

## **BILL ANALYSIS**

Senate Research Center

S.B. 562  
By: Zaffirini  
Criminal Justice  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, when persons with a mental illness are charged with a violent or sexual crime and found incompetent to stand trial or not guilty by reason of insanity (NGRI), state law requires judges to send them to a maximum security unit (MSU), usually at Vernon State Hospital, even when that placement is not appropriate. Once the defendant is at Vernon, the Health and Human Services Commission's (HHSC) Dangerousness Review Board conducts a dangerousness assessment of the defendant to determine whether an MSU is the appropriate setting for competency restoration. Because of the lack of MSU beds available statewide, a person with a mental illness is left waiting in jail without adequate treatment and without his or her case moving forward for an average of 179 days until a maximum security bed opens at Vernon.

Many defendants do not meet the clinical standard for dangerousness despite the seriousness of the alleged offense and end up being transported somewhere else, most often Kerrville, which is a non-maximum security facility. It clearly is inefficient to have a person deteriorating in jail for months waiting to occupy a maximum security bed when they never belonged there in the first place.

C.S.S.B. 562 would ensure that the best location for a defendant to receive competency restoration is determined at the outset, rather than waiting for the defendant to be sent to a maximum security unit first before determining the adequate treatment setting. Generally, C.S.S.B. 562 would allow clinicians at HHSC to determine the best location for restoring a defendant's competency using the defendant's clinical history while the defendant is in county jail. C.S.S.B. 562 also would authorize HHSC's Dangerousness Review Board to assess the dangerousness of a defendant sent by HHSC to an MSU at any time before the defendant's competency is restored. These changes would reduce the MSU waiting list while reserving limited MSU beds for defendants who are truly a danger to themselves or others. Those persons committed to non-MSU facilities as a result of this new process would experience shorter wait times in county jails and thus a quicker path to a state hospital or other treatment facility for competency restoration.

Relatedly, the Texas Judicial Council heard reports that mental health information was not being transferred with inmates from county jails to state jails. C.S.S.B. 562 would address this issue by ensuring that mental health information would be transferred with an inmate from county jail to state jail to enhance the continuity of care. (Original Author's/Sponsor's Statement of Intent)

S.B. 562 amends current law relating to criminal or juvenile procedures regarding persons who are or may be persons with a mental illness or intellectual disability and the operation and effects of successful completion of a mental health court program.

### **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 Section 8(a), Article 42.09, Code of Criminal Procedure, to include a copy of any mental health records, mental health screening, or similar information regarding the

mental health of the defendant among the items that a county that transfers a defendant to the Texas Department of Criminal Justice (TDCJ) under this article (Commencement of Sentence; Status During Appeal; Pen Packet) is required to deliver to an officer designated by TDCJ and to make nonsubstantive changes.

SECTION 2. Amends Article 46B.001, Code of Criminal Procedure, as follows:

Art. 46B.001. DEFINITIONS. Defines "adaptive behavior," "competency restoration," "developmental period," "electronic broadcast system," and "subaverage general intellectual functioning," defines "commission" as the Health and Human Services Commission (HHSC), and defines "executive commissioner" as the executive commissioner of HHSC. Redefines "intellectually disability" as significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. Redefines "mental illness" as an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that grossly impairs a person's thought, perception of reality, emotional process, or judgment, or behavior as demonstrated by recent disturbed behavior. Renumbers existing Subdivisions (2)–(6) as Subdivisions (8)–(12). Deletes existing text defining "electronic broadcast system" and "competency restoration."

SECTION 3. Amends Subchapter A, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.0021, as follows:

Art. 46B.0021. FACILITY DESIGNATION. Authorizes HHSC to designate for the commitment of a defendant under this chapter (Incompetency to Stand Trial) only a facility operated by HHSC or under a contract with HHSC for that purpose.

SECTION 4. Article 46B.073(c), Code of Criminal Procedure, is amended to read as follows:

(c) Requires the court, if the defendant is charged with an offense listed in Article 17.032(a) (relating to the definition of "violent offense") or if the indictment alleges an affirmative finding under Article 42A.054(c) (relating to requiring the trial court, on an affirmative finding regarding the use or exhibition of a certain deadly weapon, to enter the finding in the judgment of the court) or (d) (relating to requiring the court, on an affirmative finding that the a certain deadly weapon was a firearm, to enter that finding in its judgment), rather than if the defendant is charged with an offense listed in Article 17.032(a), other than an offense under Section 22.01(a)(1) (relating to providing that a person commits an offense if the person intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse), Penal Code, or the indictment alleges an affirmative finding under Article 42A.054(c) or (d), to enter an order committing the defendant for competency restoration services to a facility designated by HHSC, rather than to enter an order committing the defendant for competency restoration services to the maximum security unit of any facility designated by the Department of State Health Services (DSHS), to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

SECTION 5. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.0831, as follows:

Art. 46B.0831. DETERMINATION WHETHER DEFENDANT IS MANIFESTLY DANGEROUS. Provides that a defendant committed to a maximum security unit by HHSC is authorized to be assessed, at any time before the defendant is restored to competency, by the review board established under Section 46B.105 (Transfer Following Civil Commitment Placement) to determine whether the defendant is manifestly dangerous. Requires HHSC, if the review board determines the defendant is not manifestly dangerous, to transfer the defendant to a non-maximum security facility designated by HHSC.

