

BILL ANALYSIS

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S.B. 2037
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This legislation relates to the creation of a state agency to perform the functions relating to the sex offender civil commitment program under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code, that are currently performed by the Texas Council on Sex Offender Treatment (TCSOT), a governor-appointed independent council administratively attached to the Department of State Health Services' Professional Licensing and Certification Unit. S.B. 2037 amends the Government Code by adding Chapter 420A titled "Office of Violent Sex Offender Management."

The new office would perform appropriate functions related to the sex offender civil commitment program provided under Chapter 841, Health and Safety Code, including functions related to the provision of treatment and supervision to civilly committed sex offenders. The office would be a state agency, governed by a three-member governor-appointed board, serving staggered four-year terms, which will meet monthly. The office also would have rulemaking authority under Chapter 841, Health and Safety Code.

As proposed, S.B. 2037 amends current law relating to the sex offender civil commitment program and to the creation of a state agency to perform the functions relating to the sex offender civil commitment program that are currently performed by the Texas Council on Sex Offender Treatment.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to Texas Council on Sex Offender Treatment is transferred to Office of Violent Sex Offender Management in SECTION 11 (Section 841.141, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Government Code, by adding Chapter 420A, as follows:

CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

Sec. 420A.001. DEFINITIONS. Defines "board" and "office."

Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) Provides that the Office of Violent Sex Offender Management (OVSOM) is a state agency.

(b) Provides that the office is governed by a board (board) composed of the following three members appointed by the governor: one member experienced in the management of sex offenders; one member experienced in the investigation or prosecution of sex offenses; and one member experienced in counseling or advocating on behalf of victims of sexual assault.

(c) Provides that members of the board serve staggered two-year terms. Provides that two members' terms expire February 1 of each even-numbered year and one member's term expires February 1 of each odd-numbered year.

(d) Provides that a member of the board is entitled to travel expenses incurred in performing official duties and to a per diem equal to the maximum amount allowed on January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations provided for members of state boards and commissions in the General Appropriations Act.

Sec. 420A.003. **PRESIDING OFFICER; MEETINGS.** (a) Requires the governor to designate a member of the board as presiding officer. Provides that the presiding officer serves at the discretion of the governor.

(b) Requires the board to meet at least once each month and at other times at the call of the presiding officer.

Sec. 420A.004. **SUNSET PROVISION.** Provides that OVSOM is subject to Chapter 325 (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021.

Sec. 420A.005. **STAFF.** Authorizes the office to select and employ a general counsel, staff attorneys, and other staff necessary to perform the office's functions.

Sec. 420A.006. **SALARY CAREER LADDER FOR CASE MANAGERS.** (a) Requires the board to adopt a salary career ladder for case managers. Requires the salary career ladder to base a case manager's salary on the manager's classification and years of service with the office.

(b) Requires the office, for purposes of the salary schedule, to classify all case manager positions as Case Manager I, Case Manager II, Case Manager III, Case Manager IV, or Case Manager V.

(c) Provides that, under the salary career ladder adopted under Subsection (a), a case manager to whom the schedule applies and who received an overall evaluation of at least satisfactory in the case manager's most recent annual evaluation is entitled to an annual salary increase, during each of the case manager's first 10 years of service in a designated case manager classification as described by Subsection (b), equal to one-tenth of the difference between the case manager's current annual salary and the minimum annual salary of a case manager in the next highest classification.

Sec. 420A.007. **POWERS AND DUTIES.** Requires the office to perform appropriate functions related to the sex offender civil commitment program provided under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code, including functions related to the provision of treatment and supervision to civilly committed sex offenders.

SECTION 2. Amends Sections 841.002(3) and (4), Health and Safety Code, as follows:

(3) Redefines "case manager."

(4) Defines "office," rather than "council."

SECTION 3. Amends Section 841.003(b), Health and Safety Code, to provide that a person is a repeat sexually violent offender for the purposes of this chapter:

(1) if the person:

(A) Makes nonsubstantive changes.

(B) is adjudicated to have more than once engaged in delinquent conduct constituting any of the following sexually violent offenses, if the person is committed to the Texas Youth Commission (TYC) for at least one instance of that conduct, or is adjudicated more than once to have engaged

in delinquent conduct constituting any of the following sexually violent offenses, if based on the most recent adjudication the person is committed to TYC:

(i) an offense under Section 22.011 (Sexual Assault) or 22.021 (Aggravated Sexual Assault), Penal Code;

(ii) an offense under Section 20.04(a)(4) (relating to inflicting bodily injury on a person or violating or abusing a person sexually), Penal Code, that is described by Section 841.002(8)(B) (relating to a person committing the offense with the intent to violate or abuse the victim sexually);

(iii) an offense under Section 19.02 (Murder) or 19.03 (Capital Murder), Penal Code, that is described by Section 841.002(8)(D) (relating to when an offense is determined beyond a reasonable doubt to have been based on sexually motivated conduct);

(iv) an attempt, conspiracy, or solicitation, as defined by Chapter 15 (Preparatory Offenses), Penal Code, to commit an offense listed in Subparagraph (i), (ii), or (iii);

(v) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv); or

(vi) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv); or

(C) for a person who is not otherwise described by Paragraph B, is adjudicated to have three or more times engaged in delinquent conduct constituting any sexually violent offense, if the person is committed to TYC for at least one instance of that conduct, or is adjudicated more than once to have engaged in delinquent conduct constituting any sexually violent offense if the conduct is composed of three or more instances of a sexually violent offense and if based on the most recent adjudication the person is committed to TYC; or

