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S.B. No. 562

A BILL TO BE ENTITLED

AN ACT

1
2 relating to criminal or juvenile procedures regarding persons who
3 are or may be persons with a mental illness or intellectual
4 disability.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 8(a), Article 42.09, Code of Criminal
7 Procedure, is amended to read as follows:

8 (a) A county that transfers a defendant to the Texas
9 Department of Criminal Justice under this article shall deliver to
10 an officer designated by the department:

11 (1) a copy of the judgment entered pursuant to Article
12 42.01, completed on a standardized felony judgment form described
13 by Section 4 of that article;

14 (2) a copy of any order revoking community supervision
15 and imposing sentence pursuant to Article 42A.755, including:

16 (A) any amounts owed for restitution, fines, and
17 court costs, completed on a standardized felony judgment form
18 described by Section 4, Article 42.01; and

19 (B) a copy of the client supervision plan
20 prepared for the defendant by the community supervision and
21 corrections department supervising the defendant, if such a plan
22 was prepared;

23 (3) a written report that states the nature and the
24 seriousness of each offense and that states the citation to the

1 provision or provisions of the Penal Code or other law under which
2 the defendant was convicted;

3 (4) a copy of the victim impact statement, if one has
4 been prepared in the case under Article 56.03;

5 (5) a statement as to whether there was a change in
6 venue in the case and, if so, the names of the county prosecuting
7 the offense and the county in which the case was tried;

8 (6) if requested, information regarding the criminal
9 history of the defendant, including the defendant's state
10 identification number if the number has been issued;

11 (7) a copy of the indictment or information for each
12 offense;

13 (8) a checklist sent by the department to the county
14 and completed by the county in a manner indicating that the
15 documents required by this subsection and Subsection (c) accompany
16 the defendant;

17 (9) if prepared, a copy of a presentence or
18 postsentence report prepared under Subchapter F, Chapter 42A;

19 (10) a copy of any detainer, issued by an agency of the
20 federal government, that is in the possession of the county and that
21 has been placed on the defendant;

22 (11) if prepared, a copy of the defendant's Texas
23 Uniform Health Status Update Form; ~~and~~

24 (12) a written description of a hold or warrant,
25 issued by any other jurisdiction, that the county is aware of and
26 that has been placed on or issued for the defendant; and

27 (13) a copy of any mental health records, mental

1 health screening reports, or similar information regarding the
2 mental health of the defendant.

3 SECTION 2. Article 46B.001, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 46B.001. DEFINITIONS. In this chapter:

6 (1) "Adaptive behavior" means the effectiveness with
7 or degree to which a person meets the standards of personal
8 independence and social responsibility expected of the person's age
9 and cultural group.

10 (2) "Commission" means the Health and Human Services
11 Commission.

12 (3) "Competency restoration" means the treatment or
13 education process for restoring a person's ability to consult with
14 the person's attorney with a reasonable degree of rational
15 understanding, including a rational and factual understanding of
16 the court proceedings and charges against the person.

17 (4) "Developmental period" means the period of a
18 person's life from birth through 17 years of age.

19 (5) "Electronic broadcast system" means a two-way
20 electronic communication of image and sound between the defendant
21 and the court and includes secure Internet videoconferencing.

22 (6) "Executive commissioner" means the executive
23 commissioner of the Health and Human Services Commission.

24 (7) "Inpatient mental health facility" has the meaning
25 assigned by Section 571.003, Health and Safety Code.

26 (8) [~~2~~] "Intellectual disability" means
27 significantly subaverage general intellectual functioning that is

1 concurrent with deficits in adaptive behavior and originates during
2 the developmental period [~~has the meaning assigned by Section~~
3 ~~591.003, Health and Safety Code~~].

4 (9) [~~(3)~~] "Local mental health authority" has the
5 meaning assigned by Section 571.003, Health and Safety Code.

6 (10) [~~(4)~~] "Local intellectual and developmental
7 disability authority" has the meaning assigned by Section 531.002,
8 Health and Safety Code.

9 (11) [~~(5)~~] "Mental health facility" has the meaning
10 assigned by Section 571.003, Health and Safety Code.

11 (12) [~~(6)~~] "Mental illness" means an illness,
12 disease, or condition, other than epilepsy, dementia, substance
13 abuse, or intellectual disability, that grossly impairs:

14 (A) a person's thought, perception of reality,
15 emotional process, or judgment; or

16 (B) behavior as demonstrated by recent disturbed
17 behavior [~~has the meaning assigned by Section 571.003, Health and~~
18 ~~Safety Code~~].

