

BILL ANALYSIS

Senate Research Center

S.B. 867
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Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a county has a bed allotment for commitments of mentally ill persons (civil commitments) and criminal defendants (forensic commitments) from the county to state mental health hospitals (state hospital). A defendant may also be ordered to a state hospital if the defendant is found not guilty by reason of insanity. However, there are not enough beds in Texas state hospitals to accommodate the necessary civil and forensic commitments. This is exacerbated by the fact that forensic patients are spending more time in state hospitals than they would have spent in jail or prison for the offense for which they were committed.

S.B. 465, enacted by the 79th Legislature, Regular Session, 2005, provided the authority for civil courts with probate jurisdiction to order forensic patients to take medications, but did not expressly authorize these probate courts to charge the county which committed a defendant to a hospital in the county in which the probate court is located for costs related to the medication hearings. This has placed a burden on the probate courts in counties that have state hospitals.

S.B. 867 makes several changes to the Code of Criminal Procedure and the Health and Safety Code with the intent of freeing bed space in state mental hospitals and reducing the burden on probate courts.

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 Article 16.22, Code of Criminal Procedure, as follows:

Article 16.22. EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Creates this subdivision from existing text. Provides an exception to this subdivision in Subdivision (2). Deletes existing text referring to a disinterested expert experienced and qualified in mental health or mental retardation. Makes a nonsubstantive change.

(2) Provides that the magistrate is not required to order an examination described by Subdivision (1) (to determine if the defendant has a mental illness or mental retardation) if, in the year preceding the defendant's applicable arrest, it is determined that the defendant has a mental illness or is mentally retarded by the local mental health or mental retardation authority or another expert described by Subdivision (1). Authorizes a court that elects to use the evaluation's results to proceed under Subsection (c).

(3) Creates this subdivision from existing text. Provides that an order under this subdivision is made regarding the failure or refusal to submit to an examination required under Subdivision (1). Changes the possible facilities that a magistrate may order a defendant under this subdivision to be placed in from facilities operated by the Texas Department of Mental Health and Mental Retardation to those operated by the Department of

State Health Services or the Department of Aging and Disability Services.
Makes conforming and nonsubstantive changes.

(b) Provides that the previous requirement that a written report of the examination be submitted to the magistrate within 30 days of the order of examination applies only to felony cases. Requires the report to be submitted 10 days after the order of examination in a misdemeanor case. Makes nonsubstantive changes.

(c) Provides that if the court elects to use the results of an evaluation under Subsection (a)(2), the court is authorized, as applicable, to resume criminal proceedings relating to a defendant's release on personal recognizance bond or to resume or initiate competency proceedings.

(d) Provides that nothing in this article prevents the court from, pending an evaluation of the defendant described by this article, releasing a mentally ill or mentally retarded defendant on personal or surety bond or ordering an examination regarding the defendant's competency to stand trial.

taking actions set forth in this subsection.

SECTION 2. Amends Subchapter A, Chapter 46B, Code of Criminal Procedure, by amending Articles 46B.009 and 46B.010 and adding Article 46B.0095, as follows:

Art. 46B.009. TIME CREDITS. Deletes existing Subsection (b), which prohibited a defendant from being committed to a mental hospital or other in-patient or residential facility for a period longer than that provided for by law for the offense for which the defendant was to be tried and authorized the defendant, on expiration of that maximum term, to be confined for an additional period in such a facility only pursuant to civil committee proceedings. Makes a conforming change.

Art. 46B.0095. MAXIMUM PERIOD OF FACILITY COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) Prohibits a defendant under this chapter from being committed to a mental hospital or other in-patient or residential facility, ordered to participate in an outpatient treatment program (program), or subjected to both inpatient and outpatient treatment for a cumulative period longer than that provided for by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered to participate in a program under Subchapters D (Procedures After Determination of Incompetency) or E (Civil Commitment: Charges Pending), the maximum period of restoration is two years beginning on the date of the initial order for program participation was entered.

(b) Authorizes the defendant, on expiration of that maximum restoration period, to be confined in a certain facility or ordered to participate for an additional period in a program, as appropriate, for an additional period only pursuant to civil commitment proceedings.

Art 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. Requires the court, on the motion of the attorney representing the state, to dismiss a certain misdemeanor charge against a defendant if the court orders the commitment or participation in a program of a defendant and the defendant is not tried before the date of expiration of the maximum period of restoration under this chapter described by Article 46B.0095. Deletes existing text referring to the defendant not being tried before the second anniversary of the date on which the order or commitment was entered.

