

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 2917 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Senator Shapiro

Carona
Senator Carona

Fraser
Senator Fraser

Huffman
Senator Huffman

Nelson
On the part of the Senate
Senator Nelson

Jim McReynolds
Representative Jim McReynolds

Stephen Frost
Representative Stephen Frost

Chuck Hopson
Representative Chuck Hopson

Lois Kolkhorst
Representative Lois Kolkhorst

Vicki Truitt
On the part of the House
Representative Vicki Truitt

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2917

A BILL TO BE ENTITLED

AN ACT

1
2 relating to authorizing the Department of State Health Services to
3 obtain criminal history record information for certain applicants
4 for employment.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 411.110, Government Code, is amended by
7 amending Subsections (a), (c), and (d) and adding Subsection (f) to
8 read as follows:

9 (a) The Department of State Health Services is entitled to
10 obtain from the department criminal history record information
11 maintained by the department that relates to:

12 (1) a person who is:

13 (A) an applicant for a license or certificate
14 under the Emergency Medical Services Act (Chapter 773, Health and
15 Safety Code);

16 (B) an owner or manager of an applicant for an
17 emergency medical services provider license under that Act; or

18 (C) the holder of a license or certificate under
19 that Act;

20 (2) an applicant for a license or a license holder
21 under Subchapter N, Chapter 431, Health and Safety Code; ~~[ex]~~

22 (3) an applicant for a license, the owner or manager of
23 an applicant for a massage establishment license, or a license
24 holder under Chapter 455, Occupations Code;

1 (4) an applicant for employment at or current employee

2 of:

3 (A) the Texas Center for Infectious Disease; or

4 (B) the South Texas Health Care System; or

5 (5) an applicant for employment at, current employee
6 of, or person who contracts or may contract to provide goods or
7 services with:

8 (A) the vital statistics unit of the Department
9 of State Health Services; or

10 (B) the Council on Sex Offender Treatment or
11 other division or component of the Department of State Health
12 Services that monitors sexually violent predators as described by
13 Section 841.003(a), Health and Safety Code.

14 (c) After an entity is licensed or certified, the Department
15 of State Health Services shall destroy the criminal history record
16 information that relates to that entity. The Department of State
17 Health Services shall destroy the criminal history record
18 information that relates to:

19 (1) an applicant for employment after that applicant
20 is employed or, for an applicant who is not employed, after the
21 check of the criminal history record information on that applicant
22 is completed; or

23 (2) an employee or contractor after the check of the
24 criminal history record information on that employee or contractor
25 is completed.

26 (d) The Department of State Health Services shall destroy
27 criminal history record information that relates to an applicant

1 who [~~that~~] is not certified or employed, as applicable.

2 (f) The Department of State Health Services may not consider
3 offenses for which points are assessed under Section 708.052,
4 Transportation Code, to determine whether to hire or retain an
5 employee or to contract with a person on whom criminal history
6 record information is obtained under this section.

7 SECTION 2. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.

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SECTION 1. Sections 411.110(a), (c), and (d), Government Code, are amended to read as follows:

- (a) The Department of State Health Services is entitled to obtain from the department criminal history record information maintained by the department that relates to:
- (1) a person who is:
 - (A) an applicant for a license or certificate under the Emergency Medical Services Act (Chapter 773, Health and Safety Code);
 - (B) an owner or manager of an applicant for an emergency medical services provider license under that Act; or
 - (C) the holder of a license or certificate under that Act;
 - (2) an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code; ~~or~~
 - (3) an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455, Occupations Code;
 - (4) an applicant for employment at or current employee of:
 - (A) the Texas Center for Infectious Disease; or
 - (B) the South Texas Health Care System; or
 - (5) an applicant for employment at, current employee of, or person who contracts or may contract to provide goods or services with:
 - (A) the vital statistics unit of the Department of State Health Services; or
 - (B) the Council on Sex Offender Treatment or other

SENATE VERSION

SECTION 1. Section 411.110, Government Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (f) to read as follows:

- (a) The Department of State Health Services is entitled to obtain from the department criminal history record information maintained by the department that relates to:
- (1) a person who is:
 - (A) an applicant for a license or certificate under the Emergency Medical Services Act (Chapter 773, Health and Safety Code);
 - (B) an owner or manager of an applicant for an emergency medical services provider license under that Act; or
 - (C) the holder of a license or certificate under that Act;
 - (2) an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code; ~~or~~
 - (3) an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455, Occupations Code;
 - (4) an applicant for employment at or current employee of:
 - (A) the Texas Center for Infectious Disease; or
 - (B) the South Texas Health Care System; or
 - (5) an applicant for employment at, current employee of, or person who contracts or may contract to provide goods or services with:
 - (A) the vital statistics unit of the Department of State Health Services; or
 - (B) the Council on Sex Offender Treatment or other

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SECTION 1. Same as Senate version.

