

SUBJECT: Governmental liability for sexual exploitation by mental healthcare providers

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 8 ayes — Bosse, Janek, Dutton, Goodman, Hope, Nixon, Smithee, Zbranek

0 nays

1 absent — Alvarado

WITNESSES: For — Joe Lovelace, National Alliance for the Mentally Ill of Texas; Gail Gourley; Kevin Gourley

Against — None

On — Wayne Green, Texas Commission on Law Enforcement Officer Standards and Education

BACKGROUND: Patients or former patients sexual exploited by mental health services providers may recover damages for physical, mental or emotional injuries caused by that provider under chapter 81 of the Civil Practices and Liabilities Code. The employer of a provider may be liable if:

- ! the employer fails to make inquiries of a disclosed employer or former employer of the provider concerning possible occurrences of sexual exploitation of patients;
- ! the employer knows or has reason to know that the provider engaged in sexual exploitation and the employer failed to report the conduct or take necessary action to prevent or stop the exploitation; or
- ! the employer knows of an occurrence of sexual exploitation by a mental health services provider, receives an inquiry from an employer or prospective employer concerning the existence of such an event, and fails to disclose that information.

Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is allowed to certify certain law enforcement personnel as

special officers for mental health assignment upon completion of training and an examination by the commission.

DIGEST:

CSHB 3479 would allow a patient or former patient who was sexually exploited by a mental health services provider who was employed by a governmental body to bring a civil cause of action against the governmental body. The governmental body could be held liable only for acts committed that would establish liability against a private employer.

The sovereign immunity of the governmental body would be waived for such suits, but the governmental body's liability would be limited by the Texas Tort Claims Act, chapter 101 of the Civil Practices and Liabilities Code, which limit damages to \$250,000 for each person or \$500,000 for each single occurrence for bodily injury or death.

CSHB 3479 also would include special officers for mental health assignments in the list of providers covered under the sexual exploitation statute.

CSHB 3479 would take effect September 1, 1999, and would apply to all actions commenced or pending for trial, a new trial, or retrial on or after that date.

SUPPORTERS  
SAY:

This legislation would ensure that governmental bodies would take the same care in performing background checks, providing information to other employers, and preventing sexual exploitation by mental health services providers that already is required of private employers. The large number of mental health services providers employed by governmental agencies means that the government should take extra care in ensuring the safety of mental health care patients served by government employed providers. Governmental bodies should not be excused from performing background checks or providing information to other employers simply because of the claim of sovereign immunity.

While waiving sovereign immunity would expose the state and other governmental entities to liability, it would be limited by the Tort Claims Act. That act allows liability for actions such as auto accidents, and there is no reason it should not be extended to apply in these situations. In most cases, the

liability assessed likely would be covered by liability insurance purchased by the governmental body.

The expansion of who is considered a mental health service provider would only be a conforming change to ensure that all government employee health service providers were covered by the law.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The committee substitute would apply the damage limits of the Tort Claims Act to an action against a governmental body under the bill.