

BILL ANALYSIS

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By: Perry
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Civil Commitment Office (TCCO), provides treatment and supervision to their clients who have been civilly committed as sexually violent predators. TCCO has continued to encounter several administrative challenges that regularly hinder the effectiveness of TCCO's treatment and supervision programs.

Bill Summary

Safety and Security Issues

Section 1. Amends the Unlawful Restraint provisions in the Texas Penal Code to provide that it is an offense for a civilly committed sexually violent predator to restrain another person while civilly committed to a civil commitment facility.

Sections 2 and 3. Amend the Public Lewdness and Indecent Exposure provisions in the Texas Penal Code to provide that such an offense is a third-degree felony if the perpetrator is a civilly committed sexually violent predator.

Section 4. Amends the Assault provisions in the Texas Penal Code regarding an assault committed by a sexually violent predator against a TCCO staff member or contractor.

Section 5. Amends the Prohibited Substances and Items in Civil Commitment Facility provision in the Texas Penal Code to clarify that it is an offense to possess alcohol inside a civil commitment facility and to provide that it is an offense to possess an unauthorized cell phone inside a civil commitment facility or to provide an unauthorized cell phone to a person in a civil commitment facility.

Section 6. Creates a new offense regarding Improper Sexual Activity with Committed Person regarding a sexual relationship between a civilly committed individual and a TCCO employee or contractor.

Section 19. Clarifies the Mechanical and Chemical Restraint provisions in Chapter 841 of the Health and Safety Code to provide separate requirements for the two types of equipment.

Administrative and Legal Issues

Sections 7 and 8. Amend the Sex Offender Registration provisions in Chapter 62 of the Code of Criminal Procedure to clarify the registration process for a civilly committed sexually violent predator and to permit TCCO access to the Department of Public Safety secure information-sharing site regarding sex offender registration.

Section 9. Adds Chapter 14A to the Civil Practice and Remedies Code to add provisions regarding litigation filed by civilly committed sexually violent predators to provide limitations on frivolous lawsuits.

Section 10. Amends the Public Information Act to exempt from disclosure information related to a civilly committed sexually violent predator.

Section 11. Amends the Administrative Procedures Act to provide an exception to administrative rulemaking for internal rules or procedures of TCCO that apply to a civilly committed sexually violent predator, just like the Texas Department of Criminal Justice.

Section 12. Comptroller Recommendation - Amends the Procurement Delegation provision in Chapter 2155 of the Government Code to clarify that the Health and Human Services Commission's delegation applies to administratively attached agencies such as TCCO.

Sections 13, 14, and 15. Amend the provisions in Chapter 109 of the Occupations Code regarding the sharing of sex offender treatment information to clarify that such information regarding a sexually violent predator may be shared with TCCO.

Sections 16, 17, 18, and 20. Amend Chapter 841 of the Health and Safety Code to clarify the role of the Special Prosecutions Unit in specific types of hearings, to clarify when a hearing is required following a tier movement and the processes for such filings, to provide a burden of proof for review of petitions for release, and to provide timelines for when such petitions may be filed.

Mental Health Issues

Section 21. Amends Chapter 841 of the Health and Safety Code to add Subchapter I regarding obtaining a court order for the administration of psychotropic medications to a civilly committed sexually violent predator at a civil commitment facility.

As proposed, S.B. 1179 amends current law relating to sexually violent predators and the prosecution of certain offenses involving prohibited items at correctional or civil commitment facilities and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 9 (Section 14A.061, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 20.02(c), Penal Code, as follows:

(c) Provides that an offense under Section 20.02 (Unlawful Restraint) is a Class A misdemeanor, except that the offense is:

(1) makes no change to this subdivision;

(2) a felony of the third degree if:

(A)-(B) makes no changes to these paragraphs; or

(C) the actor, while in custody or committed to a civil commitment facility, restrains any other person; or

(3) makes no changes to this subdivision.

SECTION 2. Amends Section 21.07(b), Penal Code, as follows:

(b) Provides that an offense under Section 21.07 (Public Lewdness) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor is civilly committed as a sexually violent predator under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code.