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division or component of the Department of State Health Services that monitors sexually violent predators as described by Section 841.003(a), Health and Safety Code.

(c) After an entity is licensed or certified, the Department of State Health Services shall destroy the criminal history record information that relates to that entity. The Department of State Health Services shall destroy the criminal history record information that relates to:

(1) an applicant for employment after that applicant is employed or, for an applicant who is not employed, after the check of the criminal history record information on that applicant is completed; or

(2) an employee or contractor after the check of the criminal history record information on that employee or contractor is completed.

(d) The Department of State Health Services shall destroy criminal history record information that relates to an applicant who [that] is not certified or employed, as applicable.

No equivalent provision.

Associated CCR Draft: 81R38601

SENATE VERSION

division or component of the Department of State Health Services that monitors sexually violent predators as described by Section 841.003(a), Health and Safety Code.

(c) After an entity is licensed or certified, the Department of State Health Services shall destroy the criminal history record information that relates to that entity. The Department of State Health Services shall destroy the criminal history record information that relates to:

(1) an applicant for employment after that applicant is employed or, for an applicant who is not employed, after the check of the criminal history record information on that applicant is completed; or

(2) an employee or contractor after the check of the criminal history record information on that employee or contractor is completed.

(d) The Department of State Health Services shall destroy criminal history record information that relates to an applicant who [that] is not certified or employed, as applicable.

(f) The Department of State Health Services may not consider offenses for which points are assessed under Section 708.052, Transportation Code, to determine whether to hire or retain an employee or to contract with a person on whom criminal history record information is obtained under this section.

SECTION __. Subchapter F, Chapter 411, Government

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Code, is amended by adding Section 411.1389 to read as follows:

Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. (a) The Office of Violent Sex Offender Management is entitled to obtain from the department criminal history record information that is maintained by the department and that relates to a person who has applied with the office to be:

- (1) an employee of the office; or
- (2) a contracted service provider with the office.

(b) Criminal history record information obtained by the Office of Violent Sex Offender Management under Subsection (a) may not be 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) The Office of Violent Sex Offender Management shall destroy criminal history record information obtained under Subsection (a) as soon as practicable after the date on which, as applicable:

- (1) the person's employment or contract with the office terminates; or
- (2) the office decides not to employ or contract with the person.

No equivalent provision.

SECTION __. Subtitle B, Title 4, Government Code, is amended by adding Chapter 420A to read as follows:
CHAPTER 420A. OFFICE OF VIOLENT SEX

Same as House version.

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OFFENDER MANAGEMENT

Sec. 420A.001. DEFINITIONS. In this chapter:

(1) "Board" means the governing board of the Office of Violent Sex Offender Management.

(2) "Office" means the Office of Violent Sex Offender Management.

Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) The Office of Violent Sex Offender Management is a state agency.

(b) The office is governed by a board composed of the following three members appointed by the governor:

(1) one member experienced in the management of sex offenders;

(2) one member experienced in the investigation or prosecution of sex offenses; and

(3) one member experienced in counseling or advocating on behalf of victims of sexual assault.

(c) Members of the board serve staggered two-year terms. 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) 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.

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(a) The governor shall designate a member of the board as presiding officer. The presiding officer serves at the discretion of the governor.

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

Sec. 420A.004. SUNSET PROVISION. The Office of Violent Sex Offender Management is subject to Chapter 325 (Texas Sunset Act). 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. On behalf of the state, the office may apply for and accept grants and donations from any source to be used by the office in the performance of the duties of the office.

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

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

Sec. 420A.008. STAFF. The office may select and employ a general counsel, staff attorneys, and other staff

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necessary to perform the office's functions.

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

(b) For purposes of the salary schedule, the office shall classify all case manager positions as Case Manager I, Case Manager II, Case Manager III, Case Manager IV, or Case Manager V.

(c) 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:

(1) the case manager's current annual salary; and

(2) the minimum annual salary of a case manager in the next highest classification.

Sec. 420A.010. POWERS AND DUTIES. The office shall 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.

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~~No equivalent provision.~~

SECTION __. Subdivisions (3) and (4), Section 841.002, Health and Safety Code, are amended to read as follows:

Same as House version.

(3) "Case manager" means a person employed by or under contract with the office [~~council~~] to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(4) "Office" [~~"Council"~~] means the Office of Violent Sex Offender Management [~~Council on Sex Offender Treatment~~].