(2) if:

(A) the person is adjudicated by a juvenile court in this state, or by a juvenile court in another jurisdiction under a law described by Section 841.002(8)(G) (relating to a certain offense under the law of another state, federal law, or the Uniform Code of Military Justice), as having engaged in delinquent conduct constituting a sexually violent offense and is committed, as applicable, to TYC under Section 54.04(d)(3) (relating to the court or jury sentencing the child to commitment in TYC) or (m) (relating to sentencing a child adjudicated for habitual felony conduct), Family Code; and

(B) after the date on which under Paragraph A, rather than Subdivision (1), the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits or engages in delinquent conduct constituting a sexually violent offense for which the person receives a determinate sentence under Section 54.04(d)(3) or (m), Family Code, and is transferred to the Texas Department of Criminal Justice (TDCJ). Makes nonsubstantive changes.

SECTION 4. Amends Section 841.007, Health and Safety Code, as follows:

Sec. 841.007. New heading: DUTIES OF OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. Provides that OVSOM, rather than the Texas Council on Sex Offender Treatment (TCSOT), is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION 5. Amends Section 841.022(a), Health Code, to require the executive director of TDCJ and the commissioner of the Department of State Health Services (DSHS), rather than the Texas Department of Mental Health and Mental Retardation (MHMR), jointly to establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021 (Notice of Potential Predator). Requires that the team include two persons from DSHS, rather than MHMR, and two persons from OVSOM, rather than TCSOT, or OVSOM personnel, rather than TCSOT personnel.

SECTION 6. Amends Section 841.062, Health and Safety Code, by adding Subsection (c) to require that a determination that a person is a sexually violent predator be supported by the testimony of two experts if the person is a repeat sexually violent offender described by Section 841.003(b)(1)(B) (relating to a repeat sexually violent offender entering a certain plea in return for a grant of deferred adjudication) or (C) (relating to a repeat sexually violent offender being adjudged not guilty by reason of insanity).

SECTION 7. Amends Sections 841.082(a) and (c), Health and Safety Code, as follows:

(a) Requires the judge, before entering an order directing a person's outpatient civil commitment, to impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. Requires that the requirements include requiring the person to reside in a Texas residential facility under contract with OVSOM, rather than TSCOT, or at another location or facility approved by OVSOM, rather than TSCOT.

(c) Makes conforming changes.

SECTION 8. Amends Section 841.083, Health and Safety Code, to make conforming changes.

SECTION 9. Amends Section 841.084, Health and Safety Code, to make conforming changes.

SECTION 10. Amends Section 841.101, Health and Safety Code, to make conforming changes.

SECTION 11. Amends Section 841.141, Health and Safety Code, as follows:

Sec. 841.141. RULEMAKING AUTHORITY. (a) Requires OVSOM, rather than TSCOT, by rule to administer this chapter. Requires that rules adopted by OVSOM, rather than TSCOT, under this section be consistent with the purposes of this chapter.

(b) Makes a conforming change.

SECTION 12. Amends Sections 841.142(c) and (d), Health and Safety Code, to make conforming changes.

SECTION 13. Amends Section 841.147, Health and Safety Code, to make conforming changes.

SECTION 14. Amends Subchapter H, Chapter 841, Health and Safety Code, by adding Section 841.151, as follows:

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) Defines "correctional facility," "secure correctional facility," and "secure detention facility."

(b) Provides that this section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility,

secure correctional facility, or secure detention facility as a result of violating a civil commitment requirement imposed under Section 841.082 (Commitment Requirements) or a law of this state.

(c) Requires that the facility, not later than the day preceding the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, notify the person's case manager in writing of the anticipated date and time of the person's release.

(d) Requires a case manager, on request, to provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

SECTION 15. Provides that the functions of TCSOT that relate to the sex offender civil commitment program are transferred to OVSOM.

SECTION 16. Requires the governor, as soon as possible after the effective date of this Act, to appoint three members to OVSOM.

SECTION 17. (a) Requires OVSOM and TCSOT to coordinate the transfer of functions relating to the sex offender civil commitment program as required by this Act.

(b) Requires that the transfer of all functions relating to the sex offender civil commitment program to OVSOM be accomplished as soon as possible but not later than the 45th day after the date that the last member of OVSOM qualifies for office.

(c) Provides that the transfer required by this Act includes the transfer of all assets, duties, powers, obligations, and liabilities, including contracts, leases, real or personal property, funds, employees, furniture, computers and other equipment, and files and related materials used by TCSOT in performing the functions relating to the sex offender civil commitment program that are transferred by this Act.

(d) Provides that a form, rule, or procedure adopted by the Health and Human Services Commission or DSHS in relation to TCSOT that is in effect on the effective date of this Act remains in effect on and after that date as if adopted by OVSOM until amended, repealed, withdrawn, or otherwise superseded by that office.

(e) Provides that all unexpended appropriations for functions relating to the sex offender civil commitment program that are made for use by TCSOT are transferred to OVSOM.

(f) Requires OVSOM to publish in the Texas Register the date on which the transfer of functions under this Act is accomplished.

SECTION 18. Provides that after the effective date of this Act, TCSOT is required to continue to perform applicable functions until the transfer of functions required by this Act is completed, and provides that the laws providing for those functions are continued in effect for that purpose.

SECTION 19. Effective date: September 1, 2010.