

By: Herrero

H.B. No. 4886

A BILL TO BE ENTITLED

1 AN ACT
2 relating to sexually violent predators and the prosecution of
3 certain offenses involving prohibited items at correctional or
4 civil commitment facilities; creating a criminal offense.

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

6 SECTION 1. Section 20.02(c), Penal Code, is amended to read
7 as follows:

8 (c) An offense under this section is a Class A misdemeanor,
9 except that the offense is:

10 (1) a state jail felony if the person restrained was a
11 child younger than 17 years of age;

12 (2) a felony of the third degree if:

13 (A) the actor recklessly exposes the victim to a
14 substantial risk of serious bodily injury;

15 (B) the actor restrains an individual the actor
16 knows is a public servant while the public servant is lawfully
17 discharging an official duty or in retaliation or on account of an
18 exercise of official power or performance of an official duty as a
19 public servant; or

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

22 (3) notwithstanding Subdivision (2)(B), a felony of
23 the second degree if the actor restrains an individual the actor
24 knows is a peace officer or judge while the officer or judge is

1 lawfully discharging an official duty or in retaliation or on
2 account of an exercise of official power or performance of an
3 official duty as a peace officer or judge.

4 SECTION 2. Section 21.07(b), Penal Code, is amended to read
5 as follows:

6 (b) An offense under this section is a Class A misdemeanor,
7 except that the offense is a felony of the third degree if the actor
8 is civilly committed as a sexually violent predator under Chapter
9 841, Health and Safety Code.

10 SECTION 3. Section 21.08(b), Penal Code, is amended to read
11 as follows:

12 (b) An offense under this section is a Class B misdemeanor,
13 except that the offense is a felony of the third degree if the actor
14 is civilly committed as a sexually violent predator under Chapter
15 841, Health and Safety Code.

16 SECTION 4. Section 22.01(b-1), Penal Code, is amended to
17 read as follows:

18 (b-1) Notwithstanding Subsections [~~Subsection~~] (b) and (c),
19 an offense under Subsection (a) [~~(a)(1)~~] is a felony of the third
20 degree if the offense is committed:

21 (1) by an [~~while the~~] actor who is committed to a civil
22 commitment facility; and

23 (2) against:

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

26 (i) while the officer or employee is
27 lawfully discharging an official duty [~~at a civil commitment~~

1 ~~facility~~]; or

2 (ii) in retaliation for or on account of an
3 exercise of official power or performance of an official duty by the
4 officer or employee; or

5 (B) a person the actor knows is contracting [~~who~~
6 ~~contracts~~] with the state to perform a service in a civil commitment
7 facility or an employee of that person:

8 (i) while the person or employee is engaged
9 in performing a service within the scope of the contract [~~, if the~~
10 ~~actor knows the person or employee is authorized by the state to~~
11 ~~provide the service~~]; or

12 (ii) in retaliation for or on account of the
13 person's or employee's performance of a service within the scope of
14 the contract.

15 SECTION 5. Section [38.11](#), Penal Code, is amended by
16 amending Subsections (a), (d), and (k) and adding Subsection (j-1)
17 to read as follows:

18 (a) A person commits an offense if the person provides, or
19 possesses with the intent to provide:

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

24 (2) a deadly weapon to a person in the custody of a
25 correctional facility or residing in a civil commitment facility;

26 (3) a cellular telephone or other wireless
27 communications device or a component of one of those devices to a

1 person in the custody of a correctional facility;

2 (4) money to a person confined in a correctional
3 facility; or

4 (5) a cigarette or tobacco product to a person
5 confined in a correctional facility, except that if the facility is
6 a local jail regulated by the Commission on Jail Standards, the
7 person commits an offense only if providing the cigarette or
8 tobacco product violates a rule or regulation adopted by the
9 sheriff or jail administrator that:

10 (A) prohibits the possession of a cigarette or
11 tobacco product by a person confined in the jail; or

12 (B) places restrictions on:

13 (i) the possession of a cigarette or
14 tobacco product by a person confined in the jail; or

15 (ii) the manner in which a cigarette or
16 tobacco product may be provided to a person confined in the jail.

17 (d) A person commits an offense if the person:

18 (1) possesses an alcoholic beverage, ~~[a]~~ controlled
19 substance, or dangerous drug while in a correctional facility or
20 civil commitment facility or on property owned, used, or controlled
21 by a correctional facility or civil commitment facility; or

22 (2) possesses a deadly weapon while in a correctional
23 facility or civil commitment facility.

