

SUBJECT: Revising procedures for civil commitment of sex offenders

COMMITTEE: Corrections — favorable, without amendment

VOTE: 5 ayes — Allen, Hopson, Stick, Haggerty, Mabry

0 nays

2 absent — Alonzo, Farrar

SENATE VOTE: On final passage, May 15 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Dayna Blazey; Olen Underwood

Against — None

On — Allison Taylor, Council on Sex Offender Treatment; (*Registered, but did not testify:*) Gina DeBottis, Special Prosecution Unit

BACKGROUND: Under Health and Safety Code, sec. 841, certain repeat sex offenders released from a prison or a state mental health facility can be committed through civil courts to outpatient treatment and supervision. The law authorizes the civil commitment of sexually violent predators, defined as repeat sexually violent offenders who suffer from a behavioral abnormality that makes them likely to engage in a predatory act of sexual violence.

A multidisciplinary team evaluates sex offenders for potential civil commitment. A special division of the prison prosecution unit represents the state and handles civil commitment proceedings. People considered for civil commitment have the right to counsel from the Texas Department of Criminal Justice's (TDCJ) Office of State Counsel for Offenders.

If a judge or jury finds that a person is a sexually violent predator, the judge must commit the person for outpatient treatment and supervision, to be coordinated by a case manager employed by the Interagency Council on Sex Offender Treatment. The supervision and treatment must continue until the person no longer is considered likely to engage in a predatory act of sexual

violence. The state must pay up to \$1,600 for the cost of a civil commitment trial, and for any civil commitment proceedings, the state must pay the costs of appointed counsel and experts and of outpatient treatment and supervision.

DIGEST:

SB 1093 would lengthen many of the time frames governing civil commitment procedures, allow for penalties if a person did not submit to certain examinations, and limit representation by the State Counsel for Offenders to indigent people.

The bill would take effect September 1, 2003.

**Failure to submit to examinations.** People on trial to determine whether they were sexually violent predators would have to submit to all expert examinations required or permitted of the prosecutor. Failure to submit to an examination on the state's behalf could have these consequences:

- failure to submit to the exam could be used as evidence against the person at trial;
- the person could be prohibited from offering into evidence the results of exams performed on their behalf; and
- the person could be subject to contempt proceedings for violating a court order.

**Time frames.** The time allowed for the multidisciplinary team to make its assessment would be increased from 30 to 60 days. The time for TDCJ or the Texas Department of Mental Health and Mental Retardation (MHMR) to assess whether a person had a behavioral abnormality that made them likely to engage in predatory acts of sexual violence would be increased from 30 to 60 days, as would the time allowed for TDCJ or MHMR to notify the Special Prosecution Unit that they believed a person had a behavioral abnormality.

The time allowed for the Special Prosecution Unit to file a petition with the court alleging that a person was a sexual predator would increase from 60 to 90 days. A petition would have to be served on the person as soon as practicable after it was filed.

The trigger to begin the countdown to the deadline for judges to conduct a trial to determine whether a person was a sexually violent predator would be

changed from after a petition was filed to after a petition was served on the person, and the time frame for the judge to conduct the trial would be increased from 60 to 270 days after the petition was served.

The bill would impose a new deadline of 90 days before a trial begins for completing examinations of the person performed on behalf of the prosecutor and the defense.

The requirement that people notify their case managers within 48 hours of any change in their status that affected their treatment and supervision would be changed so that notification had to occur immediately, but at least within 24 hours of any change.

**Representation.** The Office of State Counsel for Offenders would not have to represent all people, only those who were indigent. Courts would have to appoint lawyers to represent indigent people in civil commitment proceedings if the state counsel could not do so. The current right to representation at all stages during the civil commitment proceedings would begin immediately after the petition had been filed with the court.

The state's responsibility to pay the costs of state or appointed counsel in civil commitment proceedings and the cost of outpatient treatment and supervision would be limited to reasonable costs.

