

BILL ANALYSIS

Senate Research Center
85R5805 SMT-F

S.B. 613
By: Whitmire
Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

- Currently, Section 841.0835, Health and Safety Code, as added by S.B. 746 authored by Senator Whitmire during the 84th Legislature, Regular Session, 2015, requires the Health and Human Services Commission (HHSC) to coordinate with the Texas Civil Commitment Office (TCCO) to provide psychiatric services, disability services and housing services for sexually violent predators (SVPs), but HHSC has argued on several occasions that the law is not specific enough and does not give them the authority to provide inpatient mental health care to those SVPs.
- As a result, HHSC has refused to provide appropriate services for SVPs who have mental illnesses so severe that they are unable to understand and internalize the concepts in the sex offender treatment program. Therefore, they are not able to move up through the program tiers towards release.
- As a result, TCCO is left with several SVPs at the civil commitment center who are severely mentally ill and also assaultive/violent. One such SVP recently assaulted a staff member, sending the staff member to the hospital. Another SVP punched a fellow SVP in the face over a cup of coffee. These SVPs present a serious risk of harm to staff and other SVPs.
- Similarly, SVPs who are severely mentally ill may be at greater risk of harming themselves, or even being victimized/manipulated by other SVPs. The civil commitment center is not an inpatient psychiatric facility that is set up, staffed, or accredited to handle these seriously mentally ill individuals.
- These SVPs are unable to take part in sex offender treatment but also are not receiving the type of intensive psychiatric care that would help them to hopefully recover to a point where they can participate in sex offender treatment.
- Due to this lack of intensive psychiatric care, TCCO is placed at risk of liability. That liability could result from either (1) the severely mentally ill SVP harming himself or herself or someone else or (2) challenges that the entire program is unconstitutional and warehouses these SVPs with no real opportunity to advance in treatment.
- Programs in other states have faced similar constitutional challenges; they were warehousing SVPs without providing avenues for advancement and two states' programs were found to be unconstitutional.
- Litigation regarding the constitutionality of the program and the possibility of being found unconstitutional would be incredibly costly to the state. As an example, Washington's program was found to be unconstitutional and was placed under a federal injunction that directed the specific changes the state had to make to the civil commitment program. An attorney working with the Washington program estimated the injunction's cost to Washington to be approximately \$150 million.
- If HHSC does not begin to provide these services, TCCO will be required to create a supported living unit within the civil commitment center in order to house these SVPs. That supported living unit will come at great expense to Texas, whereas HHSC is already funded to provide inpatient mental health services and received an additional \$1.65 million to

implement S.B. 746, therefore making it possible to absorb these SVPs with existing resources.

This small caseload, currently three SVPs, represents a fraction of a percentage of the total state hospital beds in the state and can be absorbed into existing resources much more efficiently and inexpensively than requiring TCCO to develop a Supported Living Unit.

As proposed, S.B. 613 amends current law relating to services provided by the Health and Human Services Commission to sexually violent offenders who are incompetent to attend sex offender treatment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 841.0835, Health and Safety Code, as follows:

Sec. 841.0835. COMMITTED PERSONS WITH SPECIAL NEEDS. (a) Creates this subsection from existing text. Requires the Health and Human Services Commission (HHSC), after coordination with the Texas Civil Commitment Office (office), to provide certain services, rather than requiring HHSC to coordinate with the office to provide those services.

(b) Requires HHSC, for a certain committed person, to provide inpatient mental health services until the person is able to participate effectively in the sex offender treatment program.

(c) Provides that a person who is adjudicated as a sexually violent predator under this chapter and who has a mental illness that prevents the person from effectively participating in a sex offender treatment program presents a substantial risk of serious harm to the person or others for purposes of Chapter 574 (Court-Ordered Mental Health Services).

SECTION 2. Effective date: September 1, 2017.