SECTION 3. Amends Section 21.08(b), Penal Code, as follows:

(b) Provides that an offense under Section 21.08 (Indecent Exposure) is a Class B misdemeanor, except that the offense is a felony of the third degree if the actor is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

SECTION 4. Amends Section 22.01(b-1), Penal Code, as follows:

(b-1) Provides that an offense under Subsection (a) (relating to providing that an offense of assault being committed under certain circumstances), notwithstanding Subsections (b) (relating to providing that certain offenses of assault are Class A misdemeanors) and (c) (relating to providing that certain offenses of assault are Class C misdemeanors), is a felony of the third degree if the offense is committed:

(1) by an actor who is committed to a civil commitment facility; and

(2) against:

(A) a person the actor knows is an officer or employee of the Texas Civil Commitment Office (TCCO):

(i) while the officer or employee is lawfully discharging an official duty; or

(ii) makes no changes to this subparagraph; or

(B) a person the actor knows is contracting with the state to perform a service in a civil commitment facility or an employee of that person:

(i) while the person or employee is engaged in performing a service within the scope of the contract; or

(ii) makes no changes to this subparagraph.

Deletes existing text providing that an offense under Subsection (a)(1) (relating to providing that a person commits an offense of assault if the person causes bodily injury to another), notwithstanding Subsection (b), is a felony of the third degree if the offense is committed while the actor is committed to a civil commitment facility; against an officer or employee of TCCO while the officer or employee is lawfully discharging an official duty at a civil commitment facility; or a person who contracts with the state to perform a service in a civil commitment facility or an employee of that person while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by the state to provide the service.

SECTION 5. Amends Section 38.11, Penal Code, by amending Subsections (a), (d), and (k) and adding Subsection (j-1), as follows:

(a) Provides that a person commits an offense if the person provides, or possesses with the intent to provide:

(1) an alcoholic beverage, controlled substance, or dangerous drug to a person in the custody of a correctional facility or residing in a civil commitment facility, except on the prescription of a practitioner;

(2) makes a conforming change to this subdivision; or

(3)-(5) makes no changes to these subdivisions.

(d) Provides that a person commits an offense if the person:

(1) possesses certain substances, including an alcoholic beverage, while in a correctional facility or civil commitment facility or on property owned, used, or controlled by a correctional facility or civil commitment facility; or

(2) makes no changes to this subdivision.

(j-1) Provides that a person commits an offense if the person, while residing in a civil commitment facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices unless the device or component is authorized by TCCO.

(k) Provides that a person commits an offense if, with the intent to provide to or make a cellular telephone or other wireless communications device or a component of one of those devices available for use by a person in the custody of a correctional facility or residing in a civil commitment facility, the person:

(1) acquires a cellular telephone or other wireless communications device or a component of one of those devices to be delivered to the person in custody or residing in the facility;

(2) provides a cellular telephone or other wireless communications device or a component of one of those devices to another person for delivery to the person in custody or residing in the facility; or

(3) makes no changes to this subdivision.

SECTION 6. Amends Chapter 39, Penal Code, by adding Section 39.041, as follows:

Sec. 39.041. IMPROPER SEXUAL ACTIVITY WITH COMMITTED PERSON. (a) Defines "deviate sexual intercourse," "sexual contact," and "sexual intercourse."

(b) Provides that an officer or employee of TCCO, a person who contracts with this state to perform a service in a civil commitment facility or an employee of that person, or a volunteer at a civil commitment facility commits an offense if the person intentionally engages in deviate sexual intercourse, sexual contact, or sexual intercourse with a person committed to a civil commitment facility.

(c) Provides that an offense under this section is a felony of the third degree.

(d) Provides that it is an affirmative defense to prosecution under this section that, at the time of the offense, the actor was the spouse of the person committed to the civil commitment facility.

(e) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 7. Amends Article 62.005(j), Code of Criminal Procedure, as follows:

(j) Requires the Department of Public Safety of the State of Texas (DPS), for law enforcement purposes or for supervision and treatment purposes, to release all relevant information described by Subsection (a) (relating to requiring DPS to maintain a computerized central database containing information required for registration under the Sex Offender Registration Program), including information that is not public information under Subsection (b) (relating to providing that certain information in the database is public information), to a peace officer, an employee of a local law enforcement authority, TCCO, or the attorney general on the request of the applicable person or entity.

