

BILL ANALYSIS

S.B. 867
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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

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

Senate Bill 867 amends the Code of Criminal Procedure and provides that a magistrate is not required to order an examination of mental illness or retardation if the defendant in the year preceding the defendant's date of arrest has been evaluated and determined to have a mental illness or to be a person with mental retardation by the local mental health or mental retardation authority or expert. A court that elects to use the results of that evaluation is authorized to proceed under Article 16.22(c), Code of Criminal Procedure. Except as provided in the previously described situation, the magistrate must order an examination of the defendant by certain experts. The bill updates the name of the state agency from Texas Department of Mental Health and Mental Retardation to the Department of State Health Services or the Department of Aging and Disability Services, and makes conforming changes. A written report of the examination must be submitted to the magistrate not later than the 30th day after the day of any order of examination issued in a felony case and not later than the 10th day after the date of any order of examination issued in a misdemeanor case, and the magistrate must provide copies of the report to the defense counsel and the prosecuting attorney. The bill also states that after the court receives the examining expert's report relating to the defendant or elects to use the results of an evaluation, the court may, as applicable, resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032, Code of Criminal Procedure, or resume or initiate certain competency proceedings, if required. Nothing in Article 16.22, Code of Criminal Procedure, prevents the court from, pending an evaluation of the defendant, releasing a mentally ill or mentally retarded defendant from custody on personal or surety bond, or ordering an examination regarding the defendant's competency to stand trial. Makes additional conforming changes.

The bill removes Article 46B.009(b), Code of Criminal Procedure, which relates to time committed or confined in a mental hospital or other related facilities. The bill adds Article 46B.0095, Code of Criminal Procedure, to provide that a defendant may not be committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment for a cumulative period that exceeds the maximum term provided 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 only to participate in an outpatient treatment program under Subchapter D or E, the maximum period of restoration is two years beginning on the date of the initial order for outpatient treatment program participation was entered. On expiration of the maximum restoration period, the defendant may be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil commitment proceedings.

The bill provides that if a court orders the commitment of or participation in an outpatient treatment program by a defendant who is charged with a misdemeanor punishable by confinement and the defendant is not tried before the date of expiration of the maximum period of restoration as described by Article 46B.0095, Code of Criminal Procedure, the court on the motion of the state's attorney must dismiss the charge. The bill removes the provision that the defendant is not tried before the second anniversary of the date on which the order of commitment was entered.

The bill also provides that subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial and if an appropriate outpatient treatment program is available for the defendant, the court may release on bail a defendant found incompetent to stand trial with respect to a felony or may continue the defendant's release on bail, and is required to release on bail a defendant found incompetent to stand trial with respect to a misdemeanor or is required to continue the defendant's release on bail. The bill removes the provision that the defendant's release on bail is subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment. The bill further provides that the court must order a defendant released on bail to participate in an outpatient treatment program for a period not to exceed 120 days. The court may order a defendant to participate in an outpatient treatment program only if the court receives and approves a comprehensive plan that provides for the treatment of the defendant for purposes of competency restoration, and identifies the person who will be responsible for providing that treatment to the defendant, and the court finds that the treatment proposed by the plan will be available and provided to the defendant. An order may require the defendant to participate in, as appropriate, an outpatient treatment program administered by a community center or an outpatient treatment program administered by any other entity that provides outpatient competency restoration services, and an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication, including those required under Article 46B.086, Code of Criminal Procedure.

The bill amends Article 46B.073(c), Code of Criminal Procedure, and requires the court to enter an order committing the defendant to a certain facility for an offense listed under Article 17.032(a), Code of Criminal Procedure, other than an offense listed in Article 17.032(a)(6), Code of Criminal Procedure, or the indictment alleges an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure. Makes a conforming change.

The bill provides that an order issued under Article 46B.072 or 46B.073, Code of Criminal Procedure, must place the defendant in the custody of the sheriff for transportation to the facility or outpatient treatment program, as applicable, in which the defendant is to receive treatment for purposes of competency restoration. S.B. 867 also states that 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, the court must send a copy of the order to the facility of the department to which the defendant is committed or the outpatient treatment program to which the defendant is released. The court is also required to provide to the facility or outpatient treatment program

copies of certain materials made available during the incompetency trial. Makes conforming changes.

