4-54 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding
4-55 Section 841.146(c), a civilly committed person who is not indigent
4-56 is responsible for the cost of the tracking service required by
4-57 Section 841.082 and monthly shall pay to the office [~~council~~] the
4-58 amount that the office [~~council~~] determines will be necessary to
4-59 defray the cost of operating the service with respect to the person
4-60 during the subsequent month. The office [~~council~~] immediately
4-61 shall transfer the money to the appropriate service provider.

4-62 SECTION 9. Section 841.101, Health and Safety Code, is
4-63 amended to read as follows:

4-64 Sec. 841.101. BIENNIAL EXAMINATION. (a) A person
4-65 committed under Section 841.081 shall receive a biennial
4-66 examination. The office [~~council~~] shall contract for an expert to
4-67 perform the examination.

4-68 (b) In preparation for a judicial review conducted under
4-69 Section 841.102, the case manager shall provide a report of the

5-1 biennial examination to the judge. The report must include
5-2 consideration of whether to modify a requirement imposed on the
5-3 person under this chapter and whether to release the person from all
5-4 requirements imposed on the person under this chapter. The case
5-5 manager shall provide a copy of the report to the office [council].

5-6 SECTION 10. Section 841.141, Health and Safety Code, is
5-7 amended to read as follows:

5-8 Sec. 841.141. RULEMAKING AUTHORITY. (a) The office
5-9 [council] by rule shall administer this chapter. Rules adopted by
5-10 the office [council] under this section must be consistent with the
5-11 purposes of this chapter.

5-12 (b) The office [council] by rule shall develop standards of
5-13 care and case management for persons committed under this chapter.

5-14 SECTION 11. Subsections (c) and (d), Section 841.142,
5-15 Health and Safety Code, are amended to read as follows:

5-16 (c) On the written request of any attorney for another state
5-17 or for a political subdivision in another state, the Texas
5-18 Department of Criminal Justice, the office [council], a service
5-19 provider contracting with one of those agencies, the
5-20 multidisciplinary team, and the attorney representing the state
5-21 shall release to the attorney any available information relating to
5-22 a person that is sought in connection with an attempt to civilly
5-23 commit the person as a sexually violent predator in another state.

5-24 (d) To protect the public and to enable an assessment or
5-25 determination relating to whether a person is a sexually violent
5-26 predator or to enable the provision of supervision and treatment to
5-27 a person who is a sexually violent predator, the Texas Department of
5-28 Criminal Justice, the office [council], a service provider
5-29 contracting with one of those agencies, the multidisciplinary team,
5-30 and the attorney representing the state may exchange any available
5-31 information relating to the person.

5-32 SECTION 12. Section 841.147, Health and Safety Code, is
5-33 amended to read as follows:

5-34 Sec. 841.147. IMMUNITY. The following persons are immune
5-35 from liability for good faith conduct under this chapter:

5-36 (1) an employee or officer of the Texas Department of
5-37 Criminal Justice, the Department of State Health Services, the
5-38 Department of Aging and Disability Services, or the office
5-39 [council];

5-40 (2) a member of the multidisciplinary team established
5-41 under Section 841.022;

5-42 (3) an employee of the civil division of the special
5-43 prosecution unit charged with initiating and pursuing civil
5-44 commitment proceedings under this chapter; and

5-45 (4) a person providing, or contracting, appointed, or
5-46 volunteering to perform, a tracking service or another service
5-47 under this chapter.

5-48 SECTION 13. Subchapter H, Chapter 841, Health and Safety
5-49 Code, is amended by adding Section 841.151 to read as follows:

5-50 Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT
5-51 PREDATOR. (a) In this section:

5-52 (1) "Correctional facility" has the meaning assigned
5-53 by Section 1.07, Penal Code.

5-54 (2) "Secure correctional facility" and "secure
5-55 detention facility" have the meanings assigned by Section 51.02,
5-56 Family Code.