SECTION 8. Amends Article 62.051, Code of Criminal Procedure, by amending Subsections (b), (e), and (f) and adding Subsection (e-1), as follows:

(b) Requires DPS to provide certain entities, including TCCO, with a form for registering persons required by Chapter 62 (Sex Offender Registration Program) to register.

(e) Requires the local law enforcement authority with whom the person is registered to send a copy of the registration form to DPS and, if the person resides on the campus of a public or private institution of higher education, to any authority for campus security for that institution not later than the third day after the registration of a person, rather than not later than the third day after a person's registering.

(e-1) Requires TCCO to register with the applicable local law enforcement authority on behalf of a person who is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, and required to reside in a civil commitment center. Provides that a person for whom registration is completed under this subsection is not required to verify the registration until the person is authorized to reside outside of the civil commitment center.

(f) Requires a person for whom registration is completed under this chapter to report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this chapter not later than the seventh day after the date on which the person is released or, for a person who is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, authorized to reside outside of the civil commitment center.

SECTION 9. Amends Subtitle A, Title 2, Civil Practice and Remedies Code, by adding Chapter 14A, as follows:

CHAPTER 14A. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 14A.001. DEFINITIONS. Defines "civilly committed individual," "claim," "office," "trust account," and "unsworn declaration."

Sec. 14A.002. SCOPE OF CHAPTER. (a) Provides that this chapter applies only to an action, including an appeal or original proceeding, brought by a civilly committed individual in a district, county, or justice court or an appellate court, including the Supreme Court of Texas (supreme court) or the Texas Court of Criminal Appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the civilly committed individual.

(b) Provides that this chapter does not apply to an action brought under the Family Code.

SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM

Sec. 14A.051. DISMISSAL OF FALSE, FRIVOLOUS, OR MALICIOUS CLAIM. (a) Authorizes a court to dismiss a claim, either before or after service of process, if the court finds that:

(1) the allegation of poverty in the affidavit or unsworn declaration is false;

(2) the claim is frivolous or malicious; or

(3) the civilly committed individual filed an affidavit or unsworn declaration required by this chapter that the individual knew was false.

(b) Authorizes the court, in determining whether a claim is frivolous or malicious, to consider whether:

- (1) the claim's realistic chance of ultimate success is slight;
- (2) the claim has no arguable basis in law or in fact;
- (3) it is clear that the civilly committed individual cannot prove the facts in support of the claim; or
- (4) the claim is substantially similar to a previous claim filed by the civilly committed individual because the claim arises from the same operative facts.

(c) Authorizes the court to hold a hearing in determining whether Subsection (a) applies. Authorizes the hearing to be held before or after service of process and to be held on motion of the court, a party, or the court clerk.

(d) Requires the court to suspend discovery relating to the claim pending the hearing on the filing of a motion under Subsection (c).

(e) Authorizes a court that dismisses a claim brought by a civilly committed individual housed in a facility operated by or under contract with TCCO to notify TCCO of the dismissal and, on the court's own motion or the motion of any party or the court clerk, to advise TCCO that a mental health evaluation of the individual may be appropriate.

Sec. 14A.052. AFFIDAVIT RELATING TO PREVIOUS FILINGS. (a) Requires a civilly committed individual who files an affidavit or unsworn declaration of inability to pay costs to file a separate affidavit or declaration:

- (1) identifying the court that ordered the individual's civil commitment under Chapter 841, Health and Safety Code;
- (2) indicating whether any cause of action or allegation contained in the petition has previously been filed in any other court, and if so, stating the cause of action or allegation previously filed and complying with Subdivision (6) and Subsection (b);
- (3) identifying each action, other than an action under the Family Code, previously brought by the individual in which the individual was not represented by an attorney, without regard to whether the individual was civilly committed at the time the action was brought;
- (4) certifying that all grievance processes applicable to the matter that is the basis of the claim, if any, have been exhausted;
- (5) certifying that no court has found the individual to be a vexatious litigant under Chapter 11 (Vexatious Litigants); and
- (6) describing each action that was previously brought by:
 - (A) stating the operative facts for which relief was sought;
 - (B) listing the case name, the cause number, and the court in which the action was brought;
 - (C) identifying each party named in the action; and
 - (D) stating the result of the action, including whether the action or a claim that was a basis for the action was dismissed as frivolous

or malicious under Section 13.001 (Dismissal of Action), 14.003 (Dismissal of Claim), or 14A.051 or otherwise.

