

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1198
By: Shapiro
Criminal Justice
4/13/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the special prosecution unit (unit) does not have dual jurisdiction to prosecute civil commitment violation trials. Current statute is also unclear as to whether the local district attorney can invite the unit to assist in these cases. The assistance of the unit could help the district attorney because he or she is familiar with the offender and the case. In the past several years, there have been instances where local district attorneys have not prosecuted violations because the violation did not constitute a new criminal offense. This is not the intent of the civil commitment statute. By involving the unit--which knows the terms of the order intimately and knows the background of the offender--this problem will be minimized.

There is currently a six-month backlog in civil commitment trials because the one judge who hears these cases is continually being struck under Section 74.053 (Objection to Judge Assigned to a Trial Court), Government Code.

C.S.S.B. 1198 corrects the name of the division which represents the state in these suits, exempts judges from being struck under Section 74.053, Government Code, and allows the unit to aid local district attorneys in the prosecution of a civil commitment violation at the invitation of the local district attorney. This bill also clarifies that a civil commitment proceeding includes the trial, the actual civil commitment, and the biennial exam.

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, Health and Safety Code, by amending Subdivision (1) and (5) and adding Subdivision (3-a) to redefine "attorney representing the state" and "predatory act" and to define "civil commitment proceeding."

SECTION 2. Amends Section 841.004, Health and Safety Code, as follows:

Sec. 841.004. New heading: SPECIAL PROSECUTION UNIT. Provides that the civil division of the special prosecution unit (division), rather than the special division of the prison prosecution unit, is responsible for initiating and pursuing a civil commitment proceeding under this chapter (Civil Commitment of Sexually Violent Predators).

SECTION 3. Amends Section 841.061, Health and Safety Code, by adding Subsection (g), to provide that a judge assigned to preside over a trial under this subchapter is not subject to an objection under Section 74.053 (Objection to Judge Assigned to a Trial Court), Government Code, other than an objection made under Section 74.053(d) (prohibiting an assigned judge or justice who was defeated in the last primary or general election from sitting in a case if either party objects to him or her), Government Code.

SECTION 4. Amends Section 841.085, Health and Safety Code, as follows:

Sec. 841.085. New heading: CRIMINAL PENALTY; PROSECUTION OF OFFENSE.
(a) Provides that a person commits an offense if, after having been adjudicated and civilly

committed as a sexually violent predator under this chapter, the person violates a civil commitment requirement imposed under Section 841.082 (Commitment Requirements).

(b) Creates this subsection from existing text.

(c) Authorizes an attorney employed by the division described by Section 841.004 (Prison Prosecution Unit), at the request of the local prosecuting attorney, to assist in the trial of an offense under this section.

SECTION 5. Amends Section 841.147, Health and Safety Code, to provide that an employee or officer of the Department of State Health Services (DSHS), rather than the Texas Department of Mental Health and Mental Retardation, the Department of Aging and Disability Services (DADS), rather than the Texas Department of Health, and the division is immune from liability for good faith conduct under this chapter.

SECTION 6. Amends Chapter 13, Code of Criminal Procedure, by adding Article 13.315, as follows:

Art. 13.315. FAILURE TO COMPLY WITH SEXUALLY VIOLENT PREDATOR CIVIL COMMITMENT REQUIREMENT. Authorizes an offense under Section 841.085, Health and Safety Code, to be prosecuted in the county in which any element of the offense occurs or in Montgomery County.

SECTION 7. (a) Provides that, except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an individual who on or after September 1, 2007, is serving a sentence in the Texas Department of Criminal Justice or is committed to DSHS or DADS for an offense committed before, on, or after the effective date of this Act.

(b) Makes application of Section 841.061(g), Health and Safety Code, of this Act prospective.

SECTION 8. Effective date, except for Section 3: September 1, 2007. Effective date, Section 3 of this Act: upon passage or September 1, 2007.