

BILL ANALYSIS

Senate Research Center
76R312 KEL-D

S.B. 29
By: Shapiro
State Affairs
3/1/1999
As Filed

DIGEST

Currently, sexually violent predators are being released from prison once they have served out their sentences even when criminal justice officials are confident that they will offend again. Repeat sexually violent offenders are a unique class of sexual offenders who exhibit behavioral abnormalities making it highly likely that they will engage in further predatory acts, and therefore are in need of treatment for their disorder. S.B. 29 would require any person convicted with two sexually violent offenses and suffering from a behavioral abnormality that makes the person more likely to commit further offenses, the state will have the ability to initiate involuntary commitment proceedings against the person. Confinement under this section is not intended as further punishment, and individuals that are committed will be reviewed biennially.

PURPOSE

As proposed, S.B. 29 establishes provisions regarding the civil commitment of sexually violent predators; provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Mental Health and Mental Retardation in SECTION 1(Section 841.161, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Health and Safety Code by adding Title 11, as follows:

TITLE 11. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

CHAPTER 841. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 841.001. LEGISLATIVE FINDINGS. Sets forth the findings of the legislature.

Sec. 841.002. DEFINITIONS. Defines "attorney representing the state," "behavioral abnormality," "board," "commissioner," "department," "predatory act," "repeat sexually violent offender," "secure correctional facility," "sexually violent offense," "sexually violent predator," and "special commitment center."

Sec. 841.003. SEXUALLY VIOLENT PREDATOR. Provides that a sexually violent predator is a repeat sexually violent offender who suffers from a behavioral abnormality that makes the person more likely to engage in a predatory act of violence. Sets forth conditions under which a person is considered a repeat sexually violent offender.

Sec. 841.004. PRISON PROSECUTION UNIT. Provides that a special division of the prison prosecution unit is responsible for prosecuting civil commitment proceedings under this chapter.

Sec. 841.005. APPLICATION OF CHAPTER. Provides that this chapter does not prohibit a person from filing a petition at any time for either discharge or conditional release to a less restrictive alternative under this chapter, or create a cause of action against another person for failure to give proper notice.

SUBCHAPTER B. NOTICE OF POTENTIAL PREDATOR; INITIAL DETERMINATIONS

Sec. 841.021. NOTICE OF POTENTIAL PREDATOR. Requires the Texas Department of Criminal Justice (TDCJ) to give the multidisciplinary team established under Section 841.022 notice of the anticipated release of a person who is serving a sentence for a sexually violent offense and is a repeat sexually violent offender. Requires TDCJ to give the multidisciplinary team notice of the anticipated discharge of a person who committed certain offenses. Authorizes TDCJ to give the notice orally. Requires TDCJ to attempt to give written notice within a prescribed time period. Sets forth requirements for information contained in the notice.

Sec. 841.022. MULTIDISCIPLINARY TEAM. Requires the TDJC executive director and the commissioner of the Texas Department of Mental Health and Retardation (MHMR) jointly to establish a multidisciplinary team that will review available records of cases referred to the team. Sets forth the people included in the makeup of the multidisciplinary team. Authorizes team members to request outside assistance in making decisions. Requires the team to assess each case within 30 days of receiving the notice, and to refer the person to the special commitment center for examination, if the team determines the person is a sexually violent predator.

Sec. 841.023. SPECIAL COMMITMENT CENTER. Authorizes TDCJ or MHMR, as appropriate, to transfer to the special commitment center a person referred to the center under Section 841.022(c). Requires the special commitment center to determine whether the person is a sexually violent predator not later than the 30th day after the date of the referral. Authorizes the center to designate an expert to examine the person. Requires the commissioner to give notice of the determination and provide corresponding documentation to the attorney representing the state not later than the 30th day after the date of the referral, if the special commitment center determines that the person is a sexually violent predator. Requires the commissioner to give notice of the determination to TDCJ or MHMR, as appropriate, not later than the 30th day after the date of the referral, if the special commitment center determines that the person is not a sexually violent predator. Requires TDCJ to transport the person to a secure correctional facility or to a state hospital for release.

SUBCHAPTER C. PETITION ALLEGING PREDATOR STATUS

Sec. 841.041. PETITION ALLEGING PREDATOR STATUS. Authorizes the attorney representing the state to file, in certain courts, a petition alleging that a person referred to the attorney is a sexually violent predator, and stating facts sufficient to support the allegation. Requires the attorney representing the state to attempt to file the petition within a prescribed time frame before the anticipated release or discharge date of the referred person.

