

BILL ANALYSIS

Senate Research Center

S.B. 166
By: Shapiro
Criminal Justice
8/3/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The bill relates to the creation of a state agency to perform the functions relating to the sex offender civil commitment program under Section 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code, that are currently performed by the Council on Sex Offender Treatment (CSOT), a governor-appointed independent council administratively attached to the Department of State Health Services (DSHS) Professional Licensing and Certification Unit. The bill amends the Government Code by adding a new Chapter 420A titled "Office of Violent Sex Offender Management."

The new office would 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 new office would be a state agency, governed by a three-member governor-appointed board, serving staggered two-year terms, which will meet monthly. The new office would have rulemaking authority under Chapter 841, Health and Safety Code.

S.B. 166 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

Rulemaking authority previously granted to the Council on Sex Offender Treatment is transferred to the Office of Violent Sex Offender Management in SECTION 12 (Section 841.141, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1389, as follows:

Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. (a) Entitles the Office of Violent Sex Offender Management (office) to obtain from the Department of Public Safety of the State of Texas (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.

(b) Prohibits criminal history record information obtained by the office under Subsection (a) from being released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

(c) Requires the office to destroy criminal history record information obtained under Subsection (a) 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.

SECTION 2. Amends Subtitle B, Title 4, Government Code, by adding Chapter 420A, as follows:

CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

Sec. 420A.001. DEFINITIONS. Defines "board" and "office" in this chapter.

Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) Provides that the office is a state agency.

(b) Provides that the office is governed by a governing board of the office composed of three members appointed by the governor. Sets forth certain criteria for the appointed members.

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

(d) 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 state boards and commissions in the General Appropriations Act.

Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) Requires the governor to designate a member of the board as presiding officer. Provides that the presiding officer serves at the discretion of the governor.

(b) Requires the board to meet at least quarterly and at other times at the call of the presiding officer.

Sec. 420A.004. SUNSET PROVISION. Provides that the office is subject to Chapter 325 (Sunset Law). Provides that the office, unless continued in existence as provided by that chapter, is abolished and this chapter expires September 1, 2023.

Sec. 420A.005. GRANTS AND DONATIONS. Authorizes the office, on behalf of the state, to apply for and accept grants and donations from any source to be used by the office in the performance of the duties of the office.

Sec. 420A.006. PUBLIC INTEREST INFORMATION. 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. Requires the office to make the information available to the public and appropriate state agencies.

Sec. 420A.007. BIENNIAL REPORT. Requires the office, not later than December 1 of each even-numbered year, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report concerning the operation of the office. Authorizes the office to include in the report any recommendations that the office considers appropriate.

Sec. 420A.008. STAFF. Authorizes the office to select and employ general counsel, staff attorneys, and other staff necessary to perform the office's functions.

Sec. 420A.009. SALARY CAREER LADDER FOR CASE MANAGERS. (a) Requires the board to adopt a salary career ladder for case managers. Requires the salary career ladder to base a case manager's salary on the manager's classification and years of service with the office.

(b) Requires the office, for purposes of the salary schedule, to classify all case manager positions as Case Manger I, Case Manager II, Case Manager III, Case Manager IV, or Case Manager V.

(c) Provides that, under the salary career ladder adopted under Subsection (a), a case manager to whom the schedule applies and who received an overall evaluation of at least satisfactory in the case manger's most recent annual evaluation is entitled to an annual salary increase, during each of the case manager's first 10 years of service in a designated case manager classification as described by Subsection (b), equal to one-tenth of the difference between the case manager's current annual salary, and the minimum annual salary of a case manger in the next highest classification.

Sec. 420A.010. POWERS AND DUTIES. Requires the office 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.

Sec. 420A.011. ADMINISTRATIVE ATTACHMENT; SUPPORT. (a) Provides that the office is administratively attached to the Department of State Health Services (DSHS).

(b) Requires DSHS to provide administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the office as necessary to carry out the purposes of this chapter.

