

**SUBJECT:** Amending provisions on civilly committed sexually violent predators

**COMMITTEE:** Corrections — favorable, without amendment

**VOTE:** 7 ayes — Herrero, Kacal, V. Jones, R. Lopez, Murr, Swanson, Toth  
0 nays  
2 absent — Allen, Sherman

**SENATE VOTE:** On final passage (April 20) — 31 - 0

**WITNESSES:** None (*considered in a formal meeting on May 1*)

**BACKGROUND:** Concerns have been raised that administrative challenges may hinder the effectiveness of the Texas Civil Commitment Office’s supervision and treatment program. Some have suggested that certain penalties related to sexually violent predators should be revised.

**DIGEST:** SB 1179 would revise administrative procedures related to the Texas Civil Commitment Office (TCCO) and certain civilly committed individuals and sexually violent predators. The bill also would create certain offenses and increase certain penalties.

**Offenses and penalties.** The bill would increase the penalty for an offense of unlawful restraint from a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the actor was committed to a civil commitment facility when restraining any other person. The bill also would increase the penalties for an offense of public lewdness or indecent exposure from a class A misdemeanor or a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), respectively, to a third degree felony if the actor was civilly committed as a sexually violent predator.

The bill would specify that an assault against a TCCO officer or employee

would be a third-degree felony if the actor knew the person was an officer or employee of the office.

The bill would establish an offense for possessing an alcoholic beverage while residing in a correctional or civil commitment facility. A person also would commit an offense if the person possessed a cellular telephone or other wireless communications device or component while residing in a civil commitment facility unless TCCO authorized the device or component. The bill would also apply other existing offenses related to cellular communication devices in correctional facilities to civil commitment facilities.

A TCCO officer, employee, contractor, or volunteer would commit a third-degree felony if the person intentionally engaged in deviate sexual intercourse, sexual contact, or sexual intercourse with a person committed to a civil commitment facility. It would be an affirmative defense to prosecution that at the time of the offense, the actor was the spouse of the person committed to a civil commitment facility.

**Use of restraints.** The bill would specify that a TCCO employee or contractor could use a mechanical restraint on certain committed individuals only if it was considered necessary to maintain the safety and security of the center or staff and the safety of the public. The bill would remove certain requirements for the use of a mechanical restraint, including the requirement that the restraint was necessary to stop or prevent certain conduct.

A TCCO employee or contractor could use a chemical restraint on a committed person residing in a civil commitment center or while transporting a resident only if the employee or contractor completed a training program on the use of chemical restraints that included instruction on approved techniques and de-escalation policies, procedures, and practices. The training program also would have to require the employee or contractor to demonstrate competency in the use of chemical restraint techniques and devices. A chemical restraint could only be used as a last resort if it was necessary to prevent or stop certain conduct and if it was

the least restrictive restraint necessary, used for the minimum duration necessary, to prevent injury, property damage, or absconsion.

**Administering psychoactive medication.** A person would not be allowed to administer a psychoactive medication to a committed person who refused to voluntarily take the medication unless:

- the committed person was under an order authorizing the administration of medication regardless of the committed person's refusal; or
- the committed person was having a medication-related emergency, which would include situations in which it was immediately necessary to administer medication to a committed person to prevent imminent probable or substantial bodily harm to the committed person or imminent physical or emotional harm to another.

The bill would specify processes for a physician to apply for an order authorizing the administration of psychoactive medication regardless of the committed person's refusal and court procedures for issuing such an order. A committed person for whom an application for such an order was filed would have certain rights, including attorney representation, presence at the hearing, and others specified in the bill. An appeal for an order authorizing the administration of psychoactive medicine could be filed following procedures outlined in the bill.

**Family liaison officer and family participation.** TCCO could designate an employee to serve as a family liaison officer to:

- facilitate the continuation and maintenance of ties between a civilly committed sex offender and the offender's family members who were supportive of the offender's participation in the treatment and supervision program;
- notify an offender regarding emergencies concerning the offender's family and provide the offender with other necessary information;
- assist in resolving problems that could affect permitted contact with

an offender.

The family liaison officer could provide an update regarding the officer's activities before quarterly board meetings. TCCO could adopt policies or limitations it considered necessary to implement provisions related to the family liaison officer. TCCO also could adopt and implement policies that encouraged family unity during a civilly committed sex offender's commitment.

**Wellness checks.** A first responder would not be required to perform a wellness check for a sexually violent predator who was civilly committed and would not be liable for damages incurred from refusing to perform such a wellness check. A first responder could refer a person requesting a such a wellness check to TCCO, which could provide the person with information on the current condition of the civilly committed sexually violent predator.

**Petitions.** A judge would be required to deny without hearing a petition for release filed without TCCO's authorization if the petitioner had filed the petition within 180 days after certain orders related to the person's civil commitment were entered or if the judge determined by a preponderance of the evidence that the petitioner's behavioral abnormality had not changed to the extent that the petitioner was no longer likely to engage in sexual violence. The judge would not be required to deny such a petition if the judge determined by a preponderance of the evidence that the petitioner's behavioral abnormality had changed to the extent that the petitioner was no longer likely to engage in predatory sexual violence.

A court would be required to deny a committed person's transfer to the next less restrictive programming tier if the petition for the transfer was filed before the 180<sup>th</sup> day after certain orders related to the person's civil commitment were entered. The court would have to determine that the transfer was in the person's best interest by clear and convincing evidence. A committed person who filed a petition for transfer to a less restrictive tier would have to serve a copy of the petition to the attorney representing the state.

**Registration of sexually violent predators.** TCCO would be required to register with the applicable local law enforcement agency on behalf of a person who was civilly committed as a sexually violent predator and required to reside in a civil commitment center. A person for whom registration was completed would not be required to verify the registration until the person was authorized to reside outside of the civil commitment center.

**Other administrative procedures.** Certain administrative procedure laws would not apply to a rule or internal procedure of TCCO that applied to a civilly committed sexually violent predator. Criminal justice agencies, people licensed to provide mental health and medical services, and local law enforcement agencies would be required to release information related to the treatment of a sex offender to TCCO. Information about a civilly committed sexually violent predator obtained or maintained by TCCO would be exempt from certain public information laws. The bill would include TCCO as an entity to which the Department of Public Safety was required to release relevant information for the purposes of supervision and treatment, as well as peace officers, local law enforcement employees, or the attorney general.

**Other provisions.** The bill would specify court procedures for claims that a civilly committed sexually violent predator was unable to pay costs, including grounds for dismissal of such a claim. The sex offender compliance unit at the Department of Public Safety would have primary jurisdiction to investigate a felony offense committed by a sexually violent predator who was civilly committed.

The bill would take effect September 1, 2023, and would apply only to an offense committed, an action filed, a cause of action accrued, or a hearing ordering the administration of psychoactive medication to a committed person that occurred on or after the effective date.

**NOTES:**

According to the Legislative Budget Board, the fiscal implications of SB 1179 cannot be determined due to a lack of data on the prevalence of

conduct included in the bill's provisions that would be subject to criminal penalties.