

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 2037  
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Criminal Justice  
5/4/2009  
Committee Report (Substituted)

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

This legislation relates to the creation of a state agency to perform the functions relating to the sex offender civil commitment program under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code, that are currently performed by the Texas Council on Sex Offender Treatment (TCSOT), a governor-appointed independent council administratively attached to the Department of State Health Services' Professional Licensing and Certification Unit. S.B. 2037 amends the Government Code by adding Chapter 420A titled "Office of Violent Sex Offender Management."

The new office would perform appropriate functions related to the sex offender civil commitment program provided under Chapter 841, Health and Safety Code, including functions related to the provision of treatment and supervision to civilly committed sex offenders. The office would be a state agency, governed by a three-member governor-appointed board, serving staggered four-year terms, which will meet monthly. The office also would have rulemaking authority under Chapter 841, Health and Safety Code.

C.S.S.B. 2037 amends current law relating to the sex offender civil commitment program and to the creation of a state agency to perform the functions relating to the sex offender civil commitment program that are currently performed by the Texas Council on Sex Offender Treatment.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to Texas Council on Sex Offender Treatment is transferred to Office of Violent Sex Offender Management in SECTION 10 (Section 841.141, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1389, as follows:

Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. (a) Entitles the Office of Violent Sex Offender Management (OVSOM) to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information that is maintained by DPS and that relates to a person who has applied with OVSOM to be an employee of OVSOM, or a contracted service provider with OVSOM.

(b) Prohibits criminal history record information obtained by OVSOM under Subsection (a) from being released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

(c) Requires OVSOM to destroy criminal history record information obtained under Subsection (a) as soon as practicable after the date on which, as applicable, the person's employment or contract with OVSOM terminates, or OVSOM decides not to employ or contract with the person.

SECTION 2. Amends Subtitle B, Title 4, Government Code, by adding Chapter 420A, as follows:

## CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

Sec. 420A.001. DEFINITIONS. Defines "board" and "office."

Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) Provides that OVSOM is a state agency.

(b) Provides that OVSOM is governed by a board (board) composed of the following three members appointed by the governor: one member experienced in the management of sex offenders; one member experienced in the investigation or prosecution of sex offenses; and one member experienced in counseling or advocating on behalf of victims of sexual assault.

(c) Provides that members of the board serve staggered two-year terms. Provides that two members' terms expire February 1 of each even-numbered year and one member's term expires February 1 of each odd-numbered year.

(d) Provides that a member of the board is entitled to travel expenses incurred in performing official duties and to a per diem equal to the maximum amount allowed on January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations provided for members of state boards and commissions in the General Appropriations Act.

Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) Requires the governor to designate a member of the board as presiding officer. Provides that the presiding officer serves at the discretion of the governor.

(b) Requires the board to meet at least quarterly and at other times at the call of the presiding officer.

Sec. 420A.004. SUNSET PROVISION. Provides that OVSOM is subject to Chapter 325 (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021.

Sec. 420A.005. GRANTS AND DONATIONS. Authorizes OVSOM, on behalf of the state, to apply for and accept grants and donations from any source to be used by OVSOM in the performance of the duties of OVSOM.

Sec. 420A.006. PUBLIC INTEREST INFORMATION. Requires OVSOM to prepare information of public interest describing the functions of OVSOM and the procedures by which complaints are filed with and resolved by OVSOM. Requires OVSOM to make the information available to the public and appropriate state agencies.

Sec. 420A.007. BIENNIAL REPORT. Requires OVSOM, not later than December 1 of each even-numbered year, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report concerning the operation of OVSOM. Authorizes OVSOM to include in the report any recommendations that OVSOM considers appropriate.

Sec. 420A.008. STAFF. Authorizes the office to select and employ a general counsel, staff attorneys, and other staff necessary to perform the office's functions.

Sec. 420A.009. SALARY CAREER LADDER FOR CASE MANAGERS. (a) Requires the board to adopt a salary career ladder for case managers. Requires the salary career ladder to base a case manager's salary on the manager's classification and years of service with the office.

(b) Requires OVSOM, for purposes of the salary schedule, to classify all case manager positions as Case Manager I, Case Manager II, Case Manager III, Case Manager IV, or Case Manager V.

(c) Provides that, under the salary career ladder adopted under Subsection (a), a case manager to whom the schedule applies and who received an overall evaluation of at least satisfactory in the case manager's most recent annual evaluation is entitled to an annual salary increase, during each of the case manager's first 10 years of service in a designated case manager classification as described by Subsection (b), equal to one-tenth of the difference between the case manager's current annual salary and the minimum annual salary of a case manager in the next highest classification.

Sec. 420A.010. **POWERS AND DUTIES.** Requires OVSOM to perform appropriate functions related to the sex offender civil commitment program provided under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code, including functions related to the provision of treatment and supervision to civilly committed sex offenders.

SECTION 3. Amends Sections 841.002(3) and (4), Health and Safety Code, as follows:

- (3) Redefines "case manager."
- (4) Defines "office," rather than "council."

SECTION 4. Amends Section 841.007, Health and Safety Code, as follows:

Sec. 841.007. New heading: **DUTIES OF OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT.** Provides that OVSOM, rather than the Texas Council on Sex Offender Treatment (TCSOT), is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION 5. Amends Section 841.022(a), Health Code, to require the executive director of TDCJ and the commissioner of the Department of State Health Services (DSHS), rather than the Texas Department of Mental Health and Mental Retardation (MHMR), jointly to establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021 (Notice of Potential Predator). Requires that the team include one person, rather than two persons, from DSHS, rather than MHMR, one person from DPS, rather than from the Texas Department of Public Safety, two persons from OVSOM, rather than TCSOT, or OVSOM personnel, rather than TCSOT personnel, and one person from TCSOT. Makes a nonsubstantive change.