S.B. 867 adds that the head of the facility or the provider of the outpatient treatment program, as appropriate, not later than the 15th day before the date on which a restoration period is to expire, must notify the applicable court that the restoration period is about to expire. The head of the facility or outpatient treatment program provider is required to promptly notify the court when the head of the facility or outpatient treatment program provider believes that the defendant has attained competency to stand trial or the defendant will not attain competency in the foreseeable future. When the head of the facility or outpatient treatment program provider gives notice to the court, the head of the facility or outpatient treatment program provider also shall file a final report with the court stating the reason for the proposed discharge and including a list of the types and dosages of medications with which the defendant was treated for mental illness while in the facility or participating in the outpatient treatment program. To enable any objection to the findings of the report to be made in a timely manner under Article 46B.084(a), Code of Criminal Procedure, the court must provide copies of the report to the defense attorney and state's attorney. If the head of the facility or outpatient treatment program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request. The bill strikes the provision related to a defendant returning to the committing court before or after the commitment term expires.

The bill also adds that on a request of the head of a facility or a treatment program provider that is made under Article 46B.079(d), Code of Criminal Procedure, the court may enter an order extending the initial restoration period for an additional period of 60 days. The court may enter an order under Article 46B.080(a), Code of Criminal Procedure, only if the court determines that, on the basis of information provided by the head of the facility or the treatment program provider the defendant has not attained competency, and an extension of the restoration period will likely enable the facility or program to restore the defendant to competency. The court is allowed to grant only one extension under this article for a period of restoration ordered under this subchapter. The bill strikes current language in Article 46B.080, Code of Criminal Procedure, and redesignates most of the provision into Article 46B.079, Code of Criminal Procedure.

The bill adds that subject to Article 46B.082(b), Code of Criminal Procedure, a defendant committed or released on bail under this subchapter must be returned to the applicable court as soon as practicable after notice to the court is provided under Article 46B.079, Code of Criminal Procedure, but not later than the date of expiration of the period for restoration specified by the court under Article 46B.072 or 46B.073, Code of Criminal Procedure. Deletes language authorizing the court to provide an extension of the term of a commitment order.

The head of the facility to which the defendant is committed or the provider of the outpatient treatment program in which the defendant is participating must cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located, if before the 15th day after the date on which the court received notification under Article 46B.079, Code of Criminal Procedure, a defendant committed to a facility of the department or ordered to participate in an outpatient treatment program has not been transported to the court that issued the order under Article 46B.072 or 46B.073, Code of Criminal Procedure, as applicable.

Requires the court to make the determination not later than the 20th day after the date on which the court received notification under Article 46B.079, Code of Criminal Procedure, regardless of whether a party objects to the report and the issue is set for a hearing.

In Article 46B.085, Code of Criminal Procedure, the bill strikes the word, "commitments," and replaces it with either "restoration periods" or "initial period of restoration."

The bill provides that Article 46B.086 only applies to a defendant for whom an inpatient mental health facility, residential care facility, or outpatient treatment program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications, along with meeting other criteria, or who is subject to Article 46B.072, Code of Criminal Procedure. The bill also states that the motion to compel medication for a defendant in an outpatient treatment program may be filed at any time.

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The bill requires the court to hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety Code, if it appears to the court that the defendant may be a person with mental illness. In proceedings conducted for this defendant, an application for court-ordered temporary or extended mental health services may not be required, the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply, and appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

The bill provides that in the proceedings conducted for a defendant described by Article 46B.103(a), Code of Criminal Procedure, an application to have the defendant declared a person with mental retardation may not be required, the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing 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 under Subtitle D, Title 7, Health and Safety Code. The bill strikes language that stated that an application for court-ordered temporary or extended mental health services may not be required, and removes references to Subtitle C, Title 7, Health and Safety Code, in Article 46B.103(d), Code of Criminal Procedure.

The bill requires that certain defendants committed to a facility be committed to a facility designated by the department, or an outpatient treatment program, and removes the provision of committing the applicable defendants in a local mental health authority or local mental retardation authority to serve the catchment area in which the committing court is located.

The bill removes the provision that if a defendant not under order of commitment is found to not have been restored to competency to stand trial, the court must order the defendant's custody status to remain unchanged.

S.B. 867 amends the Health and Safety Code and adds that the county in which the applicable criminal charges are pending or were adjudicated shall pay the costs of a hearing that is held under Section 574.106, Health and Safety Code, to evaluate the court-ordered administration of psychoactive medication to a patient ordered to receive inpatient mental health services as described by Section 574.106(a)(1), Health and Safety Code, after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or a patient who is awaiting trial after having been determined to be competent to stand trial; and was ordered to receive inpatient mental health services as described by Section 574.106(a)(2), Health and Safety Code.

The bill repeals Article 46B.084(c), Code of Criminal Procedure.

Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to a defendant with respect to which any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

The change in law made by this Act in amending Section 574.107, Health and Safety Code, applies only to a hearing under Section 574.106, Health and Safety Code, that commences on or after the effective date of this Act. A hearing under Section 574.106, Health and Safety Code, that commences before the effective date of this Act is covered by the law in effect when the hearing commenced, and the former law is continued in effect for this purpose.

EFFECTIVE DATE

September 1, 2007.