(b) Requires that the affidavit or unsworn declaration state the date of the final order affirming the dismissal if the affidavit or unsworn declaration filed under this section states that a previous action or claim was dismissed as frivolous or malicious.

(c) Requires that the affidavit or unsworn declaration be accompanied by the certified copy of the trust account statement required by Section 14A.054(f).

Sec. 14A.053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF ADMINISTRATIVE REMEDIES. (a) Requires a civilly committed individual who files a claim that is subject to a grievance system established by TCCO or a facility under contract with TCCO to file with the court:

(1) an affidavit or unsworn declaration stating the date that the grievance was filed and the date the written decision was received by the individual; and

(2) a copy of the written decision from the grievance system.

(b) Requires a court to dismiss a claim if the civilly committed individual fails to file the claim before the 31st day after the date the individual receives the written decision from the grievance system.

(c) Requires the court to stay the proceeding with respect to the claim for a period not to exceed 180 days to permit completion of the grievance system procedure if a claim is filed before the grievance system procedure is complete.

Sec. 14A.054. COURT FEES, COURT COSTS, OTHER COSTS. (a) Authorizes a court to order a civilly committed individual who has filed a claim to pay court fees, court costs, and other costs in accordance with this section and Section 14A.055. Requires the court clerk to mail a copy of the court's order and a certified bill of costs to TCCO or a facility under contract with TCCO, as appropriate.

(b) Requires the civilly committed individual, on the court's order, to pay an amount equal to the lesser of:

(1) 20 percent of the preceding six months' deposits to the individual's trust account; or

(2) the total amount of court fees, court costs, and other costs.

(c) Requires the civilly committed individual, in each month following the month in which payment is made under Subsection (b), to pay an amount equal to the lesser of:

(1) 10 percent of that month's deposits to the trust account; or

(2) the total amount of court fees, court costs, and other costs that remains unpaid.

(d) Requires that payments under Subsection (c) continue until the total amount of court fees, court costs, and other costs are paid or until the civilly committed individual is released from confinement.

(e) Requires TCCO or a facility under contract with TCCO to withdraw money from the trust account in accordance with Subsections (b), (c), and (d) on receipt of a copy of an order issued under Subsection (a). Requires TCCO or the facility

to hold the money in a separate account and to forward the money to the court clerk on the earlier of the following dates:

(1) the date the total amount to be forwarded equals the total amount of court fees, court costs, and other costs that remains unpaid; or

(2) the date the civilly committed individual is released.

(f) Requires the civilly committed individual to file a certified copy of the individual's trust account statement with the court. Requires that the statement reflect the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed. Authorizes the court to request TCCO to provide the information required under this subsection.

(g) Authorizes a civilly committed individual to authorize payment in addition to that required by this section.

(h) Authorizes the court to dismiss a claim if the civilly committed individual fails to pay fees and costs assessed under this section.

(i) Prohibits a civilly committed individual from avoiding the fees and costs assessed under this section by nonsuiting a party or by voluntarily dismissing the action.

Sec. 14A.055. OTHER COSTS. (a) Requires that an order under Section 14A.054(a) include the costs described by Subsection (b) if the court finds that:

(1) the civilly committed individual has previously filed an action to which this chapter or Chapter 14 (Inmate Litigation) applies; and

(2) a final order has been issued that affirms that the action was dismissed as frivolous or malicious under Section 13.001, 14.003, or 14A.051 or otherwise.

(b) Requires that costs of court, if Subsection (a) applies, include expenses incurred by the court or by TCCO or the facility under contract with TCCO, in connection with the claim and not otherwise charged to the civilly committed individual under Section 14A.054, including:

(1) expenses of service of process;

(2) postage; and

(3) transportation, housing, or medical care incurred in connection with the appearance of the individual in the court for any proceeding.

Sec. 14A.056. HEARING. (a) Authorizes the court to hold a hearing under this chapter at a facility operated by or under contract with TCCO or to conduct the hearing with video communications technology that permits the court to see and hear the civilly committed individual and that permits the individual to see and hear the court and any other witness.

(b) Requires that a hearing conducted under this section by video communications technology be recorded on videotape or by other electronic means. Provides that the recording is sufficient to serve as a permanent record of the hearing.