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

1 the Texas Civil Commitment Office.

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

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

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

14 (3) makes a payment to a communication common carrier,
15 as defined by Article 18A.001, Code of Criminal Procedure, or to any
16 communication service that provides to its users the ability to
17 send or receive wire or electronic communications.

18 SECTION 6. Chapter 39, Penal Code, is amended by adding
19 Section 39.041 to read as follows:

20 Sec. 39.041. IMPROPER SEXUAL ACTIVITY WITH COMMITTED
21 PERSON. (a) In this section, "deviate sexual intercourse,"
22 "sexual contact," and "sexual intercourse" have the meanings
23 assigned by Section 21.01.

24 (b) An officer or employee of the Texas Civil Commitment
25 Office, a person who contracts with this state to perform a service
26 in a civil commitment facility or an employee of that person, or a
27 volunteer at a civil commitment facility commits an offense if the

1 person intentionally engages in deviate sexual intercourse, sexual
2 contact, or sexual intercourse with a person committed to a civil
3 commitment facility.

4 (c) An offense under this section is a felony of the third
5 degree.

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

9 (e) If conduct that constitutes an offense under this
10 section also constitutes an offense under any other law, the actor
11 may be prosecuted under this section, the other law, or both.

12 SECTION 7. Article 62.005(j), Code of Criminal Procedure,
13 is amended to read as follows:

14 (j) The department, for law enforcement purposes or for
15 supervision and treatment purposes, shall release all relevant
16 information described by Subsection (a), including information
17 that is not public information under Subsection (b), to a peace
18 officer, an employee of a local law enforcement authority, the
19 Texas Civil Commitment Office, or the attorney general on the
20 request of the applicable person or entity.

21 SECTION 8. Article 62.051, Code of Criminal Procedure, is
22 amended by amending Subsections (b), (e), and (f) and adding
23 Subsection (e-1) to read as follows:

24 (b) The department shall provide the Texas Department of
25 Criminal Justice, the Texas Juvenile Justice Department, the Texas
26 Civil Commitment Office, and each local law enforcement authority,
27 authority for campus security, county jail, and court with a form

1 for registering persons required by this chapter to register.

2 (e) Not later than the third day after the registration of a
3 person [~~a person's registering~~], the local law enforcement
4 authority with whom the person is registered shall send a copy of
5 the registration form to the department and, if the person resides
6 on the campus of a public or private institution of higher
7 education, to any authority for campus security for that
8 institution.

9 (e-1) The Texas Civil Commitment Office shall register with
10 the applicable local law enforcement authority on behalf of a
11 person who is civilly committed as a sexually violent predator
12 under Chapter 841, Health and Safety Code, and required to reside in
13 a civil commitment center. A person for whom registration is
14 completed under this subsection is not required to verify the
15 registration until the person is authorized to reside outside of
16 the civil commitment center.

17 (f) Not later than the seventh day after the date on which
18 the person is released or, for a person who is civilly committed as
19 a sexually violent predator under Chapter 841, Health and Safety
20 Code, authorized to reside outside of the civil commitment center,
21 a person for whom registration is completed under this chapter
22 shall report to the applicable local law enforcement authority to
23 verify the information in the registration form received by the
24 authority under this chapter. The authority shall require the
25 person to produce proof of the person's identity and residence
26 before the authority gives the registration form to the person for
27 verification. If the information in the registration form is

1 complete and accurate, the person shall verify registration by
2 signing the form. If the information is not complete or not
3 accurate, the person shall make any necessary additions or
4 corrections before signing the form.

5 SECTION 9. Subtitle A, Title 2, Civil Practice and Remedies
6 Code, is amended by adding Chapter 14A to read as follows:

7 CHAPTER 14A. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 14A.001. DEFINITIONS. In this chapter:

10 (1) "Civilly committed individual" means a sexually
11 violent predator as described by Section 841.003, Health and Safety
12 Code, who has been committed to a facility operated by or under
13 contract with the office.

14 (2) "Claim" means a cause of action governed by this
15 chapter.

16 (3) "Office" means the Texas Civil Commitment Office.

17 (4) "Trust account" means a civilly committed
18 individual's trust account administered by the office or by a
19 facility under contract with the office.

20 (5) "Unsworn declaration" means a document executed in
21 accordance with Chapter 132.

