87R18263 EAS-F

By:  Murr H.B. No. 3432

Substitute the following for H.B. No. 3432:

By:  Rodriguez C.S.H.B. No. 3432

A BILL TO BE ENTITLED

AN ACT

relating to the civil commitment of sexually violent predators.

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

SECTION 1.  Article 62.055, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a)  If a person, other than a person described by Subsection (j), required to register under this chapter intends to change address, regardless of whether the person intends to move to another state, the person shall, not later than the seventh day before the intended change, report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address. If a person, other than a person described by Subsection (j), required to register changes address, the person shall, not later than the later of the seventh day after changing the address or the first date the applicable local law enforcement authority by policy allows the person to report, report in person to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of residence.

(j)  The Texas Civil Commitment Office shall report a change in address to each local law enforcement authority serving as the current or proposed primary registration authority for a person required to register under this chapter who is:

(1)  civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code; and

(2)  required to reside in a location other than a civil commitment center by:

(A)  a court under Chapter 574, Health and Safety Code; or

(B)  the Texas Civil Commitment Office.

SECTION 2.  Section 841.041, Health and Safety Code, is amended to read as follows:

Sec. 841.041.  PETITION ALLEGING PREDATOR STATUS. (a) If a person is referred to the attorney representing the state under Section 841.023, the attorney may file[~~, in the court of conviction for the person's most recent sexually violent offense,~~] a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.

(b)  A petition described by Subsection (a) must be:

(1)  filed in a district court in the county of the person's most recent conviction for a sexually violent offense;

(2)  filed not later than the 90th day after the date the person is referred to the attorney representing the state; and

(3) [~~(2)~~]  served on the person as soon as practicable after the date the petition is filed.

(c)  To the extent feasible, in filing the petition in a district court described by Subsection (b)(1), the attorney representing the state shall give preference to filing the petition in the applicable court of conviction.

SECTION 3.  Section 841.061, Health and Safety Code, is amended by amending Subsections (a), (c), (d), and (f) and adding Subsection (h) to read as follows:

(a)  The judge shall commence [~~conduct~~] a trial to determine whether the person is a sexually violent predator:

(1)  except as provided by Section 841.063, not later than the 270th day after the date a petition is served on the person under Section 841.041; and

(2)  not later than the person's sentence discharge date unless the judge determines that a delay is necessary in the due administration of justice.

(c)  The person and the state are each entitled to an immediate clinical interview [~~examination~~] of the person by an expert. All components of the clinical interview [~~examination~~] must be completed not later than the 90th day before the date the trial begins.

(d)  Additional rights of the person at the trial include the following:

(1)  the right to appear at the trial;

(2)  the right to waive the right to appear at the trial and appear through the person's attorney;

(3)  except as provided by Subsection (f), the right to present evidence on the person's behalf;

(4) [~~(3)~~]  the right to cross-examine a witness who testifies against the person; and

(5) [~~(4)~~]  the right to view and copy all petitions and reports in the court file.

(f)  A person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert clinical interviews [~~examinations~~] that are required or permitted of the state to prepare for the person's trial. A person who fails to submit to a clinical interview [~~expert examination~~] on the state's behalf as required by this subsection is subject to the following consequences:

(1)  the person's failure to participate may be used as evidence against the person at trial;

(2)  the person may be prohibited from offering into evidence the results of a clinical interview [~~an expert examination~~] performed on the person's behalf; and

(3)  the person may be subject to contempt proceedings if the person violates a court order by failing to submit to a clinical interview [~~an expert examination~~] on the state's behalf.

(h)  Notwithstanding any other provision in this subchapter, the person may appear at the trial through the use of remote technology, including teleconference and videoconference technology.

SECTION 4.  Section 841.062, Health and Safety Code, is amended to read as follows:

Sec. 841.062.  DETERMINATION OF PREDATOR STATUS. (a) The judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. Either the state or the person is entitled to appeal the determination and to a retrial if an appellate court remands the case to the trial court for a new trial.

(b)  A jury determination in a civil commitment proceeding [~~that the person is a sexually violent predator~~] must be by unanimous verdict. If one or two of the 12 jurors have been discharged and there are no alternate jurors to be seated, the remaining jurors may render a verdict. If fewer than 12 jurors render a verdict, the verdict must be signed by each juror rendering the verdict.

SECTION 5.  Section 841.063(b), Health and Safety Code, is amended to read as follows:

(b)  The judge may not continue a trial conducted under this chapter to a date occurring later than the person's sentence discharge date unless the judge determines that a continuance is necessary in the due administration of justice.