Sec. 14A.057. SUBMISSION OF EVIDENCE. (a) Authorizes the court to request a person with an admissible document or admissible testimony relevant to the subject matter of the hearing to submit a copy of the document or written statement stating the substance of the testimony.

(b) Requires that a written statement under this section be made under oath or made as an unsworn declaration under Section 132.001 (Unsworn Declaration).

(c) Requires that a copy of a document submitted under this section be accompanied by a certification executed under oath by an appropriate custodian of the record stating that the copy is correct and any other matter relating to the admissibility of the document that the court requires.

(d) Provides that a person submitting a written statement or document under this section is not required to appear at the hearing.

(e) Requires the court to require that the civilly committed individual be provided with a copy of each written statement or document not later than the 14th day before the date on which the hearing is to begin.

Sec. 14A.058. DISMISSAL OF CLAIM. (a) Authorizes the court to enter an order dismissing the entire claim or a portion of the claim under this chapter.

(b) Requires the court to designate the issues and defendants on which the claim is authorized to proceed, subject to Sections 14A.054 and 14A.055, if a portion of the claim is dismissed.

(c) Provides that an order under this section is not subject to interlocutory appeal by the civilly committed individual.

Sec. 14A.059. EFFECT ON OTHER CLAIMS. (a) Prohibits a court clerk from accepting for filing another claim by the civilly committed individual, except as provided by Subsection (b), on receipt of an order assessing fees and costs under Section 14A.054 that indicates that the court made the finding described by Section 14A.055(a), until the fees and costs assessed under Section 14A.054 are paid.

(b) Authorizes a court to allow a civilly committed individual who has not paid the fees and costs assessed against the individual to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the individual.

Sec. 14A.060. QUESTIONNAIRE. Authorizes a court, to implement this chapter, to develop, for use in that court, a questionnaire to be filed by the civilly committed individual.

Sec. 14A.061. REVIEW AND RECOMMENDATION BY MAGISTRATES. (a) Requires the supreme court to, by rule, adopt a system under which a court is authorized to refer a suit governed by this chapter to a magistrate for review and recommendation.

(b) Authorizes the system adopted under Subsection (a) to be funded from money appropriated to the supreme court or from money received by the supreme court through interagency contract or contracts.

(c) Provides that the adoption of a system by rule under Subsection (a), for the purposes of Section 14A.062, does not constitute a modification or repeal of a provision of this chapter.

Sec. 14A.062. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE. Prohibits this chapter from being modified or repealed by a rule adopted by the supreme court notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code.

SECTION 10. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.1345, as follows:

Sec. 552.1345. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO CIVILLY COMMITTED SEXUALLY VIOLENT PREDATORS. (a) Provides that information obtained or maintained by TCCO is excepted from the requirements of Section 552.021 (Availability of Public Information) if it is information about a person who is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, except as provided by Subsection (b).

(b) Provides that Subsection (a) does not apply to statistical or other aggregated information relating to persons civilly committed to one or more facilities operated by or under a contract with TCCO.

SECTION 11. Amends Subchapter I, Chapter 2001, Government Code, by adding Section 2001.227, as follows:

Sec. 2001.227. TEXAS CIVIL COMMITMENT OFFICE. Provides that Chapter 2001 (Administrative Procedure) does not apply to a rule or internal procedure of TCCO that applies to a person who is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, or to an action taken under that rule or procedure.

SECTION 12. Amends Section 2155.144(a), Government Code, as follows:

(a) Provides that Section 2155.144 (Procurements by Health and Human Services Agencies) applies only to certain entities, including agencies administratively attached to the Health and Human Services Commission (HHSC). Provides that the Department of Family and Protective Services (DFPS) or an agency administratively attached to HHSC is considered a health and human services agency for the purposes of this section. Makes a nonsubstantive change.

SECTION 13. Amends Section 109.051(b), Occupations Code, as follows:

(b) Requires a person described by Subsection (a) (relating to authorizing certain persons who are authorized to release certain information about the treatment of sex offenders), on request or in the normal course of business, notwithstanding Subtitle B (Physicians), Title 3, of this code or Chapter 611 (Mental Health Records), Health and Safety Code, to release information concerning the treatment of a sex offender to certain entities, including TCCO. Makes nonsubstantive changes.

