

By: Zaffirini, et al.
(Price, Collier)

S.B. No. 562

Substitute the following for S.B. No. 562:

By: González of Dallas

C.S.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. Subchapter A, Chapter 46B, Code of Criminal
6 Procedure, is amended by adding Article 46B.0021 to read as
7 follows:

8 Art. 46B.0021. FACILITY DESIGNATION. The commission may
9 designate for the commitment of a defendant under this chapter only
10 a facility operated by the commission or under a contract with the
11 commission for that purpose.

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

14 (c) If the defendant is charged with an offense listed in
15 Article 17.032(a) [~~, other than an offense under Section~~
16 ~~22.01(a)(1), Penal Code,~~] or if the indictment alleges an
17 affirmative finding under Article 42A.054(c) or (d), the court
18 shall enter an order committing the defendant for competency
19 restoration services to a [~~the maximum security unit of any~~
20 ~~facility designated by the commission [Department of State Health~~
21 ~~Services, to an agency of the United States operating a mental~~
22 ~~hospital, or to a Department of Veterans Affairs hospital].~~

23 SECTION 5. Subchapter D, Chapter 46B, Code of Criminal
24 Procedure, is amended by adding Article 46B.0831 to read as
25 follows:

26 Art. 46B.0831. DETERMINATION WHETHER DEFENDANT IS
27 MANIFESTLY DANGEROUS. A defendant committed to a maximum security

1 unit by the commission may be assessed, at any time before the
2 defendant is restored to competency, by the review board
3 established under Section 46B.105 to determine whether the
4 defendant is manifestly dangerous. If the review board determines
5 the defendant is not manifestly dangerous, the commission shall
6 transfer the defendant to a non-maximum security facility
7 designated by the commission.

8 SECTION 6. Article 46B.104, Code of Criminal Procedure, is
9 amended to read as follows:

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

15 (1) the defendant is charged with an offense listed in
16 Article 17.032(a) [~~, other than an offense listed in Article~~
17 ~~17.032(a)(6)~~]; or

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

20 SECTION 7. Articles 46B.105(a), (b), and (e), Code of
21 Criminal Procedure, are amended to read as follows:

22 (a) Unless a defendant committed to a maximum security unit
23 by the commission is determined to be manifestly dangerous by a
24 review board established under Subsection (b), not later than the
25 60th day after the date the defendant arrives at the maximum
26 security unit, the defendant shall be transferred to:

27 (1) a unit of an inpatient mental health facility

1 other than a maximum security unit;

2 (2) a residential care facility; or

3 (3) a program designated by a local mental health
4 authority or a local intellectual and developmental disability
5 authority.

6 (b) The executive commissioner [~~of state health services~~]
7 shall appoint a review board of five members, including one
8 psychiatrist licensed to practice medicine in this state and two
9 persons who work directly with persons with mental illness or an
10 intellectual disability, to determine whether the defendant is
11 manifestly dangerous and, as a result of the danger the defendant
12 presents, requires continued placement in a maximum security unit.

13 (e) If the superintendent of the facility at which the
14 maximum security unit is located disagrees with the determination,
15 the matter shall be referred to the executive commissioner [~~of~~
16 ~~state health services~~]. The executive commissioner shall decide
17 whether the defendant is manifestly dangerous.

18 SECTION 8. Article 46B.106(a), Code of Criminal Procedure,
19 is amended to read as follows:

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

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

26 (2) an outpatient treatment program.

27 SECTION 9. Articles 46B.107(a) and (d), Code of Criminal

1 Procedure, are amended to read as follows:

2 (a) The release of a defendant committed under this chapter
3 from the commission [~~Department of State Health Services, the~~
4 ~~Department of Aging and Disability Services~~], an outpatient
5 treatment program, or another facility is subject to disapproval by
6 the committing court if the court or the attorney representing the
7 state has notified the head of the facility or outpatient treatment
8 provider, as applicable, to which the defendant has been committed
9 that a criminal charge remains pending against the defendant.

10 (d) The court shall, on receiving notice from the head of a
11 facility or outpatient treatment provider of intent to release the
12 defendant under Subsection (b) [~~may, on motion of the attorney~~
13 ~~representing the state or on its own motion~~], hold a hearing to
14 determine whether release is appropriate under the applicable
15 criteria in Subtitle C or D, Title 7, Health and Safety Code. The
16 court may, on motion of the attorney representing the state or on
17 its own motion, hold a hearing to determine whether release is
18 appropriate under the applicable criteria in Subtitle C or D, Title
19 7, Health and Safety Code, regardless of whether the court receives
20 notice that the head of a facility or outpatient treatment provider
21 provides notice of intent to release the defendant under Subsection
22 (b). The court may conduct the hearing:

23 (1) at the facility; or

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

26 SECTION 10. Article 46B.151(c), Code of Criminal Procedure,
27 is amended to read as follows:

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

8 SECTION 11. Articles 46C.001(1) and (2), Code of Criminal
9 Procedure, are amended to read as follows:

10 (1) "Commission" means the Health and Human Services
11 Commission [~~"Commissioner" means the commissioner of state health~~
12 ~~services~~].