19 (13) [~~(7)~~] "Residential care facility" has the
20 meaning assigned by Section 591.003, Health and Safety Code.

21 (14) "Subaverage general intellectual functioning"
22 means a measured intelligence two or more standard deviations below
23 the age-group mean, using a standardized psychometric instrument.

24 [~~(8)~~] ~~"Electronic broadcast system" means a two-way~~
25 ~~electronic communication of image and sound between the defendant~~
26 ~~and the court and includes secure Internet videoconferencing.~~

27 [~~(9)~~] ~~"Competency restoration" means the treatment or~~

1 ~~education process for restoring a person's ability to consult with~~
2 ~~the person's attorney with a reasonable degree of rational~~
3 ~~understanding, including a rational and factual understanding of~~
4 ~~the court proceedings and charges against the person.]~~

5 SECTION 3. Article 46B.073(c), Code of Criminal Procedure,
6 is amended to read as follows:

7 (c) If the defendant is charged with an offense listed in
8 Article 17.032(a) [~~, other than an offense under Section~~
9 ~~22.01(a)(1), Penal Code,~~] or if the indictment alleges an
10 affirmative finding under Article 42A.054(c) or (d), the court
11 shall enter an order committing the defendant for competency
12 restoration services to a [~~the maximum security unit of any~~
13 ~~facility designated by the commission [Department of State Health~~
14 ~~Services, to an agency of the United States operating a mental~~
15 ~~hospital, or to a Department of Veterans Affairs hospital].~~

16 SECTION 4. Subchapter D, Chapter 46B, Code of Criminal
17 Procedure, is amended by adding Article 46B.0831 to read as
18 follows:

19 Art. 46B.0831. DETERMINATION WHETHER DEFENDANT IS
20 MANIFESTLY DANGEROUS. A defendant committed to a maximum security
21 unit by the commission may be assessed, at any time before the
22 defendant is restored to competency, by the review board
23 established under Section 46B.105 to determine whether the
24 defendant is manifestly dangerous. If the review board determines
25 the defendant is not manifestly dangerous, the commission shall
26 transfer the defendant to a nonsecure facility designated by the
27 commission.

1 SECTION 5. Article 46B.104, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
4 VIOLENCE. A defendant committed to a facility as a result of
5 proceedings initiated under this chapter shall be committed to the
6 ~~[maximum security unit of any]~~ facility designated by the
7 commission ~~[Department of State Health Services]~~ if:

8 (1) the defendant is charged with an offense listed in
9 Article 17.032(a) ~~[, other than an offense listed in Article~~
10 ~~17.032(a)(6)]~~; or

11 (2) the indictment charging the offense alleges an
12 affirmative finding under Article 42A.054(c) or (d).

13 SECTION 6. Articles 46B.105(a), (b), and (e), Code of
14 Criminal Procedure, are amended to read as follows:

15 (a) Unless a defendant committed to a maximum security unit
16 by the commission is determined to be manifestly dangerous by a
17 review board established under Subsection (b), not later than the
18 60th day after the date the defendant arrives at the maximum
19 security unit, the defendant shall be transferred to:

20 (1) a unit of an inpatient mental health facility
21 other than a maximum security unit;

22 (2) a residential care facility; or

23 (3) a program designated by a local mental health
24 authority or a local intellectual and developmental disability
25 authority.

26 (b) The executive commissioner ~~[of state health services]~~
27 shall appoint a review board of five members, including one

1 psychiatrist licensed to practice medicine in this state and two
2 persons who work directly with persons with mental illness or an
3 intellectual disability, to determine whether the defendant is
4 manifestly dangerous and, as a result of the danger the defendant
5 presents, requires continued placement in a maximum security unit.

6 (e) If the superintendent of the facility at which the
7 maximum security unit is located disagrees with the determination,
8 the matter shall be referred to the executive commissioner [~~of~~
9 ~~state health services~~]. The executive commissioner shall decide
10 whether the defendant is manifestly dangerous.

11 SECTION 7. Article 46B.106(a), Code of Criminal Procedure,
12 is amended to read as follows:

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

16 (1) a facility designated by the commission
17 [~~Department of State Health Services or the Department of Aging and~~
18 ~~Disability Services, as appropriate~~]; or

19 (2) an outpatient treatment program.

