

BILL ANALYSIS

S.B. 1576
By: Perry
Corrections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Informed observers report that recently enacted legislation made changes to the Texas Civil Commitment Office, formerly known as the Office of Violent Sex Offender Management, but that additional measures are needed to strengthen the laws regarding the civil commitment of sexually violent predators. S.B. 1576 seeks to provide these additional measures, which include, among other things, increased criminal penalties.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Civil Commitment Office, the Department of Public Safety, and the executive commissioner of the Health and Human Services Commission in SECTION 25 of this bill.

ANALYSIS

Section 531.0055, Government Code, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of health and human services by the health and human services system. Certain recently enacted legislation provides for a phased transition of the health and human services system, including the abolishment and consolidation of certain agencies and entities. To the extent practicable, this bill analysis is written to accurately reflect rulemaking authority within the health and human services system and to update references as necessary to an agency's or entity's authority with respect to a particular health and human services program.

S.B. 1576 amends the Civil Practice and Remedies Code, for purposes of the provision making certain personal identifying information pertaining to an individual who is an employee of any correctional facility or an individual who is related within the first degree by consanguinity or affinity to that individual privileged from discovery by an individual who is imprisoned or confined in any correctional facility, to also make that information privileged from discovery by an individual who is civilly committed as a sexually violent predator under Texas law. The bill extends the privilege from discovery to the personal identifying information of an individual who is an officer or employee of the Texas Civil Commitment Office, a person who contracts with the office to perform a service or an employee of that person, and an individual related within the first degree by consanguinity or affinity to those individuals. The bill establishes that personal identifying information that is privileged under these provisions may be discovered by an individual who is civilly committed as a sexually violent predator only if the committed person shows good cause to the court for such discovery and the court renders an order authorizing such

discovery.

S.B. 1576 amends the Code of Criminal Procedure to require a peace officer, on a request made by the Texas Civil Commitment Office, to execute an emergency detention order issued by the office under the bill's provisions. The bill prohibits a magistrate from releasing on personal bond a defendant who at the time of the commission of the charged offense is civilly committed as a sexually violent predator. The bill revises the requirement for an individual subject to registration under the sex offender registration program who is civilly committed as a sexually violent predator to report with a specified frequency to a local law enforcement authority designated as the person's primary registration authority for verification of the information in the registration form maintained by the authority to instead require such an individual residing at a civil commitment center to report to the designated authority not less than once each year and to specify that the frequency of reporting for such an individual not residing at a civil commitment center is not less than once in each 30-day period following either the date the person first registered as a sex offender or, if applicable, the date the person moved from a civil commitment center.

S.B. 1576 requires a person subject to registration under the sex offender registration program who is civilly committed as a sexually violent predator and resides at a civil commitment center to renew the person's driver's license, commercial driver's license, or personal identification certificate issued by the Department of Public Safety (DPS) as prescribed by specified Transportation Code provisions, as applicable, that relate to the issuance or renewal of such licenses and certificates of registered sex offenders. The bill establishes that, on the date that such a person no longer resides at a civil commitment center, the person is required to renew a driver's license or personal identification certificate only as provided by statutory provisions governing the annual renewal of the license or certificate of a person subject to registration under the sex offender registration program.

S.B. 1576 amends the Government Code to include the Texas Civil Commitment Office among the noncriminal justice agencies and entities to which a criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure. The bill entitles the office to obtain from DPS criminal history record information maintained by DPS that relates to a person who seeks the office's approval to act as a contact or chaperone for a person who is civilly committed as a sexually violent predator. The bill requires the office to destroy such information as soon as practicable after the date on which the office determines whether the person is suitable as a contact or chaperone for a person who is civilly committed as a sexually violent predator.

S.B. 1576 revises the length and expiration of the terms served by members of the governing board of the Texas Civil Commitment Office to provide that members serve staggered six-year terms, with the terms of one or two members expiring on February 1 of each odd-numbered year; requires the presiding officer of the board to select a member of the board as an assistant presiding officer; and authorizes the presiding officer to create board committees. The bill changes the agency to which the office is administratively attached from the Department of State Health Services (DSHS) to the Health and Human Services Commission and revises related provisions to reflect that change. The bill repeals certain provisions relating to the salary career ladder for Texas Civil Commitment Office case managers as regards classification of case manager positions and annual salary increases for case managers.