SECTION 3. Amends Article 46B.072, Code of Criminal Procedure, as follows:

Art. 46B.072. RELEASE ON BAIL. (a) Creates this subsection from existing text. Authorizes the court, subject to certain conditions, if it determines that a felony defendant found incompetent to stand trial is not a danger to others and may be safely treated on an

appropriate, available outpatient basis with the specific objective of attaining competency to stand trial, to release or continue the release of the defendant on bail. Requires such release under the same conditions for a misdemeanor defendant. Deletes existing text regarding the previous conditions for release on bail.

(b) Requires the court to order a defendant released on bail under Subsection (a) to participate in a program for a period not to exceed 120 days.

(c) Authorizes the court, notwithstanding Subsection (a), to order a defendant to participate in a program under this article (Incompetency to Stand Trial) only if certain conditions are met and the court makes certain findings.

(d) Authorizes an order issued under this article to require the defendant to participate in a certain program or certain treatment regimen as set forth in this subsection.

SECTION 4. Amends Articles 46B.073(c) and (d), Code of Criminal Procedure, as follows:

(c) Requires the court to enter an order committing the defendant to a certain facility set forth in this subsection for an offense under Article 17.032(a), other than an offense listed in Article 17.032(a)(6) (assault).

(d) Makes a conforming change.

SECTION 5. Amends Articles 46B.075 and 46B.076, Code of Criminal Procedure, as follows:

Art. 46B.075. New heading: TRANSFER OF DEFENDANT TO FACILITY OR OUTPATIENT TREATMENT PROGRAM. Requires an order issued under Articles 46B.072 or 46B.073, rather than this subchapter (Subchapter D), to place the defendant in the sheriff's custody for transportation to the facility or program, as applicable, in which the defendant is to receive treatment to restore competency, rather than be confined.

Art. 46B.076. COURT'S ORDER. Requires the court, if the defendant is found incompetent to stand trial, not later than the date of the order of commitment or of release on bail, as applicable, to send a copy of the order to the department the defendant is committed to or program to which the defendant is released. Makes conforming changes.

SECTION 6. Amends Article 46B.077(a), Code of Criminal Procedure, to make a conforming change.

SECTION 7. Amends Articles 46B.078, through 46B.083, Code of Criminal Procedure, as follows:

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. Makes conforming changes.

Art. 46B.079. New heading: NOTICE AND REPORT TO COURT. (a) Requires the head of the facility or provider of the program, as appropriate and not later than the 15th day before the date a restoration period is to expire, to notify the applicable court of an upcoming expiration of a restoration period.

(b) Requires the head of the facility or outpatient treatment program (entity head) to promptly notify the court when the entity head believes the defendant has attained or will not attain in the foreseeable future competency to stand trial.

(c) Requires the entity head, when giving notice to the court under Subsections (a) or (b), to file a final report with the court stating the reason for the proposed discharge under this chapter and including a list of the types and dosages of medications the defendant was treated with while in the facility or program. Requires the court to provide copies of the report to the attorneys representing the

defendant and the state in order to enable any objection to the findings of the report to be made in a timely manner under Article 46B.084(a).

(d) Authorizes the notice of expiration provided to the court from the entity head to contain a request for a 60-day extension of the period, with an explanation of the basis of the request. Deletes existing text of Article 46B.079, providing for the return to court after the commitment term expiration.

Art. 46B.080. New heading: EXTENSION OF ORDER. (a) Authorizes the court, on request of an entity head made under Article 46B.079(d) and notwithstanding any other provision of this subchapter, to enter an order extending the initial restoration period for an additional 60 days.

(b) Authorizes the court to enter an order under Subsection (a) only if the court makes a determination set forth in this subsection regarding a defendant's competency on the basis of information provided by the entity head.

(c) Authorizes the court to grant only one restoration period extension under this subchapter. Deletes existing text of Article 46B.080, which has been redesignated as Article 46B.079(a)-(d).

Art. 46B.081. RETURN TO COURT. Requires a defendant committed or released on bail under this subchapter, subject to Article 46B.082(b) (regarding a defendant required to be transported back to the court issuing the order of commitment or participation), to be returned to the applicable court as soon as practicable after notice to the court is provided under Article 46B.079, but not later than the date of expiration of the restoration period specified by the court under Article 46B.072 or 46B.073. Deletes existing text of Article 46B.081, authorizing the court to provide an extension of the term of a commitment order

Art. 46B.082. TRANSPORTATION OF DEFENDANT. Makes conforming changes.