SECTION 6.  Section 841.064, Health and Safety Code, is amended to read as follows:

Sec. 841.064.  RETRIAL [~~MISTRIAL~~]. (a) A trial following a mistrial must commence [~~begin~~] not later than the 90th day after the date a mistrial was declared in the previous trial, unless the later trial is continued as provided by Section 841.063.

(b)  If an appellate court remands the case to the trial court for a new trial, the judge shall commence the retrial not later than the 90th day after the date the appellate court remanded the case. The retrial may be continued as provided by Section 841.063.

SECTION 7.  Sections 841.0834(b) and (d), Health and Safety Code, are amended to read as follows:

(b)  Without the office's approval, a committed person may file a petition with the court for transfer to less restrictive housing and supervision. The court shall grant the transfer if the court determines that the transfer is in the best interests of the person and conditions can be imposed that adequately protect the community. A committed person who files a petition under this subsection shall serve a copy of the petition on the office.

(d)  Not later than the 90th day after the date a [~~A~~] committed person is returned to a more restrictive setting under Subsection (c), the committing court shall hold a hearing via videoconference to [~~is entitled to file a petition with the court seeking~~] review [~~of~~] the office's determination. The court shall order the office to transfer the person to less restrictive housing and supervision only if the court determines by clear and convincing evidence that the office's determination was not made in accordance with Subsection (c). The committed person may waive the right to a hearing under this subsection.

SECTION 8.  Section 841.0837, Health and Safety Code, is amended to read as follows:

Sec. 841.0837.  EMERGENCY DETENTION ORDER. The [~~(a) In this section, "peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.~~

[~~(b)  For the purpose of returning a committed person to a more restrictive setting following a transfer to less restrictive housing and supervision under Section 841.0834 or a release under Section 841.0836, the~~] office may issue an emergency detention order for a committed [~~the~~] person's immediate apprehension and transportation to an office-designated [~~a~~] location for the purpose of:

(1)  returning the person to a more restrictive setting following:

(A)  a transfer to less restrictive housing and supervision under Section 841.0834; or

(B)  a release under Section 841.0836; or

(2)  for a recently committed person who is not in the custody of the Texas Department of Criminal Justice at the time the commitment order is entered, bringing the person under the supervision of [~~designated by~~] the office.

SECTION 9.  Section 841.084, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c)  A committed person, on request, shall provide to the office any financial records or other information regarding the person's income, assets, and expenses to assist the office in determining whether the person is indigent for purposes of this section.

SECTION 10.  Section 841.146(a), Health and Safety Code, is amended to read as follows:

(a)  On request, a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding, except for a proceeding set by the judge under Section 841.102(c)(1). The jury shall consist of 12 qualified jurors. The judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Each party is entitled to 10 peremptory challenges to the 12 qualified jurors and one peremptory challenge to the qualified alternate jurors [~~The number and selection of jurors are governed by Chapter 33, Code of Criminal Procedure~~].

SECTION 11.  Section 841.151, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c)  Except as provided by Subsection (c-1), as [~~As~~] soon as practicable before, but not later than the third business 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, the facility shall notify the office and the person's case manager in writing of the anticipated date and time of the person's release.

(c-1)  Subsection (c) does not apply with respect to a person whom a court orders to be immediately released from a correctional facility, secure correctional facility, or secure detention facility.

SECTION 12.  Section 841.0834(e), Health and Safety Code, is repealed.

SECTION 13.  (a)  Except as otherwise provided by this section, the changes in law made by this Act to Chapter 841, Health and Safety Code, apply to a civil commitment proceeding under that chapter that is initiated on or after the effective date of this Act, regardless of when the applicable petition for civil commitment was filed.

(b)  Section 841.0834, Health and Safety Code, as amended by this Act, applies only to a petition for transfer that is filed or to a return to a more restrictive setting that occurs on or after the effective date of this Act. A petition filed or a return that occurs before the effective date of this Act is governed by the law in effect on the date the petition was filed or the return occurred, and the former law is continued in effect for that purpose.

(c)  Section 841.151, Health and Safety Code, as amended by this Act, applies only to the release of a committed person that occurs on or after the effective date of this Act. The release of a committed person that occurs before the effective date of this Act is governed by the law in effect on the date the person was released, and the former law is continued in effect for that purpose.

SECTION 14.  This Act takes effect September 1, 2021.