S.B. 1576 excepts from the public availability requirement of state public information law information that relates to the home address, home telephone number, emergency contact information, or social security number of a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office, or that reveals whether the person has family members, regardless of whether the current or former employee complies with certain provisions of state public information law authorizing the person to choose to restrict public access to the information. The bill makes applicable to such a person

the state public information law provisions relating to the confidentiality of certain personal identifying information of peace officers, county jailers, security officers, employees of certain criminal or juvenile justice agencies or offices, and federal and state judges and information that reveals whether the person has family members. The bill includes a member of the governing board or executive head of the office among those persons for whom the Texas Ethics Commission is required to remove the home address from a financial statement, if applicable, filed with the commission before permitting a member of the public to view the financial statement or providing a copy of the statement to a member of the public.

S.B. 1576 amends the Health and Safety Code, for purposes of the requirement that a civilly committed person submit to appropriate supervision and to tracking under a particular type of tracking service and to refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment, to require that the person also refrain from removing the equipment and to establish that the tracking requirement applies if the person leaves the civil commitment center for any reason while residing at the center, the person is in one of the two most restrictive tiers of treatment as determined by the office, the person is on disciplinary status as determined by the office, or the person resides in the community. The bill includes a civil commitment proceeding for a sexually violent predator other than a criminal proceeding involving the offense of violating certain civil commitment requirements among the proceedings over which the committing court retains jurisdiction and specifies, for purposes of the provision authorizing the modification of requirements imposed on a civilly committed person that are necessary to ensure the person's compliance with treatment and supervision and to protect the community, that the modifications may be made by the committing court. The bill specifies that the designation of a facility by the Texas Civil Commitment Office to serve as an intake and orientation facility for committed persons on release from a secure correctional facility is a designation of all or part of the facility. The bill makes information regarding the security and monitoring procedures developed by the office for the security and monitoring of committed persons in each programming tier confidential and exempt from disclosure under state public information law.

S.B. 1576 requires a civilly committed person who files a petition with the court for transfer to less restrictive housing and supervision or a petition with the court seeking a review of the Texas Civil Commitment Office's determination to return a committed person to a more restrictive setting to serve a copy of the applicable petition on the office. The bill requires a committed person released from housing operated by or under contract with the office to be released to a county designated by the office if the county in which the person was most recently convicted of a sexually violent offense does not provide adequate opportunities for the person's treatment and for the person's housing or other supervision, as determined by the office. The bill authorizes the office to require a committed person released to such a designated county to change the person's residence to the county in which the person was most recently convicted of a sexually violent offense if the office determines that adequate opportunities for the person's treatment and for the person's housing or other supervision become available in that county.

S.B. 1576 authorizes the Texas Civil Commitment Office, for the purpose of returning a civilly committed person to a more restrictive setting following a transfer to less restrictive housing and supervision or following a release, to issue an emergency detention order for the person's immediate apprehension and transportation to a location designated by the office. The bill sets out the conditions under which an employee of the office, or a person who contracts with the office or an employee of that person, may use mechanical or chemical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center and requires the office to develop procedures governing the use of mechanical or chemical restraints on committed persons. The bill includes among the costs for which a civilly committed person who is not indigent is responsible and required to pay to the office the cost of repairs to or replacement of required tracking equipment if the person intentionally caused the damage to or loss of the equipment, as determined by the office. The bill authorizes the special prosecution unit, on request of the local prosecuting attorney, to assist in

the trial of an offense for a person who violates an applicable civil commitment requirement imposed on the person. The bill changes the deadline by which a correctional facility, secure correctional facility, or secure detention facility that releases a person who, at the time of the person's detention or confinement, was civilly committed as a sexually violent predator is required to notify the office and the person's case manager of the anticipated release date and time from a deadline that is not later than the day preceding the date of release to a deadline that is as soon as practicable before but not later than the third business day preceding such release.