22 Sec. 14A.002. SCOPE OF CHAPTER. (a) This chapter applies
23 only to an action, including an appeal or original proceeding,
24 brought by a civilly committed individual in a district, county, or
25 justice court or an appellate court, including the supreme court or
26 the court of criminal appeals, in which an affidavit or unsworn
27 declaration of inability to pay costs is filed by the civilly

1 committed individual.

2 (b) This chapter does not apply to an action brought under
3 the Family Code.

4 SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM

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

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

10 (2) the claim is frivolous or malicious; or

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

14 (b) In determining whether a claim is frivolous or
15 malicious, the court may consider whether:

16 (1) the claim's realistic chance of ultimate success
17 is slight;

18 (2) the claim has no arguable basis in law or in fact;

19 (3) it is clear that the civilly committed individual
20 cannot prove the facts in support of the claim; or

21 (4) the claim is substantially similar to a previous
22 claim filed by the civilly committed individual because the claim
23 arises from the same operative facts.

24 (c) In determining whether Subsection (a) applies, the
25 court may hold a hearing. The hearing may be held before or after
26 service of process, and it may be held on motion of the court, a
27 party, or the court clerk.

1 (d) On the filing of a motion under Subsection (c), the
2 court shall suspend discovery relating to the claim pending the
3 hearing.

4 (e) A court that dismisses a claim brought by a civilly
5 committed individual housed in a facility operated by or under
6 contract with the office may notify the office of the dismissal and,
7 on the court's own motion or the motion of any party or the court
8 clerk, may advise the office that a mental health evaluation of the
9 individual may be appropriate.

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

14 (1) identifying the court that ordered the
15 individual's civil commitment under Chapter 841, Health and Safety
16 Code;

17 (2) indicating whether any cause of action or
18 allegation contained in the petition has previously been filed in
19 any other court, and if so, stating the cause of action or
20 allegation previously filed and complying with Subdivision (6) and
21 Subsection (b);

22 (3) identifying each action, other than an action
23 under the Family Code, previously brought by the individual in
24 which the individual was not represented by an attorney, without
25 regard to whether the individual was civilly committed at the time
26 the action was brought;

27 (4) certifying that all grievance processes

1 applicable to the matter that is the basis of the claim, if any,
2 have been exhausted;

3 (5) certifying that no court has found the individual
4 to be a vexatious litigant under Chapter 11; and

5 (6) describing each action that was previously brought
6 by:

7 (A) stating the operative facts for which relief
8 was sought;

9 (B) listing the case name, the cause number, and
10 the court in which the action was brought;

11 (C) identifying each party named in the action;
12 and

13 (D) stating the result of the action, including
14 whether the action or a claim that was a basis for the action was
15 dismissed as frivolous or malicious under Section 13.001, 14.003,
16 or 14A.051 or otherwise.

17 (b) If the affidavit or unsworn declaration filed under this
18 section states that a previous action or claim was dismissed as
19 frivolous or malicious, the affidavit or unsworn declaration must
20 state the date of the final order affirming the dismissal.

21 (c) The affidavit or unsworn declaration must be
22 accompanied by the certified copy of the trust account statement
23 required by Section 14A.054(f).

24 Sec. 14A.053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF
25 ADMINISTRATIVE REMEDIES. (a) A civilly committed individual who
26 files a claim that is subject to a grievance system established by
27 the office or a facility under contract with the office shall file

1 with the court:

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

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

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

11 (c) If a claim is filed before the grievance system
12 procedure is complete, the court shall stay the proceeding with
13 respect to the claim for a period not to exceed 180 days to permit
14 completion of the grievance system procedure.

15 Sec. 14A.054. COURT FEES, COURT COSTS, OTHER COSTS. (a) A
16 court may order a civilly committed individual who has filed a claim
17 to pay court fees, court costs, and other costs in accordance with
18 this section and Section 14A.055. The court clerk shall mail a copy
19 of the court's order and a certified bill of costs to the office or
20 facility under contract with the office, as appropriate.

21 (b) On the court's order, the civilly committed individual
22 shall pay an amount equal to the lesser of:

23 (1) 20 percent of the preceding six months' deposits to
24 the individual's trust account; or

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

27 (c) In each month following the month in which payment is

1 made under Subsection (b), the civilly committed individual shall
2 pay an amount equal to the lesser of:

3 (1) 10 percent of that month's deposits to the trust
4 account; or

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

7 (d) Payments under Subsection (c) shall continue until the
8 total amount of court fees, court costs, and other costs are paid or
9 until the civilly committed individual is released from
10 confinement.

