

## **BILL ANALYSIS**

C.S.H.B. 3907  
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Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

C.S.H.B. 3907 directs a sheriff to notify the local mental health or mental retardation authority when an individual determined to be mentally ill or mentally retarded is being released, except when such release occurs on final disposition of the criminal proceedings, and to arrange for the release of the individual during normal business hours, if possible.

C.S.H.B. 3907 authorizes medical, psychiatric, or psychological care or treatment to be administered in a correctional facility pending release of an individual to an outpatient program.

### **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**

C.S.H.B. 3907 amends the Code of Criminal Procedure to require a sheriff, if the sheriff releases a defendant who is a person with mental illness or retardation from custody, except on final disposition of the criminal proceedings, before releasing the person to notify the local mental health or mental retardation authority of the impending release and, if possible, to arrange for the release of the person during normal business hours.

C.S.H.B. 3907 authorizes an order for the release on bail of a defendant found incompetent to stand trial to require the defendant to participate in an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including, if applicable, care or treatment administered in a correctional facility pending release to an outpatient treatment program.

C.S.H.B. 3907 requires the court ordering a defendant's release, if the defendant is released following the maximum period of facility commitment or outpatient treatment program participation as determined by the maximum term for the offense or following the mandatory dismissal of misdemeanor charges, to consider whether the defendant could benefit from continued treatment. The bill requires the court, if it finds that the defendant could benefit from continued treatment, to include in the order of release a requirement that the sheriff, before releasing the defendant, arrange for the release of the defendant during normal business hours, if possible, and notify the local mental health or mental retardation authority, as applicable, of the impending release.

C.S.H.B. 3907 amends the Health and Safety Code to authorize a physician who is treating a patient ordered to receive inpatient mental health services after having been determined to be incompetent to stand trial to proceed under existing provisions or to file, in the court in which the criminal matter is pending, an application for an order to authorize the administration of a psychoactive medication, regardless of the patient's refusal, if the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication; the physician determines that the medication is the proper course of treatment for the

patient; and the patient, verbally or by other instruction, refuses to take the medication. The bill provides that an application is subject to the requirements and procedures under state law for court-ordered medications after determination of incompetency. The bill clarifies that certain provisions regarding court-ordered medications do not apply to the application.

C.S.H.B. 3907 includes in the judges with jurisdiction in a hearing and order authorizing psychoactive medication the judge of a criminal court who ordered the patient to receive inpatient mental health services in accordance with provisions regarding procedures for defendants who are incompetent to stand trial.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3907 omits provisions in the original prescribing the procedures to be taken by the director of a correctional facility or outpatient treatment provider, a magistrate, and the attorney representing the state in compelling psychoactive medication, by force if necessary, of certain mentally ill or mentally retarded defendants who refuse to take psychoactive medications prescribed under a continuing care plan or continuity of care plan. The substitute omits a provision in the original including an outpatient treatment program operated in a correctional facility by a local mental health authority or mental retardation authority as a program in which a court order for the release on bail of a defendant found incompetent to stand trial is authorized to require the defendant to participate. The substitute adds a provision not in the original authorizing such an order for a release on bail to require the defendant to participate in an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including, if applicable, care or treatment administered in a correctional facility pending release to an outpatient treatment program. The substitute omits provisions in the original regarding the applicability of provisions relating to court-ordered medications after a determination of incompetency to stand trial to certain defendants.

C.S.H.B. 3907 differs from the original by requiring a court order of release to include a requirement that the sheriff, before releasing the defendant, arrange for the release during normal business hours, if possible, rather than a requirement that the sheriff release the defendant during normal business hours.

C.S.H.B. 3907 adds a provision not in the original providing that an application filed by a physician for an order to authorize the administration of a psychoactive medication is subject to the requirements and procedures under state law for court-ordered medications after a determination of incompetency. The substitute differs from the original by including in the judges with jurisdiction in a hearing and order authorizing psychoactive medication the judge of a criminal court who ordered the patient to receive inpatient mental health services, rather than the judge of a criminal court with jurisdiction over the patient as in the original.