

## BILL ANALYSIS

Senate Research Center  
79R11832 MXM-F

H.B. 2036  
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Criminal Justice  
5/19/2005  
Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 2036 creates a protected practice of sex offender treatment providers to standardize training and treatment. This bill also defines what constitutes information concerning the treatment of a sex offender and directs the Council on Sex Offender Treatment to conduct a pilot program to develop, implement, research and report a dynamic risk assessment.

### RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Council on Sex Offender Treatment is modified in SECTION 8 (Section 110.152, Occupations Code), and SECTION 14 (Section 110.302, Occupations Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1, Health and Safety Code, by adding Section 1.005 to define "licensed practitioner."

SECTION 2. Amends Subchapter B, Chapter 109, Occupations Code, by adding Section 109.054 as follows:

Sec. 109.054. TREATMENT INFORMATION. Provides that in this subchapter, information concerning the treatment of a sex offender includes certain materials.

SECTION 3. Amends Section 110.001, Occupations Code, by adding Subdivision (3-a), to define "executive director."

SECTION 4. Amends Section 110.051(b), Occupations Code, to conform to Section 42.01, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, to provide that the Council on Sex Offender Treatment (council) consists of seven, rather than six, part-time members, appointed by the governor with the advice and consent of the senate in a certain manner.

SECTION 5. Amends Section 110.052, Occupations Code, to make modifications to restrictions on appointment as a public member.

SECTION 6. Amends Section 110.054, Occupations Code, to conform to Section 42.02, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, to provide that terms of two or three council members expire on February 1 of each odd-numbered year.

SECTION 7. Section 110.151, Occupations Code, to make modifications to council requirements pertaining to sex offender treatment.

SECTION 8. Amends Section 110.152, Occupations Code, as follows:

Sec. 110.152. New heading: LIST AND LICENSE REQUIREMENTS. Requires the council to maintain a list of sex offender treatment providers under Section 110.161, rather than a registry, and develop and implement by rule under Subchapter G, a license, rather than registration requirements. Makes a conforming change.

SECTION 9. Amends Section 110.159(b), Occupations Code, to make a conforming change.

SECTION 10. Amends Section 110.161, Occupations Code, as follows:

Sec. 110.161. New heading: PUBLICATION OF LIST. Makes conforming changes.

SECTION 11. Amends Section 110.253, Occupations Code, to make a conforming change.

SECTION 12. Amends the heading to Subchapter G, Chapter 110, Occupations Code, to read as follows:

#### SUBCHAPTER G. SEX OFFENDER TREATMENT PROVIDER LICENSE

SECTION 13. Amends Section 110.301, Occupations Code, as follows:

Sec. 110.301. New heading: LICENSE REQUIRED. (a) Prohibits a person from providing a rehabilitation service or acting as a sex offender treatment provider unless the person is licensed under this chapter.

(b) Creates this subsection from existing text. Prohibits a person claiming to be a sex offender treatment provider, or using the title "sex offender treatment provider" or a similar title or an abbreviation that implies the person is a sex offender treatment provider, unless the person is licensed under this chapter, rather than listed in the registry.

SECTION 14. Amends Section 110.302, Occupations Code, as follows:

Sec. 110.302. New heading: LICENSE REQUIREMENTS. (a) Creates this subsection from existing text. Makes conforming and nonsubstantive changes.

(b) Requires the council, in developing the rules, to coordinate with the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission (TYC), and the Texas Juvenile Probation Commission.

(c) Authorizes the Texas Board of Criminal Justice or the governing board of TYC to vote to exempt employees of TDCJ or TYC, as appropriate, from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency.

SECTION 15. Amends Section 110.303, Occupations Code, as follows:

Sec. 110.303. New heading: LICENSE OF OUT-OF-STATE APPLICANTS. Makes conforming changes.

SECTION 16. Amends Section 110.304, Occupations Code, to make a conforming change.

SECTION 17. Amends Section 110.305, Occupations Code, as follows:

Sec. 110.305. New heading: LICENSE EXPIRATION. Makes conforming changes.

SECTION 18. Amends Section 110.306, Occupations Code, as follows:

Sec. 110.306. New heading: LICENSE RENEWAL REQUIRED. Makes conforming changes.

SECTION 19. Amends Section 110.307, Occupations Code, to make conforming changes.

SECTION 20. Amends Section 110.308, Occupations Code, as follows:

Sec. 110.308. New heading: RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. Makes conforming changes.

SECTION 21. Amends Section 110.309, Occupations Code, as follows:

Sec. 110.309. New heading: DENIAL OF LICENSE.

SECTION 22. Amends Section 110.351, Occupations Code, to make conforming changes.

SECTION 23. Amends Section 110.352, Occupations Code, to make a conforming change.

SECTION 24. Amends Section 110.353(a), Occupations Code, to make a conforming change.

SECTION 25. Amends Subchapter H, Chapter 110, Occupations Code, to conform to Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 110.354, and further amending Section 110.354, as follows:

Sec. 110.354. EMERGENCY SUSPENSION. (a) Requires the council or a three-member committee of council members designated by the council to temporarily suspend the license of a person licensed under this chapter if the council or committee determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the public welfare.