(c) Requires the office, in accordance with the rules and procedures of the Legislative Budget Board, to prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations request for DSHS and is used to develop the office's budget structure. Requires the office to maintain the office's legislative appropriations request and budget structure separately from those of DPS.

SECTION 3. Amends Sections 841.002(3) and (4), Health and Safety Code, to redefine "case manager," define "office," and to delete the existing definition of "council."

SECTION 4. Amends Section 841.007, Health and Safety Code, as follows:

Sec. 841.007. New heading: DUTIES OF OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. Provides that the office, rather than the Council on Sex Offender Treatment (CSOT), is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION 5. Amends Sections 841.021(b) and (c), Health and Safety Code, as follows:

(b) Requires the Department of State Health Services (DSHS), rather than the Texas Department of Mental Health and Mental Retardation (TXMHMR), before the person's anticipated discharge date, to give to the multidisciplinary team established under Section 841.022 written notice of the anticipated discharge of a person who is committed to DSHS after having been adjudged not guilty by reason of insanity of certain offenses, and may be a repeat sexually violent offender.

(c) Requires the Texas Department of Criminal Justice (TDCJ) or DSHS, as appropriate, to give the notice described by Subsection (a) (requiring TDCJ to give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who is serving a sentence for certain offenses or a person who may be a repeat sexually violent offender) or (b) not later than the first day of the 16th month before the person's anticipated release or discharge date, but authorizes TDCJ or DSHS, as appropriate, under exigent circumstances, to give the notice at any time before the

anticipated release or discharge date. Requires that the notice contain certain information. Makes a conforming change.

SECTION 6. Amends Section 841.022(a), Health and Safety Code, as follows:

(a) Requires the executive director of TDCJ and the commissioner of DSHS to jointly establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. Requires that the team include one person, rather than two persons, from DSHS; two persons from TDCJ, one of whom must be from the victim services office of that department; one person from DPS; two persons from the office or office personnel; and one person from CSOT. Makes conforming changes.

SECTION 7. Amends Section 841.023, Health and Safety Code, as follows:

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY. (a) Requires TDCJ or DSHS, not later than the 60th day after the date of a recommendation under Section 841.022(c) (relating to the assessment, notice, and recommendation by the multidisciplinary team), as appropriate, to assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. Makes conforming changes.

(b) Makes conforming changes.

SECTION 8. Amends Sections 841.082(a) and (c), Health and Safety Code, as follows:

(a) Requires the judge, before entering an order directing a person's outpatient civil commitment, to impose on the person certain requirements and prohibitions necessary to ensure the person's compliance with treatment and supervision and to protect the community, including requiring the person's participation in and compliance with a specific course of treatment provided by the office and compliance with all written requirements imposed by the case manager or otherwise by the office. Deletes existing text requiring the person to notify the case manager immediately but in any event 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. Makes conforming changes.

(c) Makes conforming changes.

SECTION 9. Amends Section 841.083, Health and Safety Code, as follows:

Sec. 841.083. TREATMENT; SUPERVISION. (a) Authorizes the treatment provider to receive annual compensation in an amount not to exceed \$10,000, rather than \$6,000, for providing the required treatment. Makes a conforming change.

(b) Requires that the provision of supervision required by the case manager include a tracking service and, if required by court order, supervised housing.

(c) Requires the office to enter into appropriate memoranda with DPS for the provision of a tracking service and with DPS and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.

Deletes existing Subsection (c-1) requiring CSOT, notwithstanding Subsection (c) or any other provision of this subchapter, to provide through the case management system any supervision or tracking service required under this chapter for persons residing in Dallas, Harris, or Tarrant County; requiring the council to provide the tracking service under this subsection through two employees of DSHS; and requiring any tracking personnel used by DSHS for purposes of this chapter to be approved by CSOT.