~~No equivalent provision.~~

SECTION __. Section 841.007, Health and Safety Code, is amended to read as follows:

Same as House version.

Sec. 841.007. DUTIES OF OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT [~~COUNCIL ON SEX OFFENDER TREATMENT~~]. The Office of Violent Sex Offender Management [~~Council on Sex Offender Treatment~~] is responsible for providing appropriate and necessary treatment and supervision through the case management system.

~~No equivalent provision.~~

SECTION __. Subsection (a), Section 841.022, Health and Safety Code, is amended to read as follows:

Same as House version.

(a) The executive director of the Texas Department of Criminal Justice and the commissioner of the [~~Texas~~] Department of State Health Services [~~Mental Health and Mental Retardation~~] jointly shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The

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team must include:

- (1) one person [~~two persons~~] from the [~~Texas~~] Department of State Health Services [~~Mental Health and Mental Retardation~~];
- (2) two persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department;
- (3) one person from the [~~Texas~~] Department of Public Safety; [~~and~~]
- (4) two persons from the office [~~council~~] or office [~~council~~] personnel; and
- (5) one person from the Council on Sex Offender Treatment.

No equivalent provision.

SECTION __. Subsections (a) and (c), Section 841.082, Health and Safety Code, are amended to read as follows:

Same as House version.

(a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

- (1) requiring the person to reside in a Texas residential facility under contract with the office [~~council~~] or at another location or facility approved by the office [~~council~~];
- (2) prohibiting the person's contact with a victim or potential victim of the person;
- (3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;

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- (4) requiring the person's participation in and compliance with a specific course of treatment provided by the office and compliance with all written requirements imposed by the case manager or otherwise by the office;
- (5) requiring the person to:
- (A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and
- (B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;
- (6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;
- (7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone; and
- (8) ~~[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; and~~
- ~~[(9)]~~ any other requirements determined necessary by the judge.
- (c) The judge shall provide a copy of the requirements

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imposed under Subsection (a) to the person and to the office ~~[council]~~. The office ~~[council]~~ shall provide a copy of those requirements to the case manager and to the service providers.

~~No equivalent provision.~~

SECTION __. Section 841.083, Health and Safety Code, is amended to read as follows:

Same as House version.

Sec. 841.083. TREATMENT; SUPERVISION. (a) The office ~~[council]~~ shall approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed \$10,000 ~~[\$6,000]~~ for providing the required treatment.

(b) The case manager shall provide supervision to the person. The provision of supervision must ~~[shall]~~ include a tracking service and, if required by court order, supervised housing.

(c) The office ~~[council]~~ shall enter into appropriate memoranda of understanding with the ~~[Texas]~~ Department of Public Safety for the provision of a tracking service and with the Department of Public Safety 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.

~~[(e-1) Notwithstanding Subsection (c) or any other~~

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~~provision of this subchapter, the council shall provide through the case management system any supervision or tracking service required under this chapter for persons residing in Dallas, Harris, or Tarrant County. The council shall provide the tracking service under this subsection through two employees of the Department of State Health Services. Any tracking personnel used by the department for purposes of this chapter must be approved by the council.~~

~~[(e) 2] If the equipment necessary to implement the tracking service is available through a contract entered into by the comptroller, the Department of Public Safety or the council, as appropriate, shall acquire that equipment through that contract.]~~

(d) The office ~~[council]~~ shall enter into appropriate memoranda of understanding for any necessary supervised housing. The office ~~[council]~~ shall reimburse the applicable provider for housing costs under this section. The committed person may not be 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. In this subsection:

- (1) "Community center" means a center established under Subchapter A, Chapter 534.
- (2) "Mental health facility" has the meaning assigned by Section 571.003.
- (3) "State school" has the meaning assigned by Section

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531.002.

(e) The case manager shall:

(1) coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision;

(2) 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

(3) provide a report to the office [council], semiannually or more frequently as necessary, which must include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the judge.

No equivalent provision.

SECTION __. Section 841.084, Health and Safety Code, is amended to read as follows:

Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding Section 841.146(c), a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Section 841.082 and monthly shall pay to the office [council] the amount that the office [council] determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The office [council] immediately shall transfer the money to the appropriate service provider.

Same as House version.

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~~No equivalent provision.~~

SECTION __. Section 841.101, Health and Safety Code, is amended to read as follows:

Sec. 841.101. BIENNIAL EXAMINATION. (a) A person committed under Section 841.081 shall receive a biennial examination. The office [~~ecouncil~~] shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the case manager shall provide a report of the biennial examination to the judge. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter. The case manager shall provide a copy of the report to the office [~~ecouncil~~].

