

BILL ANALYSIS

Senate Research Center
77R1483 KEL-D

S.B. 1048
By: Shapiro
Criminal Justice
3/16/2001
As Filed

DIGEST AND PURPOSE

The 76th Legislature passed the Civil Commitment Act, which provides for the outpatient civil commitment of sexually violent predators. The Act became effective on September 1, 1999. During the course of the first year of implementation, many small changes needed to streamline the process were identified. As proposed, S.B. 1048 makes several changes to the Civil Commitment Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 841.002(4), Health and Safety Code, by redefining “council.”

SECTION 2. Amends Sections 841.005, 841.006, and 841.007, Health and Safety Code, as follows:

Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS. Requires the Office of State Counsel for Offenders (state counsel) to represent an indigent person subject to a civil commitment proceeding under this chapter, except that the court is required to appoint other counsel if for any reason the state counsel is unable to represent the indigent person.

Sec. 841.006. APPLICATION OF CHAPTER. Provides that this chapter does not create for the committed person a cause of action against another person for failure to give notice within a period required by Subchapter B, C, or D.

Sec. 841.007. New heading: DUTIES OF COUNCIL ON SEX OFFENDER TREATMENT. Provides that the Council on Sex Offender Treatment (council), rather than the Interagency Council on Sex Offender Treatment, is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION 3. Amends Sections 841.022(a) and (c), Health and Safety Code, to require the executive director of the Texas Department of Criminal Justice (TDCJ) and the commissioner of the Texas Department of Mental Health and Mental Retardation (TXMHMR) jointly to establish a team to review records of a person referred to the team under Section 841.021, and to require the team to include one person, rather than two persons, from TXMHMR and two persons, rather than one person, from the council. Requires the team, not later than the 60th, rather than 30th, day after the date the team receives notice under Section 841.021(a) or (b), to perform certain tasks.

SECTION 4. Amends Section 841.023, Health and Safety Code, to make conforming changes.

SECTION 5. Amends Section 841.041(b), Health and Safety Code, to require a petition described by Subsection (a) to be filed not later than the 90th, rather than 60th, day after the date the person is referred to the attorney representing the state.

SECTION 6. Amends Section 841.061, Health and Safety Code, to require the judge, not later than the 180th, rather than 60th, day after the date a petition is filed under Section 841.041, to conduct a trial to determine whether the person is a sexually violent predator. Provides that additional rights of the person at the trial include the right to present evidence on the person's behalf, except that a person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert examinations that are required or permitted of the state to prepare for the person's trial. Provides that a person who fails to submit to expert examination on the state's behalf as required by this section is subject to certain consequences.

SECTION 7. Amends Section 841.081, Health and Safety Code, to require the outpatient treatment and supervision to begin on the entry of an order of civil commitment by the judge, rather than the person's release from a secure correctional facility or discharge from a state hospital, and is required to continue until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

SECTION 8. Amends Sections 841.082(a) and (c), Health and Safety Code, to require the judge, before entering an order directing a person's outpatient civil commitment, to impose on the person certain requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. Requires the judge, immediately after the person's commitment, to transfer jurisdiction of the case to a district court, other than a family district court, having jurisdiction in the county in which the person, rather than defendant, is residing.

SECTION 9. Amends Sections 841.083(b), (c), and (d), Health and Safety Code, to require the council to enter into an interagency agreement with the Texas Department of Public Safety (DPS) for the provision of a tracking service. Provides that if the equipment necessary to implement that service is available through a contract entered into by the General Services Commission, DPS is required to acquire that equipment through that contract. Requires the council to enter into an interagency agreement with TDCJ for any necessary supervised housing. Requires the council to reimburse that TDCJ for housing costs under this section. Makes nonsubstantive changes.

SECTION 10. Amends Section 841.141(a), Health and Safety Code, to require the council by rule to administer treatment and supervision under this chapter. Requires rules adopted by the council to be related to treatment and supervision under this chapter.

SECTION 11. Amends Section 841.142(c), Health and Safety Code, to make a nonsubstantive change.

SECTION 12. Amends Section 841.144(b), Health and Safety Code, to require a court to appoint counsel as appropriate under Section 841.005 to assist an indigent person.

SECTION 13. Amends Sections 841.146(b) and (c), Health and Safety Code, to provide that a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases, except as otherwise provided by this subsection. Provides that to the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls. Requires the State of Texas, in an amount not to exceed \$1,600, to pay all costs associated with a civil commitment proceeding conducted under Subchapter D. Requires the State of Texas to pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and pay the reasonable cost of the person's outpatient treatment and supervision.

SECTION 14. Amends Chapter 841H, Health and Safety Code, by adding Sections 841.1461, 841.1462, 841.1463, and 841.150, as follows:

Sec. 841.1461. CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR. Provides that a person who suffers from a behavioral abnormality as determined under this chapter is not because of that

abnormality a person of unsound mind for purposes of Section 15-a, Article, I, Texas Constitution.

Sec. 841.1462. **PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM.** Provides that personal information, including a home address, home telephone number, and social security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

Sec. 841.1463. **FAILURE TO GIVE NOTICE WITHIN RELEVANT PERIOD NOT JURISDICTIONAL ERROR.** Provides that the periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but a failure to give notice within the relevant period is not a jurisdictional error.

Sec. 841.150. **EFFECT OF CERTAIN SUBSEQUENT CONVICTIONS, JUDGMENTS, OR VERDICTS ON ORDER OF CIVIL COMMITMENT.** Provides that certain convictions, judgments, and verdicts do not affect an order of civil commitment under this chapter, except that the statutory duties imposed by this chapter are suspended for the duration of any confinement of a person who receives a conviction described by this section.

SECTION 15. Amends Section 841.147, Health and Safety Code, to provide that the Texas Department of Health is immune from liability for good faith conduct under this chapter.

SECTION 16. Provides that the change in law made by this Act applies to civil commitment proceedings initiated before, on, or after the effective date of this Act.

SECTION 17. Effective date: September 1, 2001.