20 SECTION 8. Articles 46B.107(a) and (d), Code of Criminal
21 Procedure, are amended to read as follows:

22 (a) The release of a defendant committed under this chapter
23 from the commission [~~Department of State Health Services, the~~
24 ~~Department of Aging and Disability Services~~], an outpatient
25 treatment program, or another facility is subject to disapproval by
26 the committing court if the court or the attorney representing the
27 state has notified the head of the facility or outpatient treatment

1 provider, as applicable, to which the defendant has been committed
2 that a criminal charge remains pending against the defendant.

3 (d) The court shall, on receiving notice from the head of a
4 facility or outpatient treatment provider of intent to release the
5 defendant under Subsection (b) [~~may, on motion of the attorney~~
6 ~~representing the state or on its own motion~~], hold a hearing to
7 determine whether release is appropriate under the applicable
8 criteria in Subtitle C or D, Title 7, Health and Safety Code. The
9 court may, on motion of the attorney representing the state or on
10 its own motion, hold a hearing to determine whether release is
11 appropriate under the applicable criteria in Subtitle C or D, Title
12 7, Health and Safety Code, regardless of whether the court receives
13 notice that the head of a facility or outpatient treatment provider
14 provides notice of intent to release the defendant under Subsection
15 (b). The court may conduct the hearing:

16 (1) at the facility; or

17 (2) by means of an electronic broadcast system as
18 provided by Article 46B.013.

19 SECTION 9. Article 46B.151(c), Code of Criminal Procedure,
20 is amended to read as follows:

21 (c) Notwithstanding Subsection (b), a defendant placed in a
22 facility of the commission [~~Department of State Health Services or~~
23 ~~the Department of Aging and Disability Services~~] pending civil
24 hearing under this article may be detained in that facility only
25 with the consent of the head of the facility and pursuant to an
26 order of protective custody issued under Subtitle C, Title 7,
27 Health and Safety Code.

1 SECTION 10. Articles 46C.001(1) and (2), Code of Criminal
2 Procedure, are amended to read as follows:

3 (1) "Commission" means the Health and Human Services
4 Commission [~~"Commissioner" means the commissioner of state health~~
5 ~~services~~].

6 (2) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission
8 [~~"Department" means the Department of State Health Services~~].

9 SECTION 11. Article 46C.104, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO
12 EXAMINATION. (a) For the purposes described by this chapter, the
13 court may order any defendant to submit to examination, including a
14 defendant who is free on bail. If the defendant fails or refuses to
15 submit to examination, the court may order the defendant to custody
16 for examination for a reasonable period not to exceed 21
17 days. Custody ordered by the court under this subsection may
18 include custody at a facility operated by the commission
19 [~~department~~].

20 (b) If a defendant who has been ordered to a facility
21 operated by the commission [~~department~~] for examination remains in
22 the facility for a period that exceeds 21 days, the head of that
23 facility shall cause the defendant to be immediately transported to
24 the committing court and placed in the custody of the sheriff of the
25 county in which the committing court is located. That county shall
26 reimburse the facility for the mileage and per diem expenses of the
27 personnel required to transport the defendant, calculated in

1 accordance with the state travel rules in effect at that time.

2 (c) The court may not order a defendant to a facility
3 operated by the commission [~~department~~] for examination without the
4 consent of the head of that facility.

5 SECTION 12. Article 46C.106(b), Code of Criminal Procedure,
6 is amended to read as follows:

7 (b) The county in which the indictment was returned or
8 information was filed shall reimburse a facility operated by the
9 commission [~~department~~] that accepts a defendant for examination
10 under this subchapter for expenses incurred that are determined by
11 the commission [~~department~~] to be reasonably necessary and
12 incidental to the proper examination of the defendant.

13 SECTION 13. Article 46C.160(b), Code of Criminal Procedure,
14 is amended to read as follows:

15 (b) The court may order a defendant detained in a facility
16 of the commission [~~department or a facility of the Department of~~
17 ~~Aging and Disability Services~~] under this article only with the
18 consent of the head of the facility.

19 SECTION 14. Article 46C.202(a), Code of Criminal Procedure,
20 is amended to read as follows:

21 (a) Notwithstanding Article 46C.201(b), a person placed in
22 a commission [~~department~~] facility [~~or a facility of the Department~~
23 ~~of Aging and Disability Services~~] pending civil hearing as
24 described by that subsection may be detained only with the consent
25 of the head of the facility and under an Order of Protective Custody
26 issued under Subtitle C or D, Title 7, Health and Safety Code.