11 (e) On receipt of a copy of an order issued under Subsection
12 (a), the office or facility under contract with the office shall
13 withdraw money from the trust account in accordance with
14 Subsections (b), (c), and (d). The office or facility shall hold the
15 money in a separate account and shall forward the money to the court
16 clerk on the earlier of the following dates:

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

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

22 (f) The civilly committed individual shall file a certified
23 copy of the individual's trust account statement with the court.
24 The statement must reflect the balance of the account at the time
25 the claim is filed and activity in the account during the six months
26 preceding the date on which the claim is filed. The court may
27 request the office to provide the information required under this

1 subsection.

2 (g) A civilly committed individual may authorize payment in
3 addition to that required by this section.

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

6 (i) A civilly committed individual may not avoid the fees
7 and costs assessed under this section by nonsuiting a party or by
8 voluntarily dismissing the action.

9 Sec. 14A.055. OTHER COSTS. (a) An order under Section
10 14A.054(a) must include the costs described by Subsection (b) if
11 the court finds that:

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

14 (2) a final order has been issued that affirms that the
15 action was dismissed as frivolous or malicious under Section
16 13.001, 14.003, or 14A.051 or otherwise.

17 (b) If Subsection (a) applies, costs of court must include
18 expenses incurred by the court or by the office or facility under
19 contract with the office, in connection with the claim and not
20 otherwise charged to the civilly committed individual under Section
21 14A.054, including:

22 (1) expenses of service of process;

23 (2) postage; and

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

27 Sec. 14A.056. HEARING. (a) The court may hold a hearing

1 under this chapter at a facility operated by or under contract with
2 the office or may conduct the hearing with video communications
3 technology that permits the court to see and hear the civilly
4 committed individual and that permits the individual to see and
5 hear the court and any other witness.

6 (b) A hearing conducted under this section by video
7 communications technology shall be recorded on videotape or by
8 other electronic means. The recording is sufficient to serve as a
9 permanent record of the hearing.

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

15 (b) A written statement submitted under this section must be
16 made under oath or made as an unsworn declaration under Section
17 [132.001](#).

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

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

25 (e) The court shall require that the civilly committed
26 individual be provided with a copy of each written statement or
27 document not later than the 14th day before the date on which the

1 hearing is to begin.

2 Sec. 14A.058. DISMISSAL OF CLAIM. (a) The court may enter
3 an order dismissing the entire claim or a portion of the claim under
4 this chapter.

5 (b) If a portion of the claim is dismissed, the court shall
6 designate the issues and defendants on which the claim may proceed,
7 subject to Sections 14A.054 and 14A.055.

8 (c) An order under this section is not subject to
9 interlocutory appeal by the civilly committed individual.

10 Sec. 14A.059. EFFECT ON OTHER CLAIMS. (a) Except as
11 provided by Subsection (b), on receipt of an order assessing fees
12 and costs under Section 14A.054 that indicates that the court made
13 the finding described by Section 14A.055(a), a court clerk may not
14 accept for filing another claim by the civilly committed individual
15 until the fees and costs assessed under Section 14A.054 are paid.

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

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

24 Sec. 14A.061. REVIEW AND RECOMMENDATION BY MAGISTRATES.

25 (a) The supreme court shall, by rule, adopt a system under which a
26 court may refer a suit governed by this chapter to a magistrate for
27 review and recommendation.

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

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

7 Sec. 14A.062. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE.
8 Notwithstanding Section 22.004, Government Code, this chapter may
9 not be modified or repealed by a rule adopted by the supreme court.

10 SECTION 10. Subchapter C, Chapter 552, Government Code, is
11 amended by adding Section 552.1345 to read as follows:

12 Sec. 552.1345. EXCEPTION: CONFIDENTIALITY OF CERTAIN
13 INFORMATION RELATING TO CIVILLY COMMITTED SEXUALLY VIOLENT
14 PREDATORS. (a) Except as provided by Subsection (b), information
15 obtained or maintained by the Texas Civil Commitment Office is
16 excepted from the requirements of Section 552.021 if it is
17 information about a person who is civilly committed as a sexually
18 violent predator under Chapter 841, Health and Safety Code.

19 (b) Subsection (a) does not apply to statistical or other
20 aggregated information relating to persons civilly committed to one
21 or more facilities operated by or under a contract with the office.

