

- SUBJECT:** Civil commitment of murderers whose crimes are sexually motivated
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 6 ayes — Madden, R. Allen, Haggerty, Hochberg, McReynolds, Noriega  
0 nays  
1 absent — D. Jones
- WITNESSES:** For — Andy Kahan, Mayor’s Crime Office; Mitch Poe, Tarrant County District Attorney’s Office; Janice Sager, Texans for Equal Justice; Lisa Gabbert; Rona Stratton Smith; Barry Macha  
  
Against — None  
  
On — Gina DeBottis, Special Prosecution Unit; Allison Taylor, Lisa Worry, Council on Sex Offender Treatment
- BACKGROUND:** Under Health and Safety Code, sec. 841, certain repeat sex offenders released from prison or a state mental health facility can be committed through civil courts to outpatient treatment and supervision. The law authorizes the civil commitment of sexually violent predators, defined in sec. 841.003 as persons who are repeat sexual offenders and who suffer from a behavioral abnormality that makes them likely to engage in a predatory act of sexual violence.
- Sexually violent offenses are defined as:
- indecency with a child involving contact;
  - sexual assault and aggravated sexual assault;
  - aggravated kidnapping with intent to violate or abuse the victim sexually;
  - first-degree burglary with intent to commit one of these offenses;
  - attempts, conspiracy, or solicitation to commit of any of these offenses; or
  - offenses under prior state law, another state’s laws, federal law, or military law with substantially similar elements.

A “repeat sexual offender” or “sexually violent predator” is defined as a person who has been convicted of more than one sexually violent offense and a sentence was imposed for at least one of the offenses, or who:

- was convicted of a sexually violent offense, regardless of whether the sentence was imposed or probated and the person was subsequently discharged from probation;
- pled guilty or no contest to a sexually violent offense in return for a grant of deferred adjudication;
- was found not guilty by reasons of insanity for a sexually violent offense; or
- was found by a juvenile court to have committed a sexually violent offense and was committed to the Texas Youth Commission under the determinate (fixed) sentencing laws.

To be considered a repeat sexual offender, a person must, in addition to one of the four circumstances described above, subsequently commit a sexually violent offense for which the person:

- was convicted and a sentence for the offense was imposed; or
- was adjudged not guilty by reason of insanity.

A multidisciplinary team evaluates the sex offenders for potential civil commitment and, if the team determines that the offender meets the criteria for commitment, a process of evaluation begins that can result in a trial. A special division of the prison prosecution unit represents the state and handles civil commitment proceedings. The Office of State Counsel for Offenders within the Texas Department of Criminal Justice (TDCJ) is required to represent indigent offenders being considered for civil commitment.

If a judge or jury finds that a person is a sexually violent predator, the judge must commit the person for outpatient treatment and supervision to be coordinated by a case manager employed by the Council on Sex Offender Treatment.

The judge is authorized to impose any requirements deemed necessary and must require the person to participate in treatment, submit to tracking, reside in a particular location, and not contact a victim or potential victim. Each judge must conduct a biennial review of the status of a committed

person. The law also contains provisions for the committed person to petition for release.

DIGEST:

CSHB 1921 would expand the criminal offenses that could qualify a person for civil commitment to include murder and capital murder if, during the trial or during a civil commitment proceeding, it was determined beyond a reasonable doubt that the crime had been based on sexually motivated conduct.

The Council on Sex Offender Treatment would be required to provide, through the case management system, any supervision or tracking services required for persons who had been civilly committed and lived in Dallas, Harris, or Tarrant counties. The council would have to provide the tracking through two Department of State Health Services employees.

Civil commitment duties would be suspended if a person was confined or committed by governmental action to a community center, mental health facility, or state school.

The current requirement that judges require persons who have been civilly committed to reside in a particular location would be amended so that judges would have to require that a person live in a Texas residential facility under contract with the Council on Sex Offender Treatment or another facility approved by the council. The court that civilly committed a person would retain jurisdiction in the case instead of transferring it to a district court where the person lived.