5-57 (b) This section applies to a person who has been civilly
5-58 committed under this chapter and who is detained or confined in a
5-59 correctional facility, secure correctional facility, or secure
5-60 detention facility as a result of violating:

5-61 (1) a civil commitment requirement imposed under
5-62 Section 841.082; or

5-63 (2) a law of this state.

5-64 (c) Not later than the day preceding the date a correctional
5-65 facility, secure correctional facility, or secure detention
5-66 facility releases a person who, at the time of the person's
5-67 detention or confinement, was civilly committed under this chapter
5-68 as a sexually violent predator, the facility shall notify the
5-69 person's case manager in writing of the anticipated date and time of

6-1 the person's release.

6-2 (d) A case manager, on request, shall provide a correctional
6-3 facility, a secure correctional facility, or a secure detention
6-4 facility with the case manager's appropriate contact information
6-5 for notification under Subsection (c).

6-6 SECTION 14. The following are transferred to the Office of
6-7 Violent Sex Offender Management:

6-8 (1) the functions of the Council on Sex Offender
6-9 Treatment that relate to the sex offender civil commitment program;

6-10 (2) the director of the Department of State Health
6-11 Services who has jurisdiction over the sex offender civil
6-12 commitment program; and

6-13 (3) the staff of the council whose primary duties
6-14 include the operation of the sex offender civil commitment program.

6-15 SECTION 15. As soon as possible after the effective date of
6-16 this Act, the governor shall appoint three members to the Office of
6-17 Violent Sex Offender Management.

6-18 SECTION 16. (a) The Office of Violent Sex Offender
6-19 Management, the Department of State Health Services, and the
6-20 Council on Sex Offender Treatment shall coordinate the transfer of
6-21 functions relating to the sex offender civil commitment program as
6-22 required by this Act.

6-23 (b) The transfer of all functions relating to the sex
6-24 offender civil commitment program to the Office of Violent Sex
6-25 Offender Management shall be accomplished as soon as possible but
6-26 not later than the 90th day after the date that the last member of
6-27 the Office of Violent Sex Offender Management qualifies for office.

6-28 (c) The transfer required by this Act includes the transfer
6-29 of all assets, duties, powers, obligations, and liabilities,
6-30 including contracts, leases, real or personal property, funds,
6-31 employees, furniture, computers and other equipment, and files and
6-32 related materials used by the Department of State Health Services
6-33 and the Council on Sex Offender Treatment in performing the
6-34 functions relating to the sex offender civil commitment program
6-35 that are transferred by this Act. For purposes of this subsection,
6-36 "employees" includes the executive director of the Council on Sex
6-37 Offender Treatment and administrative technicians and program
6-38 specialists employed by the council.

6-39 (d) A form, rule, or procedure adopted by the Health and
6-40 Human Services Commission or the Department of State Health
6-41 Services in relation to the Council on Sex Offender Treatment that
6-42 is in effect on the effective date of this Act remains in effect on
6-43 and after that date as if adopted by the Office of Violent Sex
6-44 Offender Management until amended, repealed, withdrawn, or
6-45 otherwise superseded by that office.

6-46 (e) All unexpended appropriations for functions relating to
6-47 the sex offender civil commitment program that are made for use by
6-48 the Department of State Health Services or the Council on Sex
6-49 Offender Treatment are transferred to the Office of Violent Sex
6-50 Offender Management.

6-51 (f) The Office of Violent Sex Offender Management shall
6-52 publish in the Texas Register the date on which the transfer of
6-53 functions under this Act is accomplished.

6-54 SECTION 17. After the effective date of this Act, the
6-55 Council on Sex Offender Treatment shall continue to perform
6-56 applicable functions until the transfer of functions required by
6-57 this Act is completed, and the laws providing for those functions
6-58 are continued in effect for that purpose.

6-59 SECTION 18. This Act takes effect September 1, 2010.

6-60 * * * * *