22 SECTION 11. Subchapter I, Chapter 2001, Government Code, is
23 amended by adding Section 2001.227 to read as follows:

24 Sec. 2001.227. TEXAS CIVIL COMMITMENT OFFICE. This chapter
25 does not apply to a rule or internal procedure of the Texas Civil
26 Commitment Office that applies to a person who is civilly committed
27 as a sexually violent predator under Chapter 841, Health and Safety

1 Code, or to an action taken under that rule or procedure.

2 SECTION 12. Section 2155.144(a), Government Code, is
3 amended to read as follows:

4 (a) This section applies only to the Health and Human
5 Services Commission, each health and human services agency, ~~and~~
6 the Department of Family and Protective Services, and agencies
7 administratively attached to the Health and Human Services
8 Commission. For the purposes of this section, the Department of
9 Family and Protective Services or an agency administratively
10 attached to the Health and Human Services Commission is considered
11 a health and human services agency.

12 SECTION 13. Section 109.051(b), Occupations Code, is
13 amended to read as follows:

14 (b) Notwithstanding Subtitle B, Title 3, of this code or
15 Chapter 611, Health and Safety Code, a person described by
16 Subsection (a), on request or in the normal course of business,
17 shall release information concerning the treatment of a sex
18 offender to:

- 19 (1) another person described by Subsection (a);
20 (2) a criminal justice agency; ~~or~~
21 (3) a local law enforcement authority; or
22 (4) the Texas Civil Commitment Office.

23 SECTION 14. Section 109.052, Occupations Code, is amended
24 to read as follows:

25 Sec. 109.052. RELEASE BY CRIMINAL JUSTICE AGENCY. A
26 criminal justice agency, on request or in the normal course of
27 official business, shall release information concerning the

1 treatment of a sex offender to:

- 2 (1) another criminal justice agency;
- 3 (2) a local law enforcement authority; [~~or~~]
- 4 (3) a person described by Section 109.051(a); or
- 5 (4) the Texas Civil Commitment Office.

6 SECTION 15. Section 109.053, Occupations Code, is amended
7 to read as follows:

8 Sec. 109.053. RELEASE BY LOCAL LAW ENFORCEMENT AUTHORITY.
9 A local law enforcement authority, on request or in the normal
10 course of official business, shall release information concerning
11 the treatment of a sex offender to:

- 12 (1) another local law enforcement authority;
- 13 (2) a criminal justice agency; [~~or~~]
- 14 (3) a person described by Section 109.051(a); or
- 15 (4) the Texas Civil Commitment Office.

16 SECTION 16. Sections 841.002(1) and (8), Health and Safety
17 Code, are amended to read as follows:

18 (1) "Attorney representing the state" means a district
19 attorney, criminal district attorney, or county attorney with
20 felony criminal jurisdiction who represents the state in a [~~civil~~
21 ~~commitment~~] proceeding under this chapter.

- 22 (8) "Sexually violent offense" means:
 - 23 (A) an offense under Section 21.02, 21.11(a)(1),
24 22.011, or 22.021, Penal Code;
 - 25 (B) an offense under Section 20.04(a)(4), Penal
26 Code, if the person committed the offense with the intent to violate
27 or abuse the victim sexually;

1 (C) an offense under Section 30.02, Penal Code,
2 if the offense is punishable under Subsection (d) of that section
3 and the person entered the habitation [~~committed the offense~~] with
4 the intent to commit an offense listed in Paragraph (A) or (B) or
5 committed or attempted to commit an offense listed in Paragraph (A)
6 or (B);

7 (D) an offense under Section 19.02 or 19.03,
8 Penal Code, that, during the guilt or innocence phase or the
9 punishment phase for the offense, during the adjudication or
10 disposition of delinquent conduct constituting the offense, or
11 subsequently during a civil commitment proceeding under Subchapter
12 D, is determined beyond a reasonable doubt to have been based on
13 sexually motivated conduct;

14 (E) an attempt, conspiracy, or solicitation, as
15 defined by Chapter 15, Penal Code, to commit an offense listed in
16 Paragraph (A), (B), (C), or (D);

17 (F) an offense under prior state law that
18 contains elements substantially similar to the elements of an
19 offense listed in Paragraph (A), (B), (C), (D), or (E); or

20 (G) an offense under the law of another state,
21 federal law, or the Uniform Code of Military Justice that contains
22 elements substantially similar to the elements of an offense listed
23 in Paragraph (A), (B), (C), (D), or (E).

24 SECTION 17. Section 841.042, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 841.042. ASSISTANCE FROM SPECIAL PROSECUTION UNIT. On
27 request of the attorney representing the state, the special

1 prosecution unit shall provide legal, financial, and technical
2 assistance to the attorney for a [~~civil commitment~~] proceeding
3 conducted under this chapter.

