

BILL ANALYSIS

S.B. 746
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties claim that problems with the current process under which sexually violent predators are civilly committed could result in a major threat to public safety in Texas. While the civil commitment process is designed to provide a safety net for certain high-risk repeat sex offenders, mismanagement of the Office of Violent Sex Offender Management has reportedly led to the total replacement of that office's management and the restructure of its governing board. Additionally, the parties contend that the court designated to conduct these civil commitment trials is currently in complete disarray. Because of these management issues, the parties explain, all major vendors who currently house these individuals have provided notice that they intend to cease providing housing services in the near future. S.B. 746 seeks to address these issues by revising provisions relating to the civil commitment of sexually violent predators.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 746 amends the Government Code to rename the Office of Violent Sex Offender Management as the Texas Civil Commitment Office. The bill increases from three to five the number of members of the office's governing board and requires the governor, as soon as practicable after the bill's effective date, to appoint the additional board members to terms specified by the bill. The bill repeals Health and Safety Code provisions establishing that the civil division of the special prosecution unit is responsible for initiating and pursuing a proceeding for the civil commitment of a sexually violent predator and requiring the Office of State Counsel for Offenders to represent an indigent person subject to a civil commitment proceeding as a sexually violent predator.

S.B. 746 amends the Health and Safety Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to remove being adjudged not guilty by reason of insanity of a sexually violent offense as a condition under which a person may be considered a repeat sexually violent offender. The bill includes among the responsibilities of the Texas Civil Commitment Office developing and implementing a sex offender treatment program for persons civilly committed as sexually violent predators and specifies that the appropriate and necessary treatment and supervision that the office is responsible for providing through the case management system is treatment and supervision for such committed persons.

S.B. 746 revises the composition of the multidisciplinary team established to review available records of a person referred to the team and make certain assessments regarding whether the person is likely to commit a future sexually violent offense and requires the Texas Department of Criminal Justice (TDCJ), in consultation with the office, to provide training to the team members regarding the civil commitment program. The bill repeals the requirement for the Department of State Health Services (DSHS) to give to the multidisciplinary team written notice of the anticipated discharge of a person who is committed to DSHS after having been adjudged not guilty by reason of insanity of certain sexually violent offenses and who may be a repeat sexually violent offender. The bill authorizes TDCJ, regardless of whether any exigent circumstances are present, to give written notice to the multidisciplinary team of the anticipated release of a sexually violent offender who is scheduled to be released on parole or to mandatory supervision only if the person's anticipated release date is not later than 24 months after the date on which the notice will be given. The bill prohibits TDCJ from giving notice with respect to a person who is currently released on parole or to mandatory supervision but authorizes the multidisciplinary team to perform its functions within the required period if the written notice was received by the team before the date of the person's release. The bill changes the deadline by which TDCJ is required to give notice to the multidisciplinary team from not later than the first day of the 16th month before the person's anticipated release date to not later than the first day of the 24th month before such date. The bill prohibits TDCJ from providing the notice of the anticipated release of a person for whom TDCJ has previously provided notice and who has been previously recommended for an assessment unless, after the recommendation was made, the person is convicted of a new sexually violent offense, or the person's parole or mandatory supervision is revoked based on the commission of a new sexually violent offense, failure to adhere to the requirements of sex offender treatment and supervision, or failure to register as a sex offender.

S.B. 746 specifies that the attorney to which TDCJ is required to give notice of an assessment that a person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence and provide corresponding documentation is the attorney representing the state for the county in which the person was most recently convicted of a sexually violent offense. The bill redefines "attorney representing the state," for purposes of the civil commitment of sexually violent predators, as a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction who represents the state in a civil commitment proceeding. The bill changes the court in which the attorney representing the state is authorized to file a petition alleging that the person referred is a sexually violent predator and stating facts sufficient to support the allegation from a Montgomery County district court other than a family district court to the court of conviction for the person's most recent sexually violent offense.

S.B. 746 requires an agreed order of civil commitment to require the person to submit to the treatment and supervision administered by the office. The bill removes the specification that the treatment provided to a person civilly committed as a sexually violent predator is outpatient treatment and changes the entity responsible for coordinating the treatment and supervision of such a person from a case manager to the office. The bill transfers certain powers and duties relating to civilly committed persons from the case manager to the office. The bill revises the requirements to be imposed on a person who is civilly committed as a sexually violent predator and removes the following requirements that must be imposed: a requirement prohibiting the person's contact with a potential victim, a requirement prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance, a requirement relating to the establishment of a child safety zone, if determined appropriate by the judge, and any other requirements determined necessary by the judge.

S.B. 746 requires TDCJ to prioritize enrolling in a sex offender treatment program established by TDCJ any committed person who has not yet been released by TDCJ. The bill requires TDCJ and the office to adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care for committed persons enrolled in a sex offender

treatment program established by TDCJ.

S.B. 746 removes the requirement of the office to approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider and instead requires the office to determine the conditions of supervision and treatment of a committed person. The bill removes an authorization for the treatment provider to receive annual compensation in an amount not to exceed \$10,000 for providing the required treatment. The bill changes the entity with which the office is required to enter into appropriate memoranda of understanding for the provision of a tracking service from the Department of Public Safety to TDCJ. The bill removes the requirement that the office enter into appropriate memoranda of understanding for any supervised necessary housing and instead requires the office to enter into appropriate contracts for the provision of any necessary supervised housing and other related services and authorizes the office to enter into appropriate contracts for medical and mental health services and sex offender treatment. The bill removes the requirement that the office reimburse the applicable provider for housing costs. The bill removes the requirement that the case manager make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters and removes the requirement that a case manager's report to the office include any recommendations made to the judge.