SECTION 6. Amends Sections 841.082(a) and (c), Health and Safety Code, as follows:

- (a) Requires the judge, before entering an order directing a person's outpatient civil commitment, to impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. Requires that the requirements include requiring the person to reside in a Texas residential facility under contract with OVSOM, rather than TSCOT, or at another location or facility approved by OVSOM, rather than TSCOT; and requiring the person's participation in and compliance with a specific course of treatment provided by OVSOM and compliance with all written requirements imposed by the case manager or otherwise by OVSOM. Deletes existing text requiring the person to notify the case manager immediately but in any event within 24 hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person. Makes a nonsubstantive change.
- (c) Makes conforming changes.

SECTION 7. Amends Section 841.083, Health and Safety Code, as follows:

Sec. 841.083. **TREATMENT; SUPERVISION.** (a) Authorizes the treatment provider to receive annual compensation in an amount not to exceed \$10,000, rather than \$6,000, for providing the required treatment. Makes a conforming change.

(b) Requires that the provision of supervision include a tracking service and, if required by court order, supervised housing. Makes a nonsubstantive change.

(c) Requires OVSOM, rather than TSCOT, to enter into appropriate memoranda of understanding with DPS for the provision of a tracking service and with DPS and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person. Makes conforming changes. Deletes existing Subsection (c-1), requiring TSCOT, notwithstanding Subsection (c) or any other provision of this subchapter, to provide through the case management system any supervision or tracking service required under this chapter for persons residing in Dallas, Harris, or Tarrant County. Deletes existing text requiring TSCOT to provide the tracking service under this subsection through two employees of DSHS. Deletes existing text requiring any tracking personnel used by DSHS for purposes of this chapter be approved by TSCOT. Deletes existing Subsection (c-2), requiring DPS or TSCOT, as appropriate, if the equipment necessary to implement the tracking service is available through a contract entered into by the comptroller of public accounts, to acquire that equipment through that contract.

(d) Prohibits the committed person from being housed for any period of time in a mental health facility, state school, or community center, unless the placement results from a commitment of the person to that facility, school, or center by governmental action. Makes conforming changes.

(e) Makes a conforming change.

SECTION 8. Amends Section 841.084, Health and Safety Code, to make conforming changes.

SECTION 9. Amends Section 841.101, Health and Safety Code, to make conforming changes.

SECTION 10. Amends Section 841.141, Health and Safety Code, as follows:

Sec. 841.141. RULEMAKING AUTHORITY. (a) Requires OVSOM, rather than TSCOT, by rule to administer this chapter. Requires that rules adopted by OVSOM, rather than TSCOT, under this section be consistent with the purposes of this chapter.

(b) Makes a conforming change.

SECTION 11. Amends Sections 841.142(c) and (d), Health and Safety Code, to make conforming changes.

SECTION 12. Amends Section 841.147, Health and Safety Code, to make a conforming change.

SECTION 13. Amends Subchapter H, Chapter 841, Health and Safety Code, by adding Section 841.151, as follows:

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) Defines "correctional facility," "secure correctional facility," and "secure detention facility."

(b) Provides that this section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating a civil commitment requirement imposed under Section 841.082 (Commitment Requirements) or a law of this state.

(c) Requires that the facility, not later than the day preceding the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, notify the

person's case manager in writing of the anticipated date and time of the person's release.

(d) Requires a case manager, on request, to provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

SECTION 14. Provides that the following are transferred to OVSOM:

- (1) the functions of TSCOT that relate to the sex offender civil commitment program;
- (2) the director of DSHS who has jurisdiction over the sex offender civil commitment program; and
- (3) the staff of TSCOT whose primary duties include the operation of the sex offender civil commitment program.

SECTION 15. Requires the governor, as soon as possible after the effective date of this Act, to appoint three members to OVSOM.

SECTION 16. (a) Requires OVSOM, DSHS, and TCSOT to coordinate the transfer of functions relating to the sex offender civil commitment program as required by this Act.

(b) Requires that the transfer of all functions relating to the sex offender civil commitment program to OVSOM be accomplished as soon as possible but not later than the 90th day after the date that the last member of OVSOM qualifies for office.

(c) Provides that the transfer required by this Act includes the transfer of all assets, duties, powers, obligations, and liabilities, including contracts, leases, real or personal property, funds, employees, furniture, computers and other equipment, and files and related materials used by DSHS and TCSOT in performing the functions relating to the sex offender civil commitment program that are transferred by this Act. Defines "employees" for purposes of this subsection.

(d) Provides that a form, rule, or procedure adopted by the Health and Human Services Commission or DSHS in relation to TCSOT that is in effect on the effective date of this Act remains in effect on and after that date as if adopted by OVSOM until amended, repealed, withdrawn, or otherwise superseded by that office.

(e) Provides that all unexpended appropriations for functions relating to the sex offender civil commitment program that are made for use by DSHS or TCSOT are transferred to OVSOM.

(f) Requires OVSOM to publish in the Texas Register the date on which the transfer of functions under this Act is accomplished.

SECTION 17. Provides that after the effective date of this Act, TCSOT is required to continue to perform applicable functions until the transfer of functions required by this Act is completed, and provides that the laws providing for those functions are continued in effect for that purpose.

SECTION 18. Effective date: September 1, 2010.