Deletes existing Subsection (c-2) requiring DPS or CSOT, if the equipment necessary to implement the tracking service is available through a contract entered into by the comptroller of public accounts, DPS, or CSOT, as applicable, to acquire the equipment necessary to implement the tracking service through that contract.

(d) Deletes existing text prohibiting a committed person from being housed for any period of time in a mental health facility, state school, or community center, unless the placement results from a commitment of the person to that facility, school, or center by governmental action. Deletes existing definitions of "community center," "mental health facility," and "state school" in this subsection. Makes conforming changes.

(e) Makes a conforming change.

SECTION 10. Amends Section 841.084, Health and Safety Code, to make conforming changes.

SECTION 11. Amends Section 841.101, Health and Safety Code, to make conforming changes.

SECTION 12. Amends Section 841.141, Health and Safety Code, as follows:

Sec. 841.141. RULEMAKING AUTHORITY. (a) Requires the office by rule to administer this chapter. Requires that rules adopted by the office under this section be consistent with the purposes of this chapter. Makes conforming changes.

(b) Makes a conforming change.

SECTION 13. Amends Sections 841.142(c) and (d), Health and Safety Code, to make conforming changes.

SECTION 14. Amends Section 841.147, Health and Safety Code, to make a conforming change.

SECTION 15. Amends Section 841.150(a), Health and Safety Code, to provide that the duties imposed by this chapter are suspended for the duration of any confinement of a person, or if applicable any other commitment of a person to a community center, mental health facility, or state school, by governmental action.

SECTION 16. Amends Subchapter H, Chapter 841, Health and Safety Code, by adding Section 841.151, as follows:

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) Defines "correctional facility," "secure correctional facility," and "secure detention facility" in this section.

(b) Provides that this section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating a civil commitment requirement imposed under Section 841.082, or a law of this state.

(c) Requires a facility, not later than the day preceding the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, to notify the person's case manager in writing of the anticipated date and time of the person's release.

(d) Requires a case manager, on request, to provide a correctional facility, a secure correctional facility, or secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

SECTION 17. Provides that the following are transferred to the office:

- (1) the functions of CSOT that relate to the sex offender civil commitment program;
- (2) the director of DSHS who has jurisdiction over the sex offender civil commitment program; and
- (3) the staff of CSOT whose primary duties include the operation of the sex offender civil commitment program.

SECTION 18. Requires the governor to appoint three members to the governing board of the office as soon as practicable after the effective date of this Act.

SECTION 19. (a) Requires the office, DSHS, and CSOT to coordinate the transfer of functions relating to the sex offender civil commitment program as required by this Act.

(b) Requires that the transfer of all functions relating to the sex offender civil commitment program to the office be accomplished as soon as possible but not later than the 90th day after the date the last member of the governing board of the office qualifies for office.

(c) Provides that the transfer required by this Act includes the transfer of all assets, duties, powers, obligations, and liabilities, including contracts, leases, real or personal property, funds, employees, furniture, computers and other equipment, and files and related materials used by DSHS and CSOT in performing the functions relating to the sex offender civil commitment program that are transferred by this Act. Provides that, for the purposes of this subsection, "employees" includes the executive director of CSOT and administrative technicians and program specialists employed by CSOT.

(d) Provides that a form, rule, or procedure adopted by the Texas Health and Human Services Commission or DSHS in relation to CSOT that is in effect on the effective date of this Act remains in effect on and after that date as if adopted by the office until amended, repealed, withdrawn, or otherwise suspended by that office.

(e) Provides that all unexpended appropriations for functions relating to the sex offender civil commitment program that are made for use by DSHS or CSOT are transferred to the office.

(f) Requires the office to publish in the *Texas Register* the date on which the transfer of functions under this Act is accomplished.

SECTION 20. Requires CSOT, after the effective date of this Act, to continue to perform applicable functions until the transfer of functions required by this Act is completed, and the laws providing for those functions are continued in effect for that purpose.

SECTION 21. Effective date: September 1, 2011.