S.B. 746 requires the office to develop a tiered program for the supervision and treatment of a committed person that provides for the seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually to release from civil commitment, based on the person's behavior and progress in treatment. The bill requires the office to operate, or contract with a vendor to operate, one or more facilities provided for the purpose of housing committed persons and to designate an intake and orientation facility for committed persons on release from a secure correctional facility. The bill requires the office to develop procedures for the security and monitoring of committed persons in each programming tier and to transfer a committed person to less restrictive housing and supervision if the transfer is in the best interests of the person and conditions can be imposed that adequately protect the community.

S.B. 746 authorizes a committed person, without the office's approval, to file a petition with the court for transfer to less restrictive housing and supervision. The bill requires the court to grant the transfer if the court determines that the transfer is in the best interests of the person and conditions can be imposed that adequately protect the community. The bill requires the office to return a committed person who has been transferred to less restrictive housing and supervision to a more restrictive setting if the office considers the transfer necessary to further treatment and to protect the community and requires the transfer decision to be based on the person's behavior or progress in treatment. The bill entitles a committed person returned to a more restrictive setting to file a petition with the court seeking review of the office's determination and requires the court to order the office to transfer the person to less restrictive housing and supervision only if the court determines that the office's determination was not based on the person's behavior or progress in treatment.

S.B. 746 requires the Health and Human Services Commission (HHSC) to coordinate with the office to provide psychiatric services, disability services, and housing for a committed person with an intellectual or developmental disability, a mental illness, or a physical disability that prevents the person from effectively participating in the sex offender treatment program administered by the office. The bill requires a committed person released from housing operated by or under contract with the office to be released to the county in which the person was most recently convicted of a sexually violent offense.

S.B. 746 includes the cost of housing and treatment among the costs for which a civilly committed person who is not indigent is responsible and required to pay to the office on a monthly basis. The bill removes the specification that the monthly payments are for service to be

provided during the subsequent month. The bill removes the requirement that the office immediately transfer the money to the appropriate provider and instead requires money collected from the committed person for payment of costs to be deposited to the credit of the account from which the costs were originally paid. The bill excludes the civil commitment requirement requiring the person's participation in and compliance with the sex offender treatment program provided by the office and compliance with all written requirements imposed by the office from the civil commitment requirements the violation of which constitutes an offense.

S.B. 746 changes from the case manager to the office the entity that is required to provide a report of the biennial examination of a civilly committed sexually violent predator to the judge in preparation for a biennial review of the committed person's status and also requires the office to provide the report to the person who is the subject of the report. The bill specifies that the judge is required to conduct the biennial review not later than the 60th day after the date of receipt of the report and requires the judge to issue an order concluding the review or setting a hearing by that same deadline.

S.B. 746 removes the requirement that a judge attempt to review a petition for release filed by a committed person without the appropriate authorization as soon as practicable on receipt of the petition and instead requires the judge to review and issue a ruling on such a petition not later than the 60th day after the date of filing of the petition. The bill changes the time by which the judge is required to conduct a hearing on such a petition if the judge does not deny the petition from as soon as practicable to not later than the 60th day after the date of filing of the petition.

S.B. 746 expands the office's rulemaking authority to include the requirement to adopt rules to determine the conditions of supervision and treatment of a committed person and rules to develop and implement the tiered program. The bill clarifies that a court is required to appoint counsel to represent a person subject to a civil commitment proceeding if the person is indigent. The bill includes the applicable attorney representing the state and an employee of the attorney among the individuals who are immune from liability for good faith conduct under statutory provisions relating to civil commitment of sexually violent predators.

S.B. 746 clarifies that the duties imposed on the office and the judge by statutory provisions relating to civil commitment of sexually violent predators are suspended for the duration of a detention or confinement of a committed person in a correctional facility, secure correctional facility, or secure detention facility, or if applicable any other commitment of the person to a community center, mental health facility, or state supported living center, by governmental action. The bill requires a correctional facility, secure correctional facility, or secure detention facility to notify the office in writing of the anticipated date and time of release of a person who, at the time of the person's detention or confinement, was civilly committed as a sexually violent predator.

S.B. 746 amends the Code of Criminal Procedure to authorize an offense involving the violation of a civil commitment requirement imposed on a sexually violent predator to be prosecuted in the court that retains jurisdiction over the civil commitment proceeding, as an alternative to being prosecuted in the county in which any element of the offense occurs, and removes the specification that the offense may be prosecuted in Montgomery County.

S.B. 746 repeals Government Code provisions requiring the 435th District Court to give preference to proceedings regarding the civil commitment of sexually violent predators, criminal cases involving certain offenses relating to civil commitment requirements, and other matters that may be assigned by the administrative judge. The bill amends the Government Code to make the requirement that the state pay salaries of and other expenses related to the court reporter and court coordinator appointed for the 435th District Court applicable only to the extent that the duties of those individuals relate to proceedings for the civil commitment of a sexually violent predator or to criminal cases involving the violation of certain civil commitment requirements imposed on such a person.

S.B. 746 requires the applicable court with jurisdiction over a person civilly committed as a sexually violent predator, if a civil commitment requirement imposed before the bill's effective date differs from any of the civil commitment requirements amended by the bill, to modify the requirement imposed as applicable to conform to that section after notice and hearing. The bill's changes to the offense involving the violation of a civil commitment requirement apply to an offense committed before, on, or after the bill's effective date, but the bill establishes that a final conviction for such an offense that exists on the bill's effective date remains unaffected by the bill's provisions.

S.B. 746 repeals the following provisions:

- Section 24.579(b), Government Code
- Sections 841.004, 841.005, 841.021(b), and 841.085(c), Health and Safety Code

EFFECTIVE DATE

September 1, 2015.