SECTION 6. Amends Article 46B.104, Code of Criminal Procedure, as follows:

Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. Requires a defendant committed to a facility as a result of proceedings initiated under this chapter to be committed to the facility designated by HHSC, rather than requiring a defendant committed to a facility as a result of proceedings initiated under this chapter to be committed to the maximum security unit of any facility designated by DSHS, if:

(1) the defendant is charged with an offense listed in Article 17.032(a), rather than is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6) (relating to assault involving family violence being considered a "violent offense"); or

(2) makes no changes to this subdivision.

SECTION 7. Amends Articles 46B.105(a), (b), and (e), Code of Criminal Procedure, as follows:

(a) Requires a defendant, unless a defendant committed to a maximum security unit by HHSC is determined to be manifestly dangerous by a review board established under Subsection (b), rather than unless a defendant is determined to be manifestly dangerous by a review board established under Subsection (b), not later than the 60th day after the date the defendant arrives at the maximum security unit, to be transferred to one of certain facilities.

(b) Requires the executive commissioner, rather than the commissioner of state health services, to appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or an intellectual disability, to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(e) Makes conforming changes to this subsection.

SECTION 8. Amends Article 46B.106(a), Code of Criminal Procedure, as follows:

(a) Requires a defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, to be committed to:

(1) a facility designated by HHSC, rather than a facility designated by DSHS or the Department of Aging and Disability Services (DADS), as appropriate; or

(2) makes no changes to this subdivision.

SECTION 9. Amends Articles 46B.107(a) and (d), Code of Criminal Procedure, as follows:

(a) Makes a conforming change to this subsection.

(d) Requires the court, on receiving notice from the head of a facility or outpatient treatment provider of intent to release the defendant under Subsection (b) (relating to a deadline for notice before release of a defendant), rather than authorizing the court, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C (Texas Mental Health Code) or D (Persons With an Intellectual Disability Act), Title 7, Health and Safety Code. Authorizes the court to, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code, regardless of whether the court receives notice that the head of a facility or outpatient treatment provider provides notice of intent to release the defendant under Subsection (b).

SECTION 10. Amends Article 46B.151(c), Code of Criminal Procedure, to make a conforming change.

SECTION 11. Amends Articles 46C.001(1) and (2), Code of Criminal Procedure, to define "commission" and "executive commissioner," rather than defining "commissioner" and "department."

SECTION 12. Amends Subchapter A, Chapter 46C, Code of Criminal Procedure, by adding Article 46C.0011, as follows:

Art. 46C.0011. FACILITY DESIGNATION. Authorizes HHSC to designate for the commitment of a defendant under this chapter (Insanity Defense) only a facility operated by HHSC or under a contract with HHSC for that purpose.

SECTION 13. Amends Article 46C.104, Code of Criminal Procedure, as follows:

Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO EXAMINATION. (a) Authorizes custody ordered by the court under this subsection to include custody at a facility operated by HHSC, rather than DSHS.

(b) and (c) Makes conforming changes to these subsections.

SECTION 14. Amends Article 46C.106(b), Code of Criminal Procedure, to make conforming changes.

SECTION 15. Amends Article 46C.160(b), Code of Criminal Procedure, to authorize the court to order a defendant detained in a facility of HHSC, rather than a facility of DSHS or DADS, under this article (Detention Pending Further Proceedings) only with the consent of the head of the facility.

SECTION 16. Amends Article 46C.202(a), Code of Criminal Procedure, to authorize a person placed in an HHSC facility, rather than a DSHS facility or a facility of DADS, notwithstanding Article 46C.201(b), pending civil hearing as described by that subsection (Disposition: Nondangerous Contact), to be detained only with the consent of the head of the facility and under an order of protective custody issued under Subtitle C or D, Title 7, Health and Safety Code.

SECTION 17. Amends Articles 46C.251(a) and (b), Code of Criminal Procedure, as follows:

(a) Requires the court to order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the facility designated by HHSC, rather than for evaluation of the person's present mental condition and for treatment to the maximum security unit of any facility designated by DSHS.