4 SECTION 18. Section 841.0834, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 841.0834. MOVEMENT BETWEEN PROGRAMMING TIERS. (a)
7 The office shall transfer between programming tiers a committed
8 person required to reside in a total confinement facility [~~to less~~
9 ~~restrictive housing and supervision~~] if the transfer is in the best
10 interests of the person and conditions can be imposed that
11 adequately protect the community.

12 (b) Without the office's approval, a committed person may
13 file a petition with the court for transfer to the next less
14 restrictive tier [~~housing and supervision~~]. The court shall deny
15 the transfer if the petition is filed before the 180th day after the
16 date an order was entered under Subchapter D, F, or G or a previous
17 order was entered under this section. The court shall grant the
18 transfer if the court determines by clear and convincing evidence
19 that the transfer is in the best interests of the person and that
20 the office can impose conditions [~~can be imposed~~] that adequately
21 protect the community.

22 (c) A committed person who files a petition under Subsection
23 (b) [~~this subsection~~] shall serve a copy of the petition on the
24 office and the attorney representing the state.

25 (d) [~~(c)~~] The office shall transfer [~~return~~] a committed
26 person who is not required to reside in a total confinement facility
27 back [~~has been transferred to less restrictive housing and~~

1 ~~supervision~~] to a more restrictive setting in a total confinement
2 facility if the office considers the transfer necessary to further
3 treatment and to protect the community. The decision to transfer
4 the person must be based on the person's behavior or progress in
5 treatment.

6 (e) [~~(d)~~] Not later than the 90th day after the date a
7 committed person is returned to a more restrictive setting in a
8 total confinement facility under Subsection (d) [~~(c)~~], the
9 committing court shall hold a hearing via videoconference to review
10 the office's determination. The court shall order the office to
11 transfer the person to a less restrictive tier [~~housing and~~
12 ~~supervision~~] only if the court determines by clear and convincing
13 evidence that the office's determination was not made in accordance
14 with Subsection (d) [~~(c)~~]. The committed person may waive the right
15 to a hearing under this subsection.

16 SECTION 19. Section 841.0838, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 841.0838. USE OF RESTRAINTS. (a) An employee of the
19 office, or a person who contracts with the office or an employee of
20 that person, may use mechanical [~~or chemical~~] restraints on a
21 committed person residing in a civil commitment center or while
22 transporting a committed person who resides at the center only if:

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

26 (A) includes instruction on the office's
27 approved mechanical restraint techniques and devices and the

1 office's verbal de-escalation policies, procedures, and practices;
2 and

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

6 (2) the mechanical restraint is:

7 (A) considered necessary to maintain the safety
8 and security of the center or staff [~~used as a last resort~~];

9 (B) considered necessary to maintain the safety
10 of the public [~~necessary to stop or prevent:~~

11 [~~(i) imminent physical injury to the~~
12 ~~committed person or another,~~

13 [~~(ii) threatening behavior by the committed~~
14 ~~person while the person is using or exhibiting a weapon,~~

15 [~~(iii) a disturbance by a group of~~
16 ~~committed persons, or~~

17 [~~(iv) an absconsion from the center~~]; and

18 (C) the least restrictive restraint necessary,
19 used for the minimum duration necessary[~~, to prevent the injury,~~
20 ~~property damage, or absconsion~~].

21 (b) An employee of the office, or a person who contracts
22 with the office or an employee of that person, may use chemical
23 restraints on a committed person residing in a civil commitment
24 center or while transporting a committed person who resides at the
25 center only if:

26 (1) the employee or person completes a training
27 program approved by the office on the use of chemical restraints

1 that:

2 (A) includes instruction on the office's
3 approved chemical restraint techniques and devices and the office's
4 verbal de-escalation policies, procedures, and practices; and

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

8 (2) the chemical restraint is:

9 (A) used as a last resort;

10 (B) necessary to prevent or stop:

11 (i) physical injury to the committed person
12 or another;

13 (ii) threatening behavior by the committed
14 person;

15 (iii) a disturbance by a group of committed
16 persons; or

17 (iv) an absconsion from the center; and

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

21 (c) The office shall develop procedures governing the use of
22 mechanical or chemical restraints on committed persons.

23 SECTION 20. Sections 841.123(a), (c), and (d), Health and
24 Safety Code, are amended to read as follows:

25 (a) If the committed person files a petition for release
26 without the office's authorization, the person shall serve the
27 petition on the court, ~~and~~ the attorney representing the state,

1 and the office.