The Council on Sex Offender Treatment would be required to enter into a memorandum of understanding with the Department of Public Safety for assistance in the preparation of criminal complaints, warrants, and other documents and in the apprehension and arrest of a person. Monthly status reports from treatment and supervision providers to case managers no longer would be required.

The bill would take effect September 1, 2005, and would apply only to persons who on or after the effective date were serving sentences in TDCJ or committed to the Texas Department of Mental Health and Mental Retardation for offenses committed before, on, or after that date.

SUPPORTERS  
SAY:

CSHB 1921 would expand the scope of Texas' civil commitment statute so that violent sexual predators who committed murder but did not qualify for commitment could be considered for the process. The statute currently lists several offenses that can qualify persons for the state's civil commitment law, but the list is narrowly drawn to focus on sex offenses. However, some murderers are also violent sexual predators who should be evaluated for the civil commitment program.

CSHB 1921 would solve this problem by adding murder or capital murder based on sexually motivated conduct to the list of offenses that could trigger the state's civil commitment process. The bill would allow Texas to identify the very worst violent sexual predators and ensure that offenders in this small but dangerous group were under supervision and received treatment, if the qualifications in Texas law were met. CSHB 1921 would ensure that the new authorization captured only sexual predators by requiring a finding beyond a reasonable doubt that the murder was based on sexually motivated conduct. This finding would be similar to other findings made by courts.

In one highly publicized Texas case, someone who has been called a sexual predator was convicted of murder and therefore is not eligible for civil commitment. Wesley Wayne Miller is serving a 25-year prison sentence for murder with a deadly weapon. He also has a conviction for burglary of a habitation and been a suspect in violent rape cases. If he serves all of his sentence, he will be released in 2008 with no state supervision. CSHB 1921 would allow the state to consider him for civil commitment and continue to supervise and treat him upon release.

Sexually violent predators are at an extremely high risk to reoffend, and the state should use all available means to treat them and to protect the community. The bill would allow these predators to be subject to the state's intensive outpatient sex offender treatment, high technology global positioning satellite tracking, and comprehensive case management. Because failure to comply with a commitment order can be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), offenders who do not comply with treatment can be charged with another offense and possibly sent back to prison.

All the safeguards in current law that ensure the state is sensitive and respectful of a person's constitutional rights would apply to offenders described by CSHB 1921. They would have to be repeat offenders who

had been found guilty beyond a reasonable doubt of serious, violent sexual offenses. They would be subject to numerous reviews and exams before a court civil commitment proceeding ever began, and their rights during a proceeding judiciously would be protected. Their constitutional rights would be protected under the state's constitutional and well defined civil commitment process.

CSHB 1921 also would make the monitoring of sex offenders in Dallas, Harris, and Tarrant counties more efficient. Currently, the state pays for part-time case managers in these counties. However, each county now has enough persons under civil commitment monitoring that it would be less expensive for the state to hire the full-time case managers authorized by CSHB 1921.

The bill also would ensure that civil commitment resources were used only when a person was in the community. It would require the suspension of civil commitment duties if a person was confined under another law to a community center, mental health facility or state school. Civil commitment duties could resume again if the person were released.

Judges would be required to place persons under civil commitment in a facility under contract with the Council on Sex Offender Treatment or approved by the council to ensure that courts did not require offenders to live in remote areas without monitoring resources.

**OPPONENTS  
SAY:**

If the state continues to expand the civil commitment laws, it runs the risk of making these laws overly broad and of increasing the calls to add more offenses to the list of qualifying crimes.

CSHB 1921 should not require judges to sentence persons to live in specific types of facilities. It may be in the interests of some persons to live near their families or where they could gain employment rather than wherever there was space available in a state facility. Judges are in the best position to weigh these factors alongside the interests of public safety and decide where an offender should live.

NOTES: The committee substitute would require the council to provide tracking services in some counties, suspend civil commitment duties when a person otherwise was confined, and require defendants to live in specific facilities.