Same as House version.

~~No equivalent provision.~~

SECTION __. Section 841.141, Health and Safety Code, is amended to read as follows:

Sec. 841.141. RULEMAKING AUTHORITY. (a) The office [~~ecouncil~~] by rule shall administer this chapter. Rules adopted by the office [~~ecouncil~~] under this section must be consistent with the purposes of this chapter.

(b) The office [~~ecouncil~~] by rule shall develop standards of care and case management for persons committed under this chapter.

Same as House version.

~~No equivalent provision.~~

SECTION __. Subsections (c) and (d), Section 841.142, Health and Safety Code, are amended to read as follows:

(c) On the written request of any attorney for another

Same as House version.

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state or for a political subdivision in another state, the Texas Department of Criminal Justice, the office [~~office~~], a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the office [~~office~~], a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

No equivalent provision.

SECTION __. Section 841.147, Health and Safety Code, is amended to read as follows:

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, or the office [~~office~~];

(2) a member of the multidisciplinary team established

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under Section 841.022;

(3) an employee of the civil division of the special prosecution unit charged with initiating and pursuing civil commitment proceedings under this chapter; and

(4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

No equivalent provision.

SECTION __. Subchapter H, Chapter 841, Health and Safety Code, is amended by adding Section 841.151 to read as follows:

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) In this section:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(b) 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:

(1) a civil commitment requirement imposed under Section 841.082; or

(2) a law of this state.

(c) Not later than the day preceding the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the

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time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, the facility shall notify the person's case manager in writing of the anticipated date and time of the person's release.

(d) A case manager, on request, shall 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).

~~No equivalent provision.~~

SECTION __. As soon as possible after the effective date of this Act, the governor shall appoint three members to the Office of Violent Sex Offender Management as provided by Section 420A.002, Government Code, as added by this Act.

Same as House version.

~~No equivalent provision.~~

SECTION __. (a) The following are transferred to the Office of Violent Sex Offender Management:

Same as House version.

(1) the functions of the Council on Sex Offender Treatment that relate to the sex offender civil commitment program;

(2) the director of the Department of State Health Services who has jurisdiction over the sex offender civil commitment program; and

(3) the staff of the council whose primary duties include the operation of the sex offender civil commitment program.

(b) The Office of Violent Sex Offender Management,

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the Department of State Health Services, and the Council on Sex Offender Treatment shall coordinate the transfer of functions relating to the sex offender civil commitment program as required by this section.

(c) The transfer of all functions relating to the sex offender civil commitment program to the Office of Violent Sex Offender Management shall be accomplished as soon as possible but not later than the 90th day after the date that the last member of the Office of Violent Sex Offender Management qualifies for office.

(d) The transfer required by this section 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 the Department of State Health Services and the Council on Sex Offender Treatment in performing the functions relating to the sex offender civil commitment program that are transferred by this section. For purposes of this subsection, "employees" includes the executive director of the Council on Sex Offender Treatment and administrative technicians and program specialists employed by the council.

(e) A form, rule, or procedure adopted by the Health and Human Services Commission or the Department of State Health Services in relation to the Council on Sex Offender Treatment that is in effect on the effective date of this Act remains in effect on and after that date as if

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adopted by the Office of Violent Sex Offender Management until amended, repealed, withdrawn, or otherwise superseded by that office.

(f) All unexpended appropriations for functions relating to the sex offender civil commitment program that are made for use by the Department of State Health Services or the Council on Sex Offender Treatment are transferred to the Office of Violent Sex Offender Management.

(g) The Office of Violent Sex Offender Management shall publish in the Texas Register the date on which the transfer of functions under this section is accomplished.

(h) After the effective date of this Act, the Council on Sex Offender Treatment shall continue to perform applicable functions until the transfer of functions required by this section is completed, and the laws providing for those functions are continued in effect for that purpose.

No equivalent provision.

SECTION __. Subdivision (7), Section 108.002, Health and Safety Code, is amended to read as follows:
(7) "Department" means the [Texas] Department of State Health Services.

Same as House version.

No equivalent provision.

SECTION __. Chapter 108, Health and Safety Code, is amended by adding Section 108.0026 to read as follows:
Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL. (a) The powers and duties of the Texas Health Care Information Council

Same as House version.

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under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter, a reference to the Texas Health Care Information Council means the Department of State Health Services.

No equivalent provision.

