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S.B. No. 166

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, 2023.

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. Subsections (b) and (c), Section 841.021, Health
19 and Safety Code, are amended to read as follows:

20 (b) Before the person's anticipated discharge date, the
21 [~~Texas~~] Department of State Health Services [~~Mental Health and~~
22 ~~Mental Retardation~~] shall give to the multidisciplinary team
23 established under Section 841.022 written notice of the anticipated
24 discharge of a person who:

25 (1) is committed to the department after having been
26 adjudged not guilty by reason of insanity of:

27 (A) a sexually violent offense described by

1 Section 841.002(8)(A), (B), or (C); or

2 (B) what is, or as described by this chapter what
3 the department reasonably believes may be determined to be, a
4 sexually violent offense described by Section 841.002(8)(D); and

5 (2) may be a repeat sexually violent offender.

6 (c) The Texas Department of Criminal Justice or the [~~Texas~~]
7 Department of State Health Services [~~Mental Health and Mental~~
8 ~~Retardation~~], as appropriate, shall give the notice described by
9 Subsection (a) or (b) not later than the first day of the 16th month
10 before the person's anticipated release or discharge date, but
11 under exigent circumstances may give the notice at any time before
12 the anticipated release or discharge date. The notice must contain
13 the following information:

14 (1) the person's name, identifying factors,
15 anticipated residence after release or discharge, and criminal
16 history;

17 (2) documentation of the person's institutional
18 adjustment and actual treatment; and

19 (3) an assessment of the likelihood that the person
20 will commit a sexually violent offense after release or discharge.

21 SECTION 6. Subsection (a), Section 841.022, Health and
22 Safety Code, is amended to read as follows:

23 (a) The executive director of the Texas Department of
24 Criminal Justice and the commissioner of the [~~Texas~~] Department of
25 State Health Services [~~Mental Health and Mental Retardation~~]
26 jointly shall establish a multidisciplinary team to review
27 available records of a person referred to the team under Section

1 841.021. The team must include:

2 (1) one person [~~two persons~~] from the [~~Texas~~]
3 Department of State Health Services [~~Mental Health and Mental~~
4 ~~Retardation~~];

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

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

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

12 (5) one person from the Council on Sex Offender
13 Treatment.

14 SECTION 7. Section 841.023, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY.

17 (a) Not later than the 60th day after the date of a recommendation
18 under Section 841.022(c), the Texas Department of Criminal Justice
19 or the [~~Texas~~] Department of State Health Services [~~Mental Health~~
20 ~~and Mental Retardation~~], as appropriate, shall assess whether the
21 person suffers from a behavioral abnormality that makes the person
22 likely to engage in a predatory act of sexual violence. To aid in
23 the assessment, the department required to make the assessment
24 shall use an expert to examine the person. That department may
25 contract for the expert services required by this subsection. The
26 expert shall make a clinical assessment based on testing for
27 psychopathy, a clinical interview, and other appropriate

1 assessments and techniques to aid the department in its assessment.

2 (b) If as a result of the assessment the Texas Department of
3 Criminal Justice or the [~~Texas~~] Department of State Health Services
4 [~~Mental Health and Mental Retardation~~] believes that the person
5 suffers from a behavioral abnormality, the department making the
6 assessment shall give notice of that assessment and provide
7 corresponding documentation to the attorney representing the state
8 not later than the 60th day after the date of a recommendation under
9 Section 841.022(c).

10 SECTION 8. Subsections (a) and (c), Section 841.082, Health
11 and Safety Code, are amended to read as follows:

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

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

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

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

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

- 1 (5) requiring the person to:
- 2 (A) submit to tracking under a particular type of
- 3 tracking service and to any other appropriate supervision; and
- 4 (B) refrain from tampering with, altering,
- 5 modifying, obstructing, or manipulating the tracking equipment;
- 6 (6) prohibiting the person from changing the person's
- 7 residence without prior authorization from the judge and from
- 8 leaving the state without that prior authorization;
- 9 (7) if determined appropriate by the judge,
- 10 establishing a child safety zone in the same manner as a child
- 11 safety zone is established by a judge under Section 13B, Article
- 12 42.12, Code of Criminal Procedure, and requiring the person to
- 13 comply with requirements related to the safety zone; and
- 14 (8) ~~[requiring the person to notify the case manager~~
- 15 ~~immediately but in any event within 24 hours of any change in the~~
- 16 ~~person's status that affects proper treatment and supervision,~~
- 17 ~~including a change in the person's physical health or job status and~~
- 18 ~~including any incarceration of the person; and~~
- 19 ~~(9)~~ any other requirements determined necessary by
- 20 the judge.