Sec. 841.042. PROBABLE CAUSE DETERMINATION. Requires the judge to determine whether probable cause exists to believe that the person named in the petition under Section 841.041 is a sexually violent predator. Requires the judge to direct that the person be taken into custody and detained at a special commitment center, if probable cause is determined to exist.

Sec. 841.043. HEARING. Requires the attorney representing the state to give the detained person notice of a hearing, within 72 hours, to contest probable cause as to whether the person is a sexually violent predator. Sets forth requirements for the judge at the hearing. Authorizes the attorney representing the state to rely on the petition and supplement the petition with documentary evidence or live testimony. Sets forth the rights of the detained person.

SUBCHAPTER D. TRIAL

Sec. 841.061. TRIAL. Requires the judge to conduct a trial, not later than the 60th day after the completion date of a hearing under Section 841.043, to determine whether the detained person is a sexually violent predator. Establishes that the detained person or the state is entitled to a jury trial on demand. Requires the demand to be filed in writing not later than the 10th day before the trial. Provides that the number and selection of jurors is governed by Chapter 33, Code of Criminal Procedure.

Sec. 841.062. DETERMINATION OF PREDATOR STATUS. Requires the judge or jury to determine whether, beyond a reasonable doubt, the detained person is a sexually violent predator.

Provides that either the state or the person is entitled to appeal the determination. Requires a unanimous verdict if the jury determines that a person is a sexually violent predator.

Sec. 841.063. DISCHARGE AFTER TRIAL. Requires the judge to direct the person's discharge, unless the person is found to be a sexually violent predator.

Sec. 841.064. COMMITMENT OF PREDATOR. Requires the judge to commit a person determined to be a sexually violent offender to the custody of the commissioner for control, care, and treatment at the special commitment center until the person's behavioral abnormality has changed to the extent that certain requirements have been met. Requires MHMR to enter into an interagency contract with TDCJ for confinement of a person committed under this section. Requires TDCJ to house or contract for housing of persons committed under this section separately from inmates in the custody of TDCJ. Requires MHMR to provide or contract for the provision of care and treatment to a person committed under this section.

Sec. 841.065. CONTINUANCE. Authorizes the judge to continue a trial conducted under Section 841.061 if the detained person is not substantially prejudiced by the continuance, and certain conditions exist.

Sec. 841.066. MISTRIAL. Requires the judge, upon a mistrial, to direct the person's continued detention at the special commitment center until another trial is conducted. Requires a trial following a mistrial to begin no later than the 90th day after the date a mistrial was declared, unless a continuance is granted.

SUBCHAPTER E. COMMITMENT REVIEW.

Sec. 841.081. BIENNIAL EXAMINATION. Requires a person committed under Section 841.064 to receive a biennial examination. Requires the commissioner, in preparation for a judicial review, to provide a report of the biennial examination to the judge who committed the person. Requires the report to include consideration of whether conditional release to a less restrictive alternative is in the best interest of the person and will protect the community.

Sec. 841.082. BIENNIAL REVIEW. Requires the judge to conduct a biennial review of the status of the committed person. Provides that the person is entitled to be present at the review, but the person is not entitled to be there. Requires the judge to set a hearing if, at the review, the judge determines that probable cause exists to believe that the person's behavioral abnormality has changed regarding certain conditions.

Sec. 841.083. HEARING. Entitles the committed person to be present at the hearing by the judge and to have the benefit of all the constitutional protections provided at the initial civil commitment proceeding. Entitles the state to have a hearing before a jury and to choose an expert to examine the person. Provides that the burden of proof is on the state to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that certain conditions exist.

SUBCHAPTER F. PETITIONS FOR DISCHARGE OR CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE

Sec. 841.101. AUTHORIZED PETITIONS FOR DISCHARGE OR CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE. Requires the commissioner to authorize a person to petition the court for discharge or for conditional release to a less restrictive alternative, if the commissioner determines that the committed person's behavior is changed and the person will no longer engage in a predatory act of sexual violence upon release from the special commitment center. Requires the petitioner to serve a petition to the court and an attorney representing the state. Requires the judge to order a hearing on the petition not later than the 30th day after the date the judge receives the petition. Entitles the state to choose an expert to examine the petitioner. Requires the court, upon request, to conduct a hearing before a jury. Provides that the burden of proof is on the state to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that certain conditions exist.