(b) Requires the court to order that:

(1) makes no changes to this subdivision; and

(2) certain information be forwarded to the facility and to HHSC, rather than to the facility and, as applicable, DSHS or DADS.

SECTION 18. Amends Article 46C.260, Code of Criminal Procedure, as follows:

Art. 46C.260. New heading: TRANSFER OF COMMITTED PERSON TO NON-MAXIMUM SECURITY FACILITY. (a) Requires a person committed to a facility under this subchapter (Disposition Following Acquittal by Reason of Insanity: Finding of Dangerous Conduct) to be committed to a facility designated by HHSC, rather than to the maximum security unit of any facility designated by DSHS.

(b) Requires a person committed under this subchapter to be transferred to the designated facility, rather than the maximum security unit, immediately on the entry of the order of commitment.

(c) Requires a person committed to a maximum security unit by HHSC, unless the person is determined to be manifestly dangerous by a review board under this article, not later than the 60th day following the date of the person's arrival at the maximum security unit, to be transferred to a non-maximum security unit of a facility designated by HHSC, rather than requiring the person, unless the person is determined to be manifestly dangerous by a review board within DSHS, not later than the 60th day following the date of the person's arrival at the maximum security unit, to be transferred to a nonsecure unit of a facility designated by DSHS or DADS, as appropriate.

(d) Requires the executive commissioner, rather than the commissioner of state health services, to appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illnesses or with mental retardation, to determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

(e) Makes conforming changes to this subsection.

SECTION 19. Amends Article 55.01, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-4), as follows:

(a) Creates Subdivision (2)(A)(ii)(c) from existing text and redesignates existing Subdivisions (2)(A)(ii)(c)–(2)(A)(ii)(d) as Subdivisions (2)(A)(ii)(d)–(2)(A)(ii)(e). Provides that a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) makes no changes to this subdivision; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Chapter 42A (Community Supervision) for the offense, unless the offense is a Class C misdemeanor, provided that:

(A) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired, an indictment or information charging the person with the commission of a misdemeanor offense based on the person's arrest or charging the person with the commission of any felony offense arising out of the same transaction for which the person was arrested:

(i) makes no changes to this subparagraph; or

(ii) if presented at any time following the arrest, was dismissed or quashed, and the court finds that the indictment or information was dismissed or quashed because:

(a) makes no changes to this sub-subparagraph;

(b) the person completed a mental health court program created under Chapter 125 (Mental Health Court Programs), Government Code, or former law, subject to Subsection (a-4);

(c) the person completed a pretrial intervention program authorized under Section 76.011 (Operation of Certain Services and Programs), Government Code, other than a

veterans treatment court program created under Chapter 124 (Veterans Treatment Court Program), Government Code, or former law, or a mental health court program created under Chapter 125, Government Code, or former law;

(d)-(e) makes no further changes to these sub-subparagraphs; or

(B) makes no changes to this paragraph.

(a-4) Provides that a person is eligible under Subsection (a)(2)(A)(ii)(b) for an expunction of arrest records and files only if:

(1) the person has not previously received an expunction of arrest records and files under that sub-subparagraph; and

(2) the person submits to the court an affidavit attesting to that fact.

SECTION 20. Amends Section 1a, Article 55.02, Code of Criminal Procedure, by adding Subsection (a-2), as follows:

(a-2) Authorizes a trial court dismissing a case following a person's successful completion of a mental health court program created under Chapter 125, Government Code, or former law, if the trial court is a district court, or a district court in the county in which the trial court is located to, with the consent of the attorney representing the state, enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(b) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. Prohibits a court that enters an order for expunction under this subsection, notwithstanding any other law, from charging any fee or assessing any cost for the expunction.

SECTION 21. Amends Article 102.006(a), Code of Criminal Procedure, as follows:

(a) Requires a petitioner seeking expunction of a criminal record in a district court, in addition to any other fees required by other law and except as provided by Subsections (b) and (b-1), rather than Subsection (b), to pay certain fees.

SECTION 22. Reenacts Article 102.006(b), Code of Criminal Procedure, as amended by Chapters 693 (H.B. 322) and 1149 (H.B. 557), Acts of the 85th Legislature, Regular Session, 2017, and amends it as follows:

(b) Deletes existing Subdivision (2) and existing text relating to expunction following completion of a veterans treatment court program and deletes the designation of Subdivision (1). Requires the fees under Subsection (a) or the fee under Subsection (a-1) (relating to a certain filing fee), as applicable, to be waived if the petitioner seeks expunction of a criminal record that relates to an arrest for an offense of which the person was acquitted, other than an acquittal for an offense described by Article 55.01(c), and the petition for expunction is filed not later than the 30th day after the date of the acquittal.