SECTION 14. Amends Section 109.052, Occupations Code, as follows:

Sec. 109.052. RELEASE BY CRIMINAL JUSTICE AGENCY. Requires a criminal justice agency, on request or in the normal course of official business to release information concerning the treatment of a sex offender to certain entities, including TCCO. Makes nonsubstantive changes.

SECTION 15. Amends Section 109.053, Occupations Code, as follows:

Sec. 109.053. RELEASE BY LOCAL LAW ENFORCEMENT AUTHORITY. Requires a local law enforcement authority, on request or in the normal course of official business, to release information concerning the treatment of a sex offender to certain entities, including TCCO. Makes nonsubstantive changes.

SECTION 16. Amends Sections 841.002(1) and (8), Health and Safety Code, to redefine "attorney representing the state" and "sexually violent offense."

SECTION 17. Amends Section 841.042, Health and Safety Code, as follows:

Sec. 841.042. ASSISTANCE FROM SPECIAL PROSECUTION UNIT. Requires the special prosecution unit, on request of the attorney representing the state, to provide legal, financial, and technical assistance to the attorney for a proceeding, rather than civil commitment proceeding, conducted under this chapter.

SECTION 18. Amends Section 841.0834, Health and Safety Code, as follows:

Sec. 841.0834. MOVEMENT BETWEEN PROGRAMMING TIERS. (a) Requires TCCO to transfer between programming tiers a committed person required to reside in a total confinement facility if the transfer is in the best interests of the person and conditions can be imposed that adequately protect the community. Deletes existing text requiring TCCO to transfer a committed person to less restrictive housing and supervision if the transfer is in the best interests of the person and conditions can be imposed that adequately protect the community.

(b) Authorizes a committed person, without TCCO's approval, to file a petition with the court for transfer to the next less restrictive tier, rather than to less restrictive housing and supervision. Requires the court to deny the transfer if the petition is filed before the 180th day after the date an order was entered under Subchapter D (Trial), F (Commitment Review), or G (Petition for Release) or a previous order was entered under this section. Requires the court to grant the transfer if the court determines by clear and convincing evidence that the transfer is in the best interests of the person and that TCCO can impose conditions, rather than conditions can be imposed, that adequately protect the community.

(c) Requires a committed person who files a petition under Subsection (b), rather than this subsection, to serve a copy of the petition on TCCO and the attorney representing the state.

(d) Requires TCCO to transfer, rather than return, a committed person who is not required to reside in a total confinement facility, rather than a committed person who has not been transferred to less restrictive housing and supervision, back to a more restrictive setting in a total confinement facility if TCCO considers the transfer necessary to further treatment and to protect the community. Makes a nonsubstantive change.

(e) Requires the committing court to hold a hearing via videoconference to review TCCO's determination not later than the 90th day after the date a committed person is returned to a more restrictive setting in a total confinement facility under Subsection (d), rather than Subsection (c). Requires the court to order TCCO to transfer the person to a less restrictive tier, rather than to less restrictive housing and supervision, only if TCCO determines by clear and convincing evidence that TCCO's determination was not made in accordance with Subsection (d), rather than Subsection (c).

SECTION 19. Amends Section 841.0838, Health and Safety Code, as follows:

Sec. 841.0838. USE OF RESTRAINTS. (a) Authorizes an employee of TCCO, or a person who contracts with TCCO or an employee of that person, to use mechanical, rather than mechanical or chemical, restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if:

(1) the employee or person completes a training program approved by TCCO on the use of mechanical restraints that:

(A) includes instruction on TCCO's approved mechanical restraint techniques and devices and TCCO's verbal de-escalation policies, procedures, and practices; and

(B) requires the employee or person to demonstrate competency in the use of the mechanical restraint techniques and devices; and

(2) the mechanical restraint is:

(A) considered necessary to maintain the safety and security of the center or staff;

(B) considered necessary to maintain the safety of the public; and

(C) the least restrictive restraint necessary, used for the minimum duration necessary.

Deletes existing text authorizing certain persons to use mechanical or chemical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if the restraint is used as a last resort; necessary to stop or prevent imminent physical injury to the committed person or another, threatening behavior by the committed person while the person is using or exhibiting a weapon, a disturbance by a group of committed persons, or an absconsion from the center; and the least restrictive restraint necessary, used for the minimum duration necessary, to prevent the injury, property damage, or absconsion.