Sec. 841.102. UNAUTHORIZED PETITIONS FOR DISCHARGE OR CONDITIONAL RELEASE TO LESS RESTRICTIVE ACTIVITY. Requires the commissioner to notify the person in writing of the person's right, upon commitment and annually thereafter, to petition the court for discharge or release to a less restrictive alternative over the commissioner's objections.

Sec. 841.103. FRIVOLOUS PETITIONS FOR DISCHARGE OR CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE. Requires the judge, upon receipt of a petition filed by the committed person without the commissioner's authorization, to attempt to review the petition and determine if the petition is based on frivolous grounds. Requires the judge to deny petitions based on frivolous grounds without a hearing. Requires the judge, except as provided by Subsection (c), to deny without a hearing a petition that is filed without the commissioner's authorization providing certain conditions are met. Establishes that the judge is not required to deny a petition under Subsection (b) if the petition contains facts on which a court could find that a petitioner's behavioral abnormality had changed to the extent that a hearing was warranted.

SUBCHAPTER G. DISCHARGE OR CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE

Sec. 841.121. NOTICE OF DISCHARGE OR CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE. Requires the commissioner to give written notice of a discharge or conditional release to the victim, a guardian of the victim, or if deceased, a close relative of the deceased victim, before the committed person's discharge or release to a less restrictive alternative. Specifies conditions concerning failure to notify under this section. Defines "close relative of a deceased victim," "guardian of a victim," and "victim."

Sec. 841.122. CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE. Requires MHMR to provide or contract for the provision of treatment to a person who is conditionally released to a less restrictive alternative. Requires MHMR to enter into an interagency agreement with TDCJ for necessary supervision of a person who is conditionally released to a less restrictive alternative. Requires TDCJ to provide or contract for the provision of supervision to the person. Authorizes the provision of supervision to include housing to a person. Authorizes a service provider other than TDCJ and MHMR to provide a service to a person, if the service provider agrees in writing to provide the service.

Sec. 841.123. CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE; COURT ORDER. Requires the judge to enter an order directing a person's conditional release to a less restrictive alternative if the judge determines certain specified conditions. Requires the judge, before entering an order to grant a person's conditional release, to impose on the person necessary conditions to ensure the person's compliance with treatment and to protect the community. Sets forth conditions regarding conditional release. Requires TDCJ and MHMR on order of the court to examine the less restrictive alternative proposed by and recommend to the judge any additional conditions necessary to ensure compliance with treatment and to protect the community. Requires the judge to provide copies of the imposed conditions to the person and to the service provider. Authorizes a proposed course of treatment to include monitoring with a polygraph and plethysmograph. Requires the judge, if the judge does not enter an order granting conditional release, to remand the person to the custody of the commissioner for control, care, and treatment at the special commitment center, subject to discharge in accordance with this chapter.

Sec. 841.124. CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE; TREATMENT REPORT. Requires a treatment provider to submit a report, as directed by TDCJ, to TDCJ stating whether the person is complying with treatment requirements.

Sec. 841.125. CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE; REVIEW. Requires a judge who conditionally releases a person under Section 841.123 to conduct an annual review of the person's status. Authorizes the judge to conduct the review more frequently due to certain motions. Requires the judge, upon review, to determine whether to rescind or modify the conditional release. Authorizes certain parties, on reasonable belief that the person is not complying, to cause a person who is conditionally released to be taken into custody and detained at a special commitment center to determine whether to rescind or modify the person's conditional release. Requires the judge to be notified, if a person other than the judge causes the detention, by the end of the next judicial day. Establishes that upon the request of either

the person or the attorney representing the state, the conditionally released person is entitled to an immediate examination. Establishes that a conditionally released indigent person is entitled to expert services as approved by the judge. Requires the judge to promptly schedule a hearing, upon ordering or receiving notice of the person's detention. Provides that hearsay evidence, if it is considered reliable by the judge, is admissible at the hearing. Sets forth requirements of the judge at the hearing.