Art. 46B.083. New heading: SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY HEAD OR OUTPATIENT TREATMENT PROGRAM PROVIDER. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Articles 46B.084(a) and (b-1), Code of Criminal Procedure, as follows:

(a) Requires the court to make the determination of competency to stand trial not later than the 20th day after the date the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by this subsection and as such, the issue is set for hearing under Subsection (b). Makes conforming changes.

(b-1) Makes a conforming change.

SECTION 9. Amends Articles 46B.085 and 46B.086, Code of Criminal Procedure, as follows:

Art. 46B.085. New heading: SUBSEQUENT RESTORATION PERIODS AND EXTENSIONS OF THOSE PERIODS PROHIBITED. Makes conforming changes.

Art. 46B.086. COURT-ORDERED MEDICATIONS. (a) Provides that this article applies only to a defendant who is subject to Article 46B.0782, in addition to certain other defendants. Makes a conforming change.

(b) Provides that an attorney representing the state may file a written notice compelling medication for a defendant in a program at any time. Makes conforming changes.

(c) Makes a conforming change.

(d) Redesignated from existing Subsection (c). Makes conforming changes.

(e) Redesignated from existing Subsection (d). Makes no changes to this subsection.

(f) Redesignated from existing Subsection (e). Makes no changes to this subsection.

SECTION 10. Amends Articles 46B.102, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Requires the court to hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C (Texas Mental Health Code), Title 7, Health and Safety Code, if it appears to the court that the defendant may be a person with a mental illness.

(b) Makes a conforming change.

(d) Sets forth requirements for proceedings conducted under this subchapter for a defendant described by Subsection (a)

SECTION 11. Amends Article 46B.103(d), Code of Criminal Procedure, to provide that, in the proceedings conducted under this subchapter for a defendant described by Subsection (a) (a defendant with a mental retardation), an application to have the defendant declared to be a person with a mental retardation and not an application for a court-ordered temporary or extended mental service is prohibited from being required, the provisions of Subtitle D (Persons With Mental Retardation Act), rather than both Subtitles C and D, Title 7, Health and Safety Code, do not apply, and appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a residential care facility, and not court-ordered inpatient medical services under Subtitle C as provided above.

SECTION 12. Amends Article 46B.104, Code of Criminal Procedure, to make a conforming change.

SECTION 13. Amends Article 46B.106, Code of Criminal Procedure, to require a committed defendant, except a defendant described by Article 46B.104 (a defendant committed to a maximum security facility), to be committed to a facility designated by the Department of State Health Services, rather than a local mental health or mental retardation authority, or an outpatient treatment program. Makes a conforming change.

SECTION 14. Amends Article 46B.107, Code of Criminal Procedure, as follows:

Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT. Makes conforming changes.

SECTION 15. Amends Article 46B.108, Code of Criminal Procedure, as follows:

Art. 46B.108. REDETERMINATION OF COMPETENCY. Makes conforming changes.

SECTION 16. Amends Article 46B.109, Code of Criminal Procedure, as follows:

Art. 46B.109. New heading: REQUEST BY HEAD OF FACILITY OR OUTPATIENT TREATMENT PROVIDER. Makes conforming changes.

SECTION 17. Amends Article 46B.113, Code of Criminal Procedure, to make conforming changes.

SECTION 18. Amends Article 46B.117, Code of Criminal Procedure, as follows:

Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY. Deletes Subsection (b), requiring the court to order the custody status of a defendant not under

commitment and found to be incompetent to stand trial to remain unchanged. Makes conforming changes.

SECTION 19. Amends Article 46B.171, Code of Criminal Procedure, to make conforming changes.

SECTION 20. Amends Section 574.107, Health and Safety Code, as follows:

(a) Creates this subsection from existing text. Makes a nonsubstantive change.

(b) Provides that the county in which applicable charges are pending or were adjudicated is required, as provided by Subsection (a) (in accordance with certain sections), to pay the costs of a hearing held under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) evaluating the court-ordered administration of psychoactive medication to certain mental patients set forth in this section.

SECTION 21. Repealer: Article 46B.084(c) (Proceedings on Return of Defendant to Court), Code of Criminal Procedure.

SECTION 22. (a) Makes application of this Act prospective to a defendant with respect to which any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the Act's effective date.

(b) Makes application of Section 574.107, Health and Safety Code, as added by this Act, prospective.

SECTION 23. Effective date: September 1, 2007.