

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 562
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Criminal Justice
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Committee Report (Substituted)

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.

C.S.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.

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 is required to deliver to an officer designated by TDCJ. Makes nonsubstantive changes.

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

Art. 46B.001. DEFINITIONS. Defines "adaptive behavior," "commission," "competency restoration," "developmental period," "electronic broadcast system," "executive commissioner," and "subaverage general intellectual functioning." Redefines "intellectually disability" to mean significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. Redefines "mental illness" to mean 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 (8)–(12). Deletes existing text defining "electronic broadcast system" and "competency restoration."

SECTION 3. Amends Article 46B.073(c), Code of Criminal Procedure, 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 affirmative finding regarding the use or exhibition of a 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 deadly weapon under Subsection (c) was a firearm, to enter that finding in its judgment), to enter an order committing the defendant for competency restoration services to a facility designated by the Health and Human Services Commission (HHSC), rather than requiring the court, 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 a person committing 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 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 4. 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 nonsecure facility designated by HHSC.

SECTION 5. 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 (Incompetency to Stand Trial) 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 the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6); or

(2) makes no changes to this subdivision.

SECTION 6. Amends Articles 46B.105(a), (b), and (e), Code of Criminal Procedure, as follows:

(a) Requires the 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), not later than the 60th day after the date the defendant arrives at the maximum security unit, to be transferred to certain facilities.

(b) Requires the executive commissioner of HHSC (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 7. 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 designated by DSHS or the Department of Aging and Disability Services (DADS), as appropriate; or

(2) makes no changes to this subdivision.

SECTION 8. Amends Articles 46B.107(a) and (d), Code of Criminal Procedure, as follows:

(a) Provides that the release of a defendant committed under this chapter from HHSC, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant, rather than providing that the release of a defendant committed under this chapter from DSHS, DADS, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(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 requiring the head of the facility or outpatient treatment provider to notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release by a certain deadline), to hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle (Texas Mental Health Code) or D (Persons With Intellectual Disability Act), Title 7, Health and Safety Code, rather than authorizing the court, on motion of the attorney representing the state or on its own motion, to hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. Authorizes the court, on motion of the attorney representing the state or on its own motion, to 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 9. Amends Article 46B.151(c), Code of Criminal Procedure, to make a conforming change.

SECTION 10. Amends Articles 46C.001(1) and (2), Code of Criminal Procedure, to define "commission" and "executive commissioner," rather than defining "commissioner" and "department."

SECTION 11. 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 this subsections.

SECTION 12. Amends Article 46C.106(b), Code of Criminal Procedure, to make conforming changes.

SECTION 13. 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 14. Amends Article 46C.202(a), Code of Criminal Procedure, to authorize a person placed in a HHSC facility, rather than a DSHS facility or a facility of DADS, pending civil hearing as described by Article 46C.201(b) (relating to requiring the court to order certain procedures if the court determines that there is evident to support a finding of mental illness or mental retardation), notwithstanding Article 46C.201(b), 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 15. 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 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 certain information be forwarded to the facility and, as applicable, DSHS or DADS.

SECTION 16. 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 of Following Acquittal by Reason by 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 the person, unless a person committed to a maximum security unit by HHSC 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 the department, 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 17. Amends Section 532.013(a), Health and Safety Code, as follows:

(a) Redefines "forensic patient" to mean 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 18. Makes application of this Act prospective.

SECTION 19. Effective date: upon passage or September 1, 2019.