2 (c) Except as provided by Subsection (d), the judge shall
3 deny without a hearing a petition for release filed without the
4 office's authorization if [~~the petition is frivolous or if~~]:

5 (1) the judge determines by a preponderance of the
6 evidence that [~~petitioner previously filed without the office's~~
7 ~~authorization another petition for release; and~~

8 [~~(2) the judge determined on review of the previous~~
9 ~~petition or following a hearing that:~~

10 [~~(A) the petition was frivolous; or~~

11 [~~(B)~~] the petitioner's behavioral abnormality
12 has [~~had~~] not changed to the extent that the petitioner is [~~was~~] no
13 longer likely to engage in a predatory act of sexual violence; or

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

18 (d) The judge is not required to deny a petition under
19 Subsection (c)(2) if the judge determines by a preponderance of the
20 evidence [~~probable cause exists to believe~~] that the petitioner's
21 behavioral abnormality has changed to the extent that the
22 petitioner is no longer likely to engage in a predatory act of
23 sexual violence.

24 SECTION 21. Chapter 841, Health and Safety Code, is amended
25 by adding Subchapter I to read as follows:

26 SUBCHAPTER I. ADMINISTRATION OF CERTAIN MEDICATION TO CERTAIN

27 SEXUALLY VIOLENT PREDATORS

1 Sec. 841.201. DEFINITIONS. In this subchapter:

2 (1) "Capacity" means a committed person's ability to:

3 (A) understand the nature and consequences of a
4 proposed treatment, including the benefits, risks, and
5 alternatives to the proposed treatment; and

6 (B) make a decision whether to undergo the
7 proposed treatment.

8 (2) "Medication-related emergency" means a situation
9 in which it is immediately necessary to administer medication to a
10 committed person to prevent:

11 (A) imminent probable death or substantial
12 bodily harm to the committed person because the committed person:

13 (i) overtly or continually is threatening
14 or attempting to commit suicide or serious bodily harm; or

15 (ii) is behaving in a manner that indicates
16 that the committed person is unable to satisfy the committed
17 person's need for nourishment, essential medical care, or
18 self-protection; or

19 (B) imminent physical or emotional harm to
20 another because of threats, attempted acts, or acts the committed
21 person overtly or continually makes or commits.

22 (3) "Psychoactive medication" has the meaning
23 assigned by Section [574.101](#).

24 Sec. 841.202. ADMINISTRATION OF MEDICATION TO COMMITTED
25 PERSON. A person may not administer a psychoactive medication to a
26 committed person who refuses to take the medication voluntarily
27 unless:

1 (1) the committed person is having a
2 medication-related emergency; or

3 (2) the committed person is under an order issued
4 under Section 841.205 authorizing the administration of medication
5 regardless of the committed person's refusal.

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

13 (1) the physician believes that the committed person
14 lacks the capacity to make a decision regarding the administration
15 of the psychoactive medication;

16 (2) the physician determines that the medication is
17 the proper course of treatment for the committed person;

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

20 (4) the committed person, verbally or by other
21 indication, refuses to take the medication voluntarily.

22 (b) An application filed under this section must state:

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

27 (2) each medication the physician wants the court to

1 compel the committed person to take;

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

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

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

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

11 (d) A hearing on the application must be held not later than
12 the 30th day after the date the application was filed. If the
13 committed person is transferred to a mental health facility in
14 another county, the court may transfer the application to the
15 county where the committed person has been transferred.

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

21 Sec. 841.204. RIGHTS OF COMMITTED PERSON. A committed
22 person for whom an application under Section 841.203 is filed is
23 entitled to:

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

26 (2) meet with that attorney as soon as is practicable
27 to prepare for the hearing and to discuss any of the committed

1 person's questions or concerns;

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

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

9 (5) be present at the hearing;

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

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

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

19 (b) The court may issue an order under this section only if
20 the court finds by clear and convincing evidence after a hearing
21 that the committed person:

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

26 (2) as determined under Section 841.206, presents a
27 danger to the committed person or others in the civil commitment

1 center in which the committed person is being treated.

2 (c) In making the finding that treatment with the proposed
3 medication is in the best interest of the committed person, the
4 court shall consider:

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

7 (2) the committed person's religious beliefs;

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

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

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

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

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

19 (d) A hearing under this subchapter shall be conducted on
20 the record by the probate judge or judge with probate jurisdiction,
21 except as provided by Subsection (e).