27 SECTION 15. Articles 46C.251(a) and (b), Code of Criminal

1 Procedure, are amended to read as follows:

2 (a) The court shall order the acquitted person to be
3 committed for evaluation of the person's present mental condition
4 and for treatment to the ~~[maximum security unit of any]~~ facility
5 designated by the commission ~~[department]~~. The period of
6 commitment under this article may not exceed 30 days.

7 (b) The court shall order that:

8 (1) a transcript of all medical testimony received in
9 the criminal proceeding be prepared as soon as possible by the court
10 reporter and the transcript be forwarded to the facility to which
11 the acquitted person is committed; and

12 (2) the following information be forwarded to the
13 facility and~~[, as applicable,]~~ to the commission ~~[department or the~~
14 ~~Department of Aging and Disability Services]~~:

15 (A) the complete name, race, and gender of the
16 person;

17 (B) any known identifying number of the person,
18 including social security number, driver's license number, or state
19 identification number;

20 (C) the person's date of birth; and

21 (D) the offense of which the person was found not
22 guilty by reason of insanity and a statement of the facts and
23 circumstances surrounding the alleged offense.

24 SECTION 16. Article 46C.260, Code of Criminal Procedure, is
25 amended to read as follows:

26 Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NON-MAXIMUM
27 SECURITY ~~[NONSECURE]~~ FACILITY. (a) A person committed to a

1 facility under this subchapter shall be committed to a a [~~the maximum~~
2 ~~security unit of any~~] facility designated by the commission
3 [~~department~~].

4 (b) A person committed under this subchapter shall be
5 transferred to the designated facility [~~maximum security unit~~]
6 immediately on the entry of the order of commitment.

7 (c) Unless a a [~~the~~] person committed to a maximum security
8 unit by the commission is determined to be manifestly dangerous by a
9 review board under this article [~~within the department~~], not later
10 than the 60th day following the date of the person's arrival at the
11 maximum security unit the person shall be transferred to a
12 non-maximum security [~~nonsecure~~] unit of a facility designated by
13 the commission [~~department or the Department of Aging and~~
14 ~~Disability Services, as appropriate~~].

15 (d) The executive commissioner shall appoint a review board
16 of five members, including one psychiatrist licensed to practice
17 medicine in this state and two persons who work directly with
18 persons with mental illnesses or with mental retardation, to
19 determine whether the person is manifestly dangerous and, as a
20 result of the danger the person presents, requires continued
21 placement in a maximum security unit.

22 (e) If the head of the facility at which the maximum
23 security unit is located disagrees with the determination, then the
24 matter shall be referred to the executive commissioner. The
25 executive commissioner shall decide whether the person is
26 manifestly dangerous.

27 SECTION 17. Section 532.013(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) In this section:

3 (1) "Forensic patient" means a person with mental
4 illness or a person with an intellectual disability who is:

5 (A) examined on the issue of competency to stand
6 trial by an expert appointed under Subchapter B, Chapter 46B, Code
7 of Criminal Procedure;

8 (B) found incompetent to stand trial under
9 Subchapter C, Chapter 46B, Code of Criminal Procedure;

10 (C) committed to court-ordered mental health
11 services under Subchapter E, Chapter 46B, Code of Criminal
12 Procedure; ~~or~~

13 (D) found not guilty by reason of insanity under
14 Chapter 46C, Code of Criminal Procedure;

15 (E) examined on the issue of fitness to proceed
16 with juvenile court proceedings by an expert appointed under
17 Chapter 51, Family Code; or

18 (F) found unfit to proceed under Subchapter C,
19 Chapter 55, Family Code.

20 (2) "Forensic services" means a competency
21 examination, competency restoration services, or mental health or
22 intellectual disability services provided to a current or former
23 forensic patient in the community or at a department facility.

24 SECTION 18. This Act applies only to a proceeding under the
25 Code of Criminal Procedure that begins on or after the effective
26 date of this Act, regardless of when the defendant committed the
27 underlying offense for which the defendant became subject to the

1 proceeding. A proceeding that begins before the effective date of
2 this Act is governed by the law in effect on the date the proceeding
3 began, and the former law is continued in effect for that purpose.

4 SECTION 19. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect September 1, 2019.