

BILL ANALYSIS

C.S.S.B. 906
By: Perry
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that there are several loopholes relating to the civil commitment of sexually violent predators, such as lack of ability to issue an emergency detention order for a newly committed person, lack of notice before the transfer of the person while committed, and the committed person's inability to provide notice in person to law enforcement regarding the person's change in address while residing in a civil commitment center. In addition, there have been issues regarding the right to a hearing to review the transfer of a person to a more restrictive setting while committed and the requirement that a person provide records related to reimbursement to the state for costs associated with the person's housing, treatment, and GPS tracking. C.S.S.B. 906 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 906 amends the Health and Safety Code to specify that the court in which the state's attorney must file a petition alleging that a person is a sexually violent predator is a district court in the county of the person's most recent conviction for a sexually violent offense and that, in filing the petition, the state's attorney must give preference to filing the petition in the applicable court of conviction.

C.S.S.B. 906 authorizes a judge to delay or continue a trial to determine whether a person is a sexually violent predator after the person's sentence discharge date if the judge determines that it is necessary in the due administration of justice.

C.S.S.B. 906, with respect to the expert examinations to which a person and the state are each entitled before the trial and which may be required of the person for purposes of the state's preparation for the trial, changes the examination to an expert clinical interview.

C.S.S.B. 906 authorizes a person to do the following:

- waive the person's right to appear at the trial and appear through the person's attorney; and
- appear at the trial through the use of remote technology.

C.S.S.B. 906 entitles the state or the person to a retrial after an appeal if an appellate court remands the case to the trial court for a new trial. The bill requires the judge to commence a

retrial not later than the 90th day after the date the appellate court remanded the case and establishes that the retrial may be continued by a judge who determines that it is necessary in the due administration of justice.

C.S.S.B. 906 replaces provisions subjecting the number and selection of jurors in a civil commitment trial to requirements under the Code of Criminal Procedure with the following provisions with regard to such a trial:

- the jury must consist of 12 qualified jurors;
- the judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors; and
- each party to the case is entitled to 10 peremptory challenges to the 12 qualified jurors and one peremptory challenge to the qualified alternate jurors.

The bill provides procedures for a jury determination in such a case if there are fewer than 12 jurors and there are no alternate jurors.

C.S.S.B. 906 requires a civilly committed person who files a petition for transfer to less restrictive housing and supervision to serve a copy of the petition on the Texas Civil Commitment Office. The bill provides a committed person with the right to an automatic hearing by requiring a court, not later than the 90th day after the date the committed person is returned to a more restrictive setting, to hold a hearing through videoconference to review the determination. The bill authorizes the committed person to waive the right to such a hearing.

C.S.S.B. 906 sets an evidentiary standard for a court order transferring a civilly committed person to less restrictive housing and supervision. Such a transfer may be ordered only if the court determines by clear and convincing evidence that the office's determination was not made in accordance with the applicable statutory requirements.

C.S.S.B. 906 authorizes the office to issue an emergency detention order for a recently civilly committed person who is not in the custody of the Texas Department of Criminal Justice at the time the commitment order is entered for the purposes of bringing that person under the supervision of the office.

C.S.S.B. 906 requires a civilly committed person, on request, to provide to the office any financial records or other information regarding the person's income, assets, and expenses to assist the office in determining whether the person is indigent for purposes of the payment of costs associated with the person's civil commitment.

C.S.S.B. 906 excludes a person whose immediate release is ordered by a court from a correctional facility, secure correctional facility, or secure detention facility from the notice requirements otherwise applicable to such a facility when it releases a civilly committed person.

C.S.S.B. 906 amends the Code of Criminal Procedure to require the Texas Civil Commitment Office to report a change in address to each local law enforcement authority serving as the current or proposed primary registration authority for a person who is civilly committed as a sexually violent predator and required to register as a sex offender and reside in a location other than a civil commitment center.

C.S.S.B. 906 repeals Section 841.0834(e), Health and Safety Code.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 906 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a specification not included in the engrossed that the court in which a state's attorney must file a petition alleging that a person is a sexually violent predator is a district court in the county of the person's most recent violent offense.

The substitute includes the following provisions not included in the engrossed:

- an authorization for a judge to delay or continue such a trial if the judge determines it is necessary;
- an authorization for a person to appear at a trial through the use of remote technology or waive the right to appear at the trial and appear through their attorney; and
- an entitlement of the state or a person to a retrial and related procedures if an appellate court remands a case to the trial court for a new trial.

The substitute includes a provision that is not in the engrossed replacing statutory provisions governing the number and selection of jurors in a civil commitment case with provisions relating to the number and selection of jurors and the rendering of a verdict if there are fewer than the required number of jurors.