Sec. 841.126. DEPARTMENTAL CERTIFICATE OR COURT ORDER DIRECTING RETURN TO SPECIAL COMMITMENT CENTER. Authorizes MHMR, by issuing a special certificate, to cause a person to be taken into custody and returned to a special commitment center, if MHMR reasonably believes the person has performed certain actions. Authorizes a judge to enter an order directing a peace officer to take the person into custody and return the person to the special commitment center, if MHMR issues a certificate. Requires a peace officer, upon direction by a departmental certificate or court order, to take the person into custody and return the person to the special commitment center. Provides that the peace officer need not have possession of the certificate at the time the officer acts under this subsection. Establishes that a person commits an offense if the person is absent without authority from the special commitment center, or if the person violates a condition of release. Specifies that an offense under this subsection is a state jail felony.

SUBCHAPTER H. ADMINISTRATION OF MEDICATIONS

Sec. 841.141. DEFINITIONS. Defines "capacity," "medication-related emergency," "psychoactive medication."

Sec. 841.142. APPLICATION OF SUBCHAPTER. Establishes that this subchapter applies only to the application of psychoactive medication to a person who meets certain requirements.

Sec. 841.143. ADMINISTRATION OF MEDICATION TO PERSON. Prohibits a person from administering a psychoactive medication to a person who refuses to take the medication voluntarily, unless the person is having a medical emergency or under an order authorizing the administration of medication regardless of refusal.

Sec. 841.144. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. Authorizes a physician who is treating a person, on behalf of the state, to file an application in certain courts for an order to authorize the administration of psychoactive medication regardless of the person's refusal. Sets forth conditions for administration of psychoactive drugs if a person refuses. Sets forth the requirements for an application filed under this section. Establishes that an application filed under this section is separate from a petition for that commitment as a sexually violent predator.

Sec. 841.145. RIGHTS OF PERSON. Entitles a person for whom an application is filed, for an order to authorize the administration of a psychoactive medication, to certain rights

Sec. 841.146. HEARING ON PERSON'S CAPACITY AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. Authorizes the court to issue an order authorizing the administration of one or more classes of psychoactive medication, only if the court, after the hearing, finds certain requirements by clear and convincing evidence. Requires the court, in making its findings, to consider certain conditions. Requires a hearing under this subchapter to be conducted on the record by the probate judge, or judge with jurisdiction. Authorizes a judge to refer a hearing to a magistrate or a court-appointed master who has training regarding psychoactive medications. Authorizes that magistrate or master to give notice, set hearing dates, and appoint attorneys. Provides that a record is not required if the hearing is held by a magistrate or court-appointed master. Entitles a party to a trial de novo by the judge if an appeal of the magistrate's or master's report is filed with the court within three days after the date the report was issued. Requires the hearing to be held within 30 days of the date of the filing of the application for an order to authorize psychoactive medication. Authorizes the person or person's attorney to request that the proceeding be transferred to a court in which a judge is licensed to practice law in this state, if an appeal of a magistrate's or master's report is held in a county court in which the judge is not a licensed attorney. Requires the county judge to transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in

that court. Entitles that person or person's attorney to have provided, as soon as possible, written notification of the court's determinations under this section. Requires the notification to include a statement of evidence on which the court relied and the reasons for the court's determinations. Authorizes an order under this section to authorize the administration to a person, regardless of the person's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the person's diagnosis. Authorizes the order to permit certain conditions regarding the distribution of the medication to the person. Requires medications in the order to conform to classes determined by MHMR. Authorizes an order under this section to be reauthorized or modified on the petition of a party. Provides that the order remains in effect pending the action on the petition. Authorizes a modification to an order to change a class of medication authorized in the order.

Sec. 841.147. COSTS. Requires the cost for hearings under this subchapter to be paid by the court in which the application is filed.

Sec. 841.148. APPEAL. Authorizes a person to appeal under this subchapter. Provides that an order under this subchapter is effective pending an appeal.

Sec. 841.149. EFFECT OF ORDER. Establishes that a person's consent to take psychoactive medication is not valid and may not be relied upon if the person is subject to an order under Section 841.146. Establishes that the issuance of an order is not a determination or adjudication of mental incompetency and does not limit that person's rights as a citizen or the person's property rights or legal capacity.

Sec. 841.150. EXPIRATION OF ORDER. Establishes that an order under Section 841.146 expires on the expiration date of the order of commitment as a sexually violent predator.

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 841.161. RULEMAKING AUTHORITY. Authorizes, by rule, the Texas Board of Mental Health and Mental Retardation (board) to administer this chapter. Requires rules adopted under this section to be consistent with the purposes of this chapter. Authorizes the board, by rule, to define for persons committed under this chapter appropriate rights based on individualized risk assessments of those persons.