21 (c) The judge shall provide a copy of the requirements

22 imposed under Subsection (a) to the person and to the office

23 ~~[council]~~. The office ~~[council]~~ shall provide a copy of those

24 requirements to the case manager and to the service providers.

25 SECTION 9. Section 841.083, Health and Safety Code, is

26 amended to read as follows:

27 Sec. 841.083. TREATMENT; SUPERVISION. (a) The office

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

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

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

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

27 ~~[(c-2) If the equipment necessary to implement the tracking~~

1 ~~service is available through a contract entered into by the~~
2 ~~comptroller, the Department of Public Safety or the council, as~~
3 ~~appropriate, shall acquire that equipment through that contract.]~~

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

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

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

16 [~~(3) "State school" has the meaning assigned by~~
17 ~~Section 531.002.]~~

18 (e) The case manager shall:

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

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

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

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

3 (B) any recommendations made to the judge.

4 SECTION 10. Section 841.084, Health and Safety Code, is
5 amended to read as follows:

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

14 SECTION 11. Section 841.101, Health and Safety Code, is
15 amended to read as follows:

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

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

27 SECTION 12. Section 841.141, Health and Safety Code, is

1 amended to read as follows:

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

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

8 SECTION 13. Subsections (c) and (d), Section 841.142,
9 Health and Safety Code, are amended to read as follows:

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

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

26 SECTION 14. Section 841.147, Health and Safety Code, is
27 amended to read as follows:

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

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

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

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

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

15 SECTION 15. Subsection (a), Section 841.150, Health and
16 Safety Code, is amended to read as follows:

17 (a) The duties imposed by this chapter are suspended for the
18 duration of any confinement of a person, or if applicable any other
19 commitment of a person to a community center, mental health
20 facility, or state school, by governmental action.

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

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

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

27 (2) "Secure correctional facility" and "secure

1 detention facility" have the meanings assigned by Section 51.02,
2 Family Code.

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

7 (1) a civil commitment requirement imposed under
8 Section 841.082; or

9 (2) a law of this state.

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

17 (d) A case manager, on request, shall provide a correctional
18 facility, a secure correctional facility, or a secure detention
19 facility with the case manager's appropriate contact information
20 for notification under Subsection (c).

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

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

25 (2) the director of the Department of State Health
26 Services who has jurisdiction over the sex offender civil
27 commitment program; and

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

3 SECTION 18. As soon as possible after the effective date of
4 this Act, the governor shall appoint three members to the governing
5 board of the Office of Violent Sex Offender Management.

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

11 (b) The transfer of all functions relating to the sex
12 offender civil commitment program to the Office of Violent Sex
13 Offender Management shall be accomplished as soon as possible but
14 not later than the 90th day after the date the last member of the
15 governing board of the Office of Violent Sex Offender Management
16 qualifies for office.

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

1 (d) A form, rule, or procedure adopted by the Health and
2 Human Services Commission or the Department of State Health
3 Services in relation to the Council on Sex Offender Treatment that
4 is in effect on the effective date of this Act remains in effect on
5 and after that date as if adopted by the Office of Violent Sex
6 Offender Management until amended, repealed, withdrawn, or
7 otherwise superseded by that office.

8 (e) All unexpended appropriations for functions relating to
9 the sex offender civil commitment program that are made for use by
10 the Department of State Health Services or the Council on Sex
11 Offender Treatment are transferred to the Office of Violent Sex
12 Offender Management.

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

16 SECTION 20. After the effective date of this Act, the
17 Council on Sex Offender Treatment shall continue to perform
18 applicable functions until the transfer of functions required by
19 this Act is completed, and the laws providing for those functions
20 are continued in effect for that purpose.

21 SECTION 21. This Act takes effect September 1, 2011.