22 (e) A judge may refer a hearing to a magistrate or
23 court-appointed associate judge who has training regarding
24 psychoactive medications. The magistrate or associate judge may
25 provide the notice, set hearing dates, and appoint attorneys as
26 required by this subchapter. A record is not required if the
27 hearing is held by a magistrate or court-appointed associate judge.

1 (f) A party is entitled to a hearing de novo by the judge if
2 an appeal of the magistrate's or associate judge's report is filed
3 with the court not later than the third day after the date the
4 report is issued. The hearing de novo must be held not later than
5 the 30th day after the date the application under Section 841.203
6 was filed.

7 (g) If a hearing or an appeal of a magistrate's or associate
8 judge's report is to be held in a county court in which the judge is
9 not a licensed attorney, the committed person or the committed
10 person's attorney may request that the proceeding be transferred to
11 a court with a judge who is licensed to practice law in this state.
12 The county judge shall transfer the case after receiving the
13 request, and the receiving court shall hear the case as if it had
14 been originally filed in that court.

15 (h) As soon as practicable after the conclusion of the
16 hearing, the committed person is entitled to have provided to the
17 committed person and the committed person's attorney written
18 notification of the court's determinations under this section. The
19 notification must include a statement of the evidence on which the
20 court relied and the reasons for the court's determinations.

21 (i) An order issued under this section shall authorize the
22 administration to a committed person, regardless of the committed
23 person's refusal, of one or more classes of psychoactive
24 medications specified in the application and consistent with the
25 committed person's diagnosis. The order shall permit an increase
26 or decrease in a medication's dosage, continuation of medication
27 authorized but discontinued during the period the order is valid,

1 or the substitution of a medication within the same class.

2 (j) The classes of psychoactive medications in the order
3 must conform to classes determined by the Health and Human Services
4 Commission.

5 (k) An order issued under this section may be reauthorized
6 or modified on the petition of a party. The order remains in effect
7 pending action on a petition for reauthorization or modification.
8 For the purpose of this subsection, "modification" means a change
9 of a class of medication authorized in the order.

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

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

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

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

26 Sec. 841.207. COSTS. (a) The court shall order the payment
27 of reasonable compensation to attorneys, physicians, language

1 interpreters, sign interpreters, and associate judges appointed
2 under this subchapter. The compensation paid shall be assessed as
3 court costs.

4 (b) The agency responsible for services under Section
5 841.0835(a) shall pay as provided by Subsection (a) the costs of a
6 hearing held under Section 841.205 regarding an order for the
7 administration of psychoactive medication to a committed person.

8 Sec. 841.208. APPEAL. (a) An appeal from an order issued
9 under Section 841.205, or from a renewal or modification of an
10 order, must be filed in the court of appeals for the county in which
11 the order is issued.

12 (b) Notice of appeal must be filed not later than the 10th
13 day after the date on which the order is issued.

14 (c) When an appeal is filed, the clerk shall immediately
15 send a certified transcript of the proceedings to the court of
16 appeals.

17 (d) An order issued under Section 841.205 is effective
18 pending an appeal of the order.

19 (e) The court of appeals and supreme court shall give an
20 appeal under this section preference over all other cases and shall
21 advance the appeal on the docket. The courts may suspend all rules
22 relating to the time for filing briefs and docketing cases.

23 Sec. 841.209. EXPIRATION OF ORDER. An order issued under
24 Section 841.205 expires on the first anniversary of the date the
25 order was issued.

26 SECTION 22. The changes in law made by this Act in amending
27 Sections 20.02, 21.07, 21.08, 22.01, and 38.11, Penal Code, apply

1 only to an offense committed on or after the effective date of this
2 Act. An offense committed before the effective date of this Act is
3 governed by the law in effect on the date the offense was committed,
4 and the former law is continued in effect for that purpose. For
5 purposes of this section, an offense was committed before the
6 effective date of this Act if any element of the offense occurred
7 before that date.

8 SECTION 23. Chapter 14A, Civil Practice and Remedies Code,
9 as added by this Act, applies only to an action filed on or after the
10 effective date of this Act.

11 SECTION 24. Subchapter I, Chapter 841, Health and Safety
12 Code, as added by this Act, applies to a hearing ordering the
13 administration of psychoactive medication to a committed person
14 under that chapter that occurs on or after the effective date of
15 this Act, regardless of whether the applicable conduct of the
16 committed person being evaluated for that purpose occurred before,
17 on, or after the effective date of this Act.

18 SECTION 25. This Act takes effect September 1, 2023.