(b) Authorizes the license to be suspended under this section without notice or hearing on the complaint under certain conditions.

(c) Requires the State Office of Administrative Hearings to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 26. Amends Chapter 110, Occupations Code, to conform to Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter J, and further amending Subchapter J, as follows:

#### SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 110.451. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the council to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 110.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Prohibits the amount of the administrative penalty from being less than \$50 or more than \$5,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) Requires the amount to be based on certain information.

Sec. 110.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the executive director of the council (executive director), if he or she determines that a violation occurred, to issue to the council a report stating certain information.

(b) Requires the executive director to give written notice of the report to the subject of the report within a certain time.

Sec. 110.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person to take certain action within 20 days after the date the person receives the notice.

(b) Requires the council, if the person accepts the determination and recommended penalty of the executive director, or fails to respond in a timely manner to the notice, to by order approve the determination and impose the recommended penalty.

Sec. 110.455. HEARING. (a) Requires the executive director, if the person requests a hearing, to set a hearing and give written notice of the hearing to the person.

(b) Requires an administrative law judge of the State Office of Administrative Hearings to hold the hearing.

(c) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the council a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 110.456. DECISION BY COUNCIL. (a) Authorizes the council, based on the findings of fact, conclusions of law, and proposal for decision, to by order make certain determinations.

(b) Requires the notice of the council's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 110.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days after the date the council's order becomes final, to take certain action.

(b) Authorizes a person who files a petition for judicial review to take certain action within the 30-day period prescribed by Subsection (a).

(c) Requires the executive director, if the executive director receives a copy of an affidavit under Subsection (b)(2), to file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 110.458. COLLECTION OF PENALTY. (a) Authorizes the penalty to be collected if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

Sec. 110.459. DETERMINATION BY COURT. (a) Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 110.460. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, when the court's judgment becomes final, to order the release of the bond.

(e) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 110.461. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

SECTION 27. Amends the heading to Section 110.401, Occupations Code, to read as follows:

Sec. 110.401. OFFENSE.

SECTION 28. Amends Section 110.401(b), Occupations Code, to provide that an offense under this section is a Class A, rather than C, misdemeanor.

SECTION 29. Amends Chapter 110, Occupations Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. ADULT DYNAMIC RISK ASSESSMENT PILOT PROGRAM

Sec. 110.501. DYNAMIC RISK ASSESSMENT. (a) Provides that this section applies only to adult sex offenders who are treated in a county with a population of one million or more.

(b) Requires the council to work directly with the appropriate entities to develop, implement, research, and deploy dynamic risk assessment tools and protocols for use under this subchapter by persons licensed under this chapter. Requires costs incurred under this section to be included with certain other costs.

(c) Provides that this section expires September 1, 2007.

Sec. 110.502. REPORT AND STUDY ON PILOT PROGRAM. (a) Requires the council, not later than November 1, 2006, to report to the criminal justice division of the governor's office on the progress of implementing the pilot program under this subchapter. Requires the report to include information on the program's use of all dynamic risk assessment tools, including plethysmograph and visual reaction time assessments, and the use of dynamic risk assessment protocols.

(b) Requires the council, after filing the report, to work with the Legislative Budget Board to study the recidivism of sex offenders treated under the pilot program, including a study comparing the various dynamic risk assessment tools and protocols.

Sec. 110.503. EXPIRATION DATE. Provides that this subchapter expires December 1, 2009.

SECTION 30. Amends Section 411.1388(a), Government Code, to entitle the council, rather than the Interagency Council on Sex Offender Treatment to obtain from the department criminal history record information maintained by the department that relates to certain individuals.

SECTION 31. Repealer: (1) Section 110.001(4) (defining "registry"), Occupations Code;

(2) Section 27 (pertaining to emergency suspension and an administrative penalty), Chapter 326, Acts of the 78th Legislature, Regular Session, 2003; and

(3) Sections 42.01 (pertaining to the statewide rural healthcare system) and 42.02 (pertaining to the Council on Sex Offender Treatment), Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 32. Provides that the changes in law made by this Act to the qualifications of a member of the Council on Sex Offender Treatment do not affect the entitlement of a member serving on the council immediately before the effective date of this Act to continue to serve as a member for the remainder of the member's term. Provides that the changes in law made by this Act apply only to a member appointed on or after the effective date of this Act. Provides that this Act does not prohibit a person who is a member of the council on the effective date of this Act from being reappointed to the council if the person has the qualifications required for a member under Section 110.051, Occupations Code, as amended by this Act.

SECTION 33. Provides that a person who holds a registration issued under Chapter 110, Occupations Code, on the effective date of this Act is considered to hold a license under Chapter 110, Occupations Code, as amended by this Act. Provides that all provisions of Chapter 110, Occupations Code, including renewal requirements, apply to the person as if the person was issued a license under that chapter.

SECTION 34. (a) Makes the change in law made by this Act to Section 110.401, Occupations Code, prospective.

(b) Provides that an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) Provides that for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 35. Provides that to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 36. Effective date: September 1, 2005.