S.B. 1576 requires a court, on motion by the attorney representing the state, to require a civilly committed person to appear via closed-circuit video teleconferencing at a hearing on the modification of civil commitment requirements or a hearing relating to a commitment review or petition for release and requires a recording of the hearing to be made and preserved with the court's record of the hearing. The bill requires the Texas Civil Commitment Office, on the release of a civilly committed person from a correctional facility, secure correctional facility, or secure detention facility, to determine whether the person has a valid driver's license or commercial driver's license or a valid personal identification certificate and, if the person does not have such a license or certificate, to submit as soon as practicable to DPS on behalf of the person a request for the issuance of a personal identification certificate. The bill requires the office, DPS, and the executive commissioner of the Health and Human Services Commission by rule to adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a committed person, including responsibilities related to verification of the person's identity. The bill requires the memorandum to require the Department of State Health Services (DSHS) to electronically verify the birth record of a civilly committed person whose name and any other personal information is provided by the office and to electronically report the recorded filing information to DPS to validate the identity of a civilly committed person. The bill requires the office to reimburse DPS or DSHS, as applicable, for the actual costs incurred by those agencies in performing such responsibilities and authorizes the office to charge a civilly committed person for the actual costs incurred or for the applicable required fees. The bill repeals a requirement for the office to adopt certain specified rules relating to the development of standards of care and case management, the determination of conditions of supervision and treatment, and the development and implementation of the tiered program for supervision and treatment.

S.B. 1576 amends the Penal Code to add to the code a definition for "civil commitment facility" and to enhance the penalty for assault in which the actor intentionally, knowingly, or recklessly causes bodily injury to another from a Class A misdemeanor to a third degree felony if the offense is committed while the actor is committed to a civil commitment facility and the offense is committed against the following: an officer or employee of the Texas Civil Commitment Office while the officer or employee is lawfully discharging an official duty at a civil commitment facility or in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employer; or a person who contracts with the state to perform a service in a civil commitment facility or an employee of that person while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by the state to provide the service or in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract. The bill expands the conduct that constitutes harassment by persons in certain facilities to include conduct by a person who, with the intent to assault, harass, or alarm and while committed to a civil commitment facility and under those same circumstances triggering the bill's penalty enhancement for assault against the applicable officer, person, or employee, causes the applicable officer, person, or employee to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal.

S.B. 1576 makes certain conduct that constitutes certain offenses regarding taking, providing, possessing, or possessing with the intent to provide certain prohibited substances and items in a correctional facility and the applicable affirmative defenses for such conduct applicable to such conduct in a civil commitment facility. The bill expands the conduct that constitutes the offense

of unlawful carrying of a handgun by a handgun license holder to include intentionally, knowingly, or recklessly carrying a handgun on the premises of a civil commitment facility.

S.B. 1576 amends the Tax Code to include a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office among persons to whom statutory provisions relating to the confidentiality of certain home address information in certain tax appraisal records apply.

S.B. 1576 amends the Transportation Code to provide for the automatic revocation by DPS of a personal identification certificate and driver's license of a person who is subject to registration under the sex offender registration program, is civilly committed as a sexually violent predator, and resides at a civil commitment center and who fails to apply to DPS for renewal of the certificate as required by the bill. The bill sets the expiration date of a personal identification certificate or driver's license issued to a such a person on the sixth anniversary of the date on which the license or certificate was issued. The bill sets the expiration date of a commercial driver's license issued to such a person on the fifth anniversary of the date on which the license was issued. The bill sets a \$5 fee for a personal identification certificate issued to such a person under the bill's provisions requiring the office to submit a request for such issuance on the person's release from an applicable facility if the person does not have a valid driver's license, commercial driver's license, or certificate.

S.B. 1576 makes its provisions amending statutory provisions relating to the sex offender registration program applicable to any person who, on or after the bill's effective date, is required to register under the program, regardless of whether the offense or conduct for which the person is required to register occurs before, on, or after that date. The bill, if a civil commitment requirement imposed under the Health and Safety Code before the bill's effective date differs from any of the civil commitment requirements under that code as amended by the bill, requires the applicable court with jurisdiction over the committed person, after notice and hearing by submission, to modify the requirement imposed as applicable to conform to the amended Health and Safety Code provision. The bill authorizes the members of the board of the Texas Civil Commitment Office serving on the bill's effective date to draw lots or use another method to determine the members who serve terms that expire as provided by the bill's provisions in 2019, 2021, or 2023, respectively. The members of the board appointed to succeed the members serving on the bill's effective date serve six-year terms.

S.B. 1576 repeals the following provisions:

- Sections 420A.009(b) and (c), Government Code
- Section 841.141(b), Health and Safety Code

EFFECTIVE DATE

September 1, 2017.