SECTION __. Subsection (h), Section 108.009, Health and Safety Code, is amended to read as follows:

(h) The department [~~ecouncil~~] shall coordinate data collection with the data submission formats used by hospitals and other providers. The department [~~ecouncil~~] shall accept data in the format developed by the American National Standards Institute [~~National Uniform Billing Committee (Uniform Hospital Billing Form UB-92) and HCFA-1500~~] or its successor [~~their successors~~] or other nationally [~~universally~~] accepted standardized forms that hospitals and other providers use for other complementary purposes.

Same as House version.

No equivalent provision.

SECTION __. Section 108.013, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (d), (g), (i), and (j) and adding Subsections (k), (l), (m), and (n) to read as follows:

(a) The data received by the department under this chapter [~~ecouncil~~] shall be used by the department [~~ecouncil~~] for the benefit of the public. Subject to specific limitations established by this chapter and executive

Same as House version.

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commissioner [council] rule, the department [council] shall make determinations on requests for information in favor of access.

(b) The executive commissioner [council] by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department [council] may not release and a person or entity may not gain access to any data obtained under this chapter:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to the department under this chapter [council] in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all [AH] data collected and used by the department [~~and the council~~] under this chapter is subject to the confidentiality provisions and criminal penalties of:

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- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.
- (g) Unless specifically authorized by this chapter, the department [The council] may not release data elements in a manner that will reveal the identity of a patient. The department [council] may not release data elements in a manner that will reveal the identity of a physician.
- (i) Notwithstanding any other law, the [council and the] department may not provide information made confidential by this section to any other agency of this state.
- (j) The executive commissioner [council] shall by rule[; with the assistance of the advisory committee under Section 108.003(g)(5);] develop and implement a mechanism to comply with Subsections (c)(1) and (2).
- (k) The department may disclose data collected under this chapter that is not included in public use data to any program within the department if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.
- (l) Confidential data collected under this chapter that is disclosed to a program within the department remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.
- (m) The following provisions do not apply to the

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disclosure of data to a department program:

- (1) Section 81.103;
 - (2) Sections 108.010(g) and (h);
 - (3) Sections 108.011(e) and (f);
 - (4) Section 311.037; and
 - (5) Section 159.002, Occupations Code.
- (n) Nothing in this section authorizes the disclosure of physician identifying data.

No equivalent provision.

SECTION __. Section 108.0135, Health and Safety Code, is amended to read as follows:
Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department [council] shall establish an institutional [a scientific] review board [panel] to review and approve requests for access to data not contained in [information other than] public use data. The members of the institutional review board must [panel shall] have experience and expertise in ethics, patient confidentiality, and health care data.
(b) To assist the institutional review board [panel] in determining whether to approve a request for information, the executive commissioner of the Health and Human Services Commission [council] shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' [Health Care Financing Administration's] guidelines on releasing data.
(c) A request for information other than public use data must be made on the form prescribed [created] by the department [council].

Same as House version.

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~~No equivalent provision.~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION __. Subdivision (5), Section 108.002, Health and Safety Code, is repealed.

SECTION 2. Same as House version.

Same as House version.

SECTION 2. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2917** by McReynolds (Relating to authorizing the Department of State Health Services to obtain criminal history record information for certain applicants for employment.),
Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill expands the authority of the Department of State Health Services (DSHS) to obtain criminal history record information for certain applicants for employment, employees, and in some cases contractors at the:

1. Texas Center for Infectious Disease (TCID)
2. South Texas Health Care System (STHCS)
3. Bureau of Vital Statistics of the DSHS, or
4. Council on Sex Offenders or other division or component of DSHS that monitors sexually violent predators.

According to DSHS, there would be minimal additional costs; that could be absorbed, and revenue associated with the expanded criminal background checks due to the fact that some employees at these entities are already receiving criminal background checks and the costs for the checks are not very high (\$1.00 per applicant for a name check and \$44.20 for an FBI background check).

Local Government Impact

No fiscal implication to units of local government is anticipated.

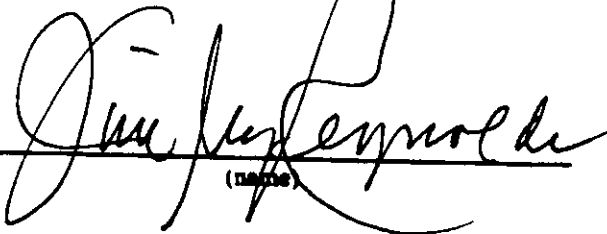
Source Agencies: 405 Department of Public Safety, 537 State Health Services, Department of

LBB Staff: JOB, CL, PP, JF, LR, MB

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2917 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

5/30/09
(date)