(b) Authorizes an employee of TCCO, or a person who contracts with TCCO or an employee of that person, to use chemical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if:

(1) the employee or person completes a training program approved by TCCO on the use of chemical restraints that:

(A) includes instruction on TCCO's approved chemical restraint techniques and devices and TCCO's verbal de-escalation policies, procedures, and practices; and

(B) requires the employee or person to demonstrate competency in the use of chemical restraint techniques and devices; and

(2) the chemical restraint is:

(A) used as a last resort;

(B) necessary to prevent or stop physical injury to the committed person or another, threatening behavior by the committed person, a disturbance by a group of committed persons, or an absconsion from the center; and

(C) the least restrictive restraint necessary, used for the minimum duration necessary, to prevent injury, property damage, or absconsion.

(c) Creates this subsection from existing text.

SECTION 20. Amends Sections 841.123(a), (c), and (d), Health and Safety Code, as follows:

(a) Requires the committed person to serve the petition on the court, the attorney representing the state, and TCCO if the person files a petition for release without TCCO's authorization. Makes nonsubstantive changes.

(c) Requires the judge, except as provided by Subsection (d), to deny without a hearing a petition for release filed without TCCO's authorization if:

(1) the judge determines by a preponderance of the evidence that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence; or

(2) the petitioner has filed the petition for release before the 180th day after the date an order was entered under Subchapter D or F or a previous order was entered under this section.

Deletes existing text requiring the judge to deny without a hearing a petition for release filed without TCCO's authorization if the petition is frivolous or if the petitioner previously filed without TCCO's authorization another petition for release, and the judge determined on review of the previous petition or following a hearing that the petition was frivolous. Makes nonsubstantive changes.

(d) Provides that the judge is not required to deny a petition under Subsection (c)(2) if the judge determines by a preponderance of the evidence, rather than if probable cause exists to believe, that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

SECTION 21. Amends Chapter 841, Health and Safety Code, by adding Subchapter I, as follows:

SUBCHAPTER I. ADMINISTRATION OF CERTAIN MEDICATION TO CERTAIN SEXUALLY VIOLENT PREDATORS

Sec. 841.201. DEFINITIONS. Defines "capacity," "medication-related emergency," and "psychoactive medication."

Sec. 841.202. ADMINISTRATION OF MEDICATION TO COMMITTED PERSON. Prohibits a person from administering a psychoactive medication to a committed person who refuses to take the medication voluntarily unless:

- (1) the committed person is having a medication-related emergency; or
- (2) the committed person is under an order issued under Section 841.205 authorizing the administration of medication regardless of the committed person's refusal.

Sec. 841.203. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) Authorizes a physician who is treating a committed person to file, on behalf of the state, an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the committed person's refusal if:

- (1) the physician believes that the committed person lacks the capacity to make a decision regarding the administration of the psychoactive medication;
- (2) the physician determines that the medication is the proper course of treatment for the committed person;
- (3) the committed person is receiving mental health services under Section 841.0835 (Committed Persons With Special Needs) or other law; and
- (4) the committed person, verbally or by other indication, refuses to take the medication voluntarily.

(b) Requires that an application filed under this section state:

- (1) that the physician believes that the committed person lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the committed person to take;

(3) whether the committed person is receiving mental health services under Section 841.0835 or other law;

(4) the physician's diagnosis of the committed person; and

(5) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) Provides that an application filed under this section is separate from an application for court-ordered mental health services.

(d) Requires that a hearing on the application be held not later than the 30th day after the date the application was filed. Authorizes the court to transfer the application to the county where the committed person has been transferred if the committed person is transferred to a mental health facility in another county.

(e) Authorizes the court to grant one continuance on a party's motion and for good cause shown, subject to the requirement in Subsection (d) that the hearing be held not later than the 30th day after the date the application was filed. Authorizes the court to grant more than one continuance only with the agreement of the parties.

Sec. 841.204. RIGHTS OF COMMITTED PERSON. Provides that a committed person for whom an application under Section 841.203 is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the committed person's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the committed person's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) be notified orally, at the conclusion of the hearing, of the court's determinations of the committed person's capacity and best interests.