SECTION 23. Amends Article 102.006, Code of Criminal Procedure, by adding Subsection (b-1), as follows:

(b-1) Requires the fees under Subsection (a) to be waived if the petitioner is entitled to expunction:

(1) under Article 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans treatment court program created under Chapter 124, Government Code, or former law; or

(2) under Article 55.01(a)(2)(A)(ii)(b) after successful completion of a mental health court program created under Chapter 125, Government Code, or former law.

SECTION 24. Amends Section 125.001, Government Code, as follows:

Sec. 125.001. New heading: MENTAL HEALTH COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) Creates this subsection from existing text and make no further changes.

(b) Requires the mental health court, if a defendant successfully completes a mental health court program, after notice to the attorney representing the state and a hearing in the mental health court at which that court determines that a dismissal is in the best interest of justice, to provide to the court in which the criminal case is pending information about the dismissal and to include all of the information required about the defendant for a petition for expunction under Section 2(b) (relating to requiring a certain petition to be verified and to include an explanation for why certain information is not included), Article 55.02, Code of Criminal Procedure. Provides that the court in which the criminal case is pending is required to dismiss the case against the defendant and:

(1) if that trial court is a district court, the court is authorized, with the consent of the attorney representing the state, to enter an order of expunction on behalf of the defendant under Section 1a(a-2), Article 55.02, Code of Criminal Procedure; or

(2) if that trial court is not a district court, the court is authorized, with the consent of the attorney representing the state, to forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Section 1a(a-2), Article 55.02, Code of Criminal Procedure.

SECTION 25. Amends Chapter 125, Government Code, by adding Sections 125.0025 and 125.005, as follows:

Sec. 125.0025. ESTABLISHMENT OF REGIONAL PROGRAM. Authorizes the commissioners courts of two or more counties to elect to establish a regional mental health court program under this chapter for the participating counties.

Sec. 125.005. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a) Requires the commissioners court of a county with a population of more than 200,000 to:

(1) establish a mental health court program under Section 125.002 (Authority to Establish Program); and

(2) direct the judge, magistrate, or coordinator to comply with Section 121.002(c)(1) (relating to oversight of specialty court programs).

(b) Requires a county required under this section to establish a mental health court program to apply for federal and state funds available to pay the costs of the program. Authorizes the criminal justice division of the Office of the Governor to assist a county in applying for federal funds as required by this subsection.

(c) Requires a county, notwithstanding Subsection (a), to establish a mental health court program under this section only if:

(1) the county receives federal or state funding specifically for that purpose in an amount sufficient to pay the fund costs of the mental health court program; and

(2) the judge, magistrate, or coordinator receives the verification described by Section 121.002(c)(2) (relating to verification of compliance with oversight requirements).

(d) Provides that a county that is required under this section to establish a mental health court program and fails to establish or to maintain that program is ineligible to receive grant funding from this state or any state agency.

SECTION 26. Amends Section 532.013(a), Health and Safety Code, as follows:

(a) Redefines "forensic patient" as a person with mental illness or a person with an intellectual disability who meets certain criteria, including a person examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51 (General Provisions), Family Code, or found unfit to proceed under Subchapter C (Child Unfit to Proceed as a Result of Mental Illness or Intellectual Disability), Chapter 55, Family Code. Redefines "forensic services" to mean a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a DSHS facility.

SECTION 27. (a) Makes application of this Act, with respect to a proceeding under Chapter 46B or 46C, Code of Criminal Procedure, that begins on or after the effective date of this Act, regardless of when the defendant committed the underlying offense for which the defendant became subject to the proceeding, prospective.

(b) Provides that, except as provided by Subsection (c) of this section, the changes in law made to Articles 55.01 and 55.02, Code of Criminal Procedure, apply to the expunction of arrest records and files for a person who successfully completes a mental health court program under Chapter 125, Government Code, or former law before, on, or after the effective date of this Act, regardless of when the underlying arrest occurred.

(c) Provides that the change in law made by this Act to Article 102.006, Code of Criminal Procedure, applies to the fees charged or costs assessed for an expunction order entered on or after the effective date of this Act, regardless of whether the underlying arrest occurred before, on, or after the effective date of this Act.

(d) Authorizes the court, for a person who is entitled to expunction under Article 55.01(a)(2)(A)(ii)(b), Code of Criminal Procedure, as amended by this Act, based on a successful completion of a mental health court program under Chapter 125, Government Code, or former law before the effective date of this Act, notwithstanding the 30-day time limit provided for the court to enter an automatic order of expunction under Section 1a(a-2), Article 55.02, Code of Criminal Procedure, as added by this Act, to, with the consent of the attorney representing the state, enter an order of expunction for the person as soon as practicable after the court receives written notice from any party to the case about the person's entitlement to the expunction.

SECTION 28. Effective date: upon passage or September 1, 2019.