**Other provisions.** The bill would make several other changes to the statutes governing civil commitment, including:

- changing the name of the Interagency Council on Sex Offender Treatment to the Council on Sex Offender Treatment;
- limiting the council's administration of civil commitment statutes to treatment and supervision and requiring that rules adopted by the council under the law be related to treatment and supervision;
- changing the composition of the multidisciplinary team that evaluates sex offenders for potential civil commitment so that it would have two, rather than three, people from TDCJ and two, rather than one, persons from the Council on Sex Offender Treatment;

- requiring the council to enter into agreements with TDCJ to provide housing for people civilly committed and to reimburse TDCJ for the housing, as opposed to the current requirement that the council contract for housing;
- making civil commitment orders effective immediately on the court's entry of the order;
- stating that a person would not have a cause of action if someone failed to give notice within a specified time period relating to a petition alleging that a person was a sexual predator;
- stating that failure to give a notice within a time period established by the civil commitment statute would not be a jurisdictional error;
- requiring that a judge conducting a civil commitment trial retain jurisdiction of the case for proceedings relating to petitions for release and review of civil commitments;
- prohibiting the following convictions, judgments, and verdicts from affecting a civil commitment order: felony convictions, if a sentence is not imposed; misdemeanor convictions; and a judgment or verdict of not guilty by reason of insanity without a corresponding commitment to MHMR;
- suspending duties imposed under the civil commitment statute during any confinement of a person for a misdemeanor;
- establishing that, although civil commitment proceedings are subject to the rules of civil procedure and appeal, the civil commitment statute controls in case of any conflicts;
- making the personal information of victims, including home addresses, home telephone number, and social security numbers privileged from discovery;
- adding employees and officers of the Texas Department of Health to the list of those who are immune from liability for good-faith conduct under the civil commitment statute; and
- establishing that a person who is determined to be suffering from a behavioral abnormality is not, because of that abnormality, considered a person of unsound mind under the Texas Constitution's provisions governing the commitment of people of unsound mind.

**SUPPORTERS  
SAY:**

SB 1093 would clarify and streamline various provisions in the state's civil commitment laws to ensure that the process runs smoothly and efficiently, but it would not make any significant policy changes to the statute.

**Failure to submit to examinations.** The bill would impose needed uniformity in the process for examinations of sex offenders by experts. In cases that have been brought so far, some offenders have refused to submit to exams performed on behalf of the prosecution. Without a person submitting to exams by the state's experts, it can be difficult or impossible for the state to rebut testimony from the offender's experts. Requiring people to submit to examination by the state's experts would ensure that both the prosecution and the defense could use their experts in a trial and would create a level playing field for both sides. Courts have held that because civil commitment proceedings are civil and not criminal, people do not have a right against self-incrimination under the Fifth Amendment to the U.S. Constitution.

Courts would ensure that experts were reliable and would be able to discount any testimony from unqualified or unreliable experts.

**Time frames.** SB 1093 would lengthen many of the deadlines in the civil commitment statute so that they were more realistic and would allow adequate enough time for entities to complete their required tasks. When the law was established, it was unknown how much time different procedures would take, and courts and others have had difficulties meeting the deadlines under current law. SB 1093 would provide an additional 30 to 210 days for most procedures to give everyone time to do their jobs properly while ensuring that the process moved as quickly and efficiently as possible.

**Representation.** It was always the intent of the law that the Office of State Counsel for Offenders would have to represent only indigent people. A person with resources should use them to pay for representation in civil commitment proceedings, just as people with resources must pay for their attorneys in other proceedings. SB 1093 would ensure that people would have representation even if the office could not provide it because of a conflict of interest or some other reason by requiring the court to appoint an attorney in these circumstances.

OPPONENTS  
SAY:

**Failure to submit to examinations.** Using the failure of people to submit to examinations as evidence against them could violate their constitutional protections. Under SB 1093, if a person did not submit to an exam and used

this as an assertion of the right to remain silent, the assertion might be used against the person, contrary to the U.S. Constitution.

People should have the right to refuse to submit to exams, especially in the absence of any required qualifications for the experts or a requirement that the examiner be reliable. News stories of unqualified and unethical government experts illustrate the potential pitfalls of unquestioned reliance on certain experts.

**Time frames.** When the civil commitment statutes were enacted, the deadlines were crafted to ensure that the process moved along quickly and efficiently, and they should not be changed.

**NOTES:**

SB 1834 by Staples, also on today's General State Calendar, would increase from \$1,600 to \$2,500 the maximum amount that the state would have to pay for the cost of a civil commitment trial to determine whether a person was a sexually violent predator.