Sec. 841.205. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) Authorizes the court to issue an order authorizing the administration of one or more classes of psychoactive medication to a committed person who is receiving mental health services under Section 841.0835 or other law.

(b) Authorizes the court to issue an order under this section only if the court finds by clear and convincing evidence after a hearing that the committed person:

(1) lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the committed person; or

(2) as determined under Section 841.206, presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated.

(c) Requires the court, in making the finding that treatment with the proposed medication is in the best interest of the committed person, to consider:

(1) the committed person's expressed preferences regarding treatment with psychoactive medication;

(2) the committed person's religious beliefs;

(3) the risks and benefits, from the perspective of the committed person, of taking psychoactive medication;

(4) the consequences to the committed person if the psychoactive medication is not administered;

(5) the prognosis for the committed person if the committed person is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the committed person's agreement to take the psychoactive medication.

(d) Requires that a hearing under this subchapter be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) Authorizes a judge to refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. Authorizes the magistrate or associate judge to provide the notice, set hearing dates, and appoint attorneys as required by this subchapter. Provides that a record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) Provides that a party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court not later than the third day after the date the report is issued. Requires that the hearing de novo be held not later than the 30th day after the date the application under Section 841.203 was filed.

(g) Authorizes the committed person or the committed person's attorney to request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state if a hearing or an appeal of a magistrate's or associate judge's report is to be held in a county court in which the judge is not a licensed attorney. Requires the county judge to transfer the case after receiving the request, and the receiving court to hear the case as if it had been originally filed in that court.

(h) Provides that the committed person is entitled to have provided to the committed person and the committed person's attorney written notification of the court's determinations under this section as soon as practicable after the conclusion of the hearing. Requires that the notification include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) Requires that an order under this section authorize the administration to a committed person, regardless of the committed person's refusal, of one or more

classes of psychoactive medications specified in the application and consistent with the committed person's diagnosis. Requires that the order permit an increase or decrease in a medication's dosage, continuation of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) Requires that the classes of psychoactive medications in the order conform to classes determined by HHSC.

(k) Authorizes an order issued under this section to be reauthorized or modified on the petition of a party. Provides that the order remains in effect pending action on a petition for reauthorization or modification. Defines "modification."

Sec. 841.206. FINDING THAT COMMITTED PERSON PRESENTS A DANGER. Requires the court, in making a finding under Section 841.205(b)(2) that the committed person presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated, to consider:

(1) an assessment of the committed person's present mental condition;

(2) whether the committed person has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to the committed person's self or to another while in the center; and

(3) whether the committed person, in the 180-day period preceding the date the committed person was placed in the center, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to another.

Sec. 841.207. COSTS. (a) Requires the court to order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subchapter. Requires that the compensation paid be assessed as court costs.

(b) Requires the agency responsible for services under Section 841.0835(a) (relating to requiring HHSC to provide certain services to certain offenders) to pay as provided by Subsection (a) the costs of a hearing held under Section 841.205 regarding an order for the administration of psychoactive medication to a committed person.

Sec. 841.208. APPEAL. (a) Requires that an appeal from an order issued under Section 841.205, or from a renewal or modification of an order, be filed in the court of appeals for the county in which the order is issued.

(b) Requires that notice of appeal be filed not later than the 10th day after the date on which the order is issued.

(c) Requires the clerk to immediately send a certified transcript of the proceedings to the court of appeals when an appeal is filed.

(d) Provides that an order issued under Section 841.205 is effective pending an appeal of the order.

(e) Requires the court of appeals and supreme court to give an appeal under this section preference over all other cases and to advance the appeal on the docket. Authorizes the courts to suspend all rules relating to the time for filing briefs and docketing cases.

Sec. 841.209. EXPIRATION OF ORDER. Provides that an order issued under Section 841.205 expires on the first anniversary of the date the order was issued.

SECTION 22. Makes application of Sections 20.02, 21.07, 21.08, 22.01, and 38.11, Penal Code, prospective.

SECTION 23. Makes application of Chapter 14A, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 24. Makes application of Subchapter I, Chapter 841, Health and Safety Code, as added by this Act, prospective.

SECTION 25. Effective date: September 1, 2023.