Sec. 841.162. RELEASE OR EXCHANGE OF INFORMATION. Requires, in order to protect the public and enable a determination of whether a person is a sexually violent predator, any entity that possesses information regarding relevant information relating to a person's predator status to release the information to an entity charged with determining that status. Requires, in order to protect the public and enable the provision of control, care, and treatment, to a sexually violent predator, any entity that possesses information regarding relevant information relating to a person's predator status to release the information to MHMR. Requires the state, upon written request, to release to certain named entities any available information regarding a person who is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state. Authorizes certain entities to exchange any available information regarding a person, to facilitate and encourage the effective control, care, and treatment of a person and to protect the public. Establishes that information under this section includes information relating to the care, treatment, criminal history, or the physical or mental health of the person, as appropriate. Provides that the person's consent is not required for release or exchange of information under this section.

Sec. 841.163. REPORT, RECORD, OR STATEMENT SUBMITTED TO COURT. Establishes that certain reports submitted to the court under this chapter are part of the record of the court. Requires the report, record, or statement, notwithstanding Subsection (a), to be sealed and may be opened only on the order of the judge or as provided by this chapter.

Sec. 841.164. CONSTITUTIONAL REQUIREMENTS FOR CARE AND TREATMENT. Requires the detention and commitment of a person under this chapter to conform to constitutional requirements for care and treatment.

Sec. 841.165. COUNSEL. Entitles a detained or committed person, at all stages of the civil commitment proceedings, to the assistance of counsel. Requires the court to appoint an attorney

if the person is indigent.

Sec. 841.166. EXPERT. Authorizes a person detained under this chapter to retain an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf. Requires a judge to determine the necessity of an expert's services in the case of an indigent person. Requires the judge, if the judge determines it is necessary, to appoint an expert to perform an examination and participate in the trial on the person's behalf. Requires the court to approve reasonable compensation for expert services rendered on behalf of an indigent person on filing of a certified compensation claim supported by a written statement specifying certain information regarding the services rendered. Requires the court to ensure that an expert retained or appointed has reasonable access to a person examined under this chapter, as well as all of the relevant records and reports.

Sec. 841.167. CIVIL COMMITMENT PROCEEDING; PROCEDURE AND COSTS. Establishes that a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding. Establishes that a civil commitment hearing is subject to the rules of procedure and appeal for civil cases. Requires the state to pay the costs of a civil commitment proceeding conducted under this chapter, except as provided by Subchapter H.

Sec. 841.168. IMMUNITY. Sets forth persons who are immune from liability for good faith conduct under this chapter.

SECTION 2. Amends Sections 51.13(a) and (b), Family Code, to provide that an order of adjudication or disposition of a juvenile in a proceeding under this title is not a conviction of crime, and except as provided by Chapter 841, Health and Safety Code, an order of adjudication or disposition does not impose any civil disability ordinarily resulting from a conviction. Authorizes the adjudication or disposition of a child or evidence adduced in a hearing under this title to be used only in subsequent civil commitment proceedings under Chapter 841, Health and Safety Code. Makes conforming changes.

SECTION 3. Amends Section 494.008(a), Government Code, to authorize the director of the institutional division or the director's designee to authorize those employees to transport and to apprehend persons subject to civil commitment proceedings under Chapter 841, Health and Safety Code.

SECTION 4. Amends Section 250.001(3), Health and Safety Code, to redefine "facility."

SECTION 5. Amends Chapter 321, Health and Safety Code, by adding Section 321.005, as follows:

Sec. 321.005. APPLICATION OF CHAPTER. Establishes that this chapter does not apply to certain types of facilities or waive an immunity defense.

SECTION 6. Amends Chapter 533D, Health and Safety Code, by adding Section 533.0851, as follows:

Sec. 533.0851. FACILITIES FOR PREDATOR CARE. Authorizes MHMR, contingent upon the agreement of the governing boards of MHMR and TDCJ, to transfer a part of Rusk State Hospital to the TDCJ for confinement of sexually violent predators, under Chapter 841. Defines "transfer."

SECTION 7. (a) Makes application of this Act prospective, except as provided by Subsection (b).

(b) Makes application of this Act retroactive to January 1, 1996.

SECTION 8. Effective date: September 1, 1999.

SECTION 9. Emergency clause.