13 (2) "Executive commissioner" means the executive
14 commissioner of the Health and Human Services Commission
15 [~~"Department" means the Department of State Health Services~~].

16 SECTION 12. Subchapter A, Chapter 46C, Code of Criminal
17 Procedure, is amended by adding Article 46C.0011 to read as
18 follows:

19 Art. 46C.0011. FACILITY DESIGNATION. The commission may
20 designate for the commitment of a defendant under this chapter only
21 a facility operated by the commission or under a contract with the
22 commission for that purpose.

23 SECTION 13. Article 46C.104, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO
26 EXAMINATION. (a) For the purposes described by this chapter, the
27 court may order any defendant to submit to examination, including a

1 defendant who is free on bail. If the defendant fails or refuses to
2 submit to examination, the court may order the defendant to custody
3 for examination for a reasonable period not to exceed 21
4 days. Custody ordered by the court under this subsection may
5 include custody at a facility operated by the commission
6 [~~department~~].

7 (b) If a defendant who has been ordered to a facility
8 operated by the commission [~~department~~] for examination remains in
9 the facility for a period that exceeds 21 days, the head of that
10 facility shall cause the defendant to be immediately transported to
11 the committing court and placed in the custody of the sheriff of the
12 county in which the committing court is located. That county shall
13 reimburse the facility for the mileage and per diem expenses of the
14 personnel required to transport the defendant, calculated in
15 accordance with the state travel rules in effect at that time.

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

19 SECTION 14. Article [46C.106](#)(b), Code of Criminal Procedure,
20 is amended to read as follows:

21 (b) The county in which the indictment was returned or
22 information was filed shall reimburse a facility operated by the
23 commission [~~department~~] that accepts a defendant for examination
24 under this subchapter for expenses incurred that are determined by
25 the commission [~~department~~] to be reasonably necessary and
26 incidental to the proper examination of the defendant.

27 SECTION 15. Article [46C.160](#)(b), Code of Criminal Procedure,

1 is amended to read as follows:

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

6 SECTION 16. Article 46C.202(a), Code of Criminal Procedure,
7 is amended to read as follows:

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

14 SECTION 17. Articles 46C.251(a) and (b), Code of Criminal
15 Procedure, are amended to read as follows:

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

21 (b) The court shall order that:

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

26 (2) the following information be forwarded to the
27 facility and [~~as applicable,~~] to the commission [~~department or the~~

1 ~~Department of Aging and Disability Services~~]:

2 (A) the complete name, race, and gender of the
3 person;

4 (B) any known identifying number of the person,
5 including social security number, driver's license number, or state
6 identification number;

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

8 (D) the offense of which the person was found not
9 guilty by reason of insanity and a statement of the facts and
10 circumstances surrounding the alleged offense.

11 SECTION 18. Article 46C.260, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NON-MAXIMUM
14 SECURITY [~~NONSECURE~~] FACILITY. (a) A person committed to a
15 facility under this subchapter shall be committed to a a [~~the maximum~~
16 ~~security unit of any~~] facility designated by the commission
17 [~~department~~].

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

21 (c) Unless a a [~~the~~] person committed to a maximum security
22 unit by the commission is determined to be manifestly dangerous by a
23 review board under this article [~~within the department~~], not later
24 than the 60th day following the date of the person's arrival at the
25 maximum security unit the person shall be transferred to a
26 non-maximum security [~~nonsecure~~] unit of a facility designated by
27 the commission [~~department or the Department of Aging and~~

1 ~~Disability Services, as appropriate].~~

2 (d) The executive commissioner shall appoint a review board
3 of five members, including one psychiatrist licensed to practice
4 medicine in this state and two persons who work directly with
5 persons with mental illnesses or with mental retardation, to
6 determine whether the person is manifestly dangerous and, as a
7 result of the danger the person presents, requires continued
8 placement in a maximum security unit.

9 (e) If the head of the facility at which the maximum
10 security unit is located disagrees with the determination, then the
11 matter shall be referred to the executive commissioner. The
12 executive commissioner shall decide whether the person is
13 manifestly dangerous.

14 SECTION 19. Section 532.013(a), Health and Safety Code, is
15 amended to read as follows:

16 (a) In this section:

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

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

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

24 (C) committed to court-ordered mental health
25 services under Subchapter E, Chapter 46B, Code of Criminal
26 Procedure; ~~[or]~~

27 (D) found not guilty by reason of insanity under

1 Chapter [46C](#), Code of Criminal Procedure;

2 (E) examined on the issue of fitness to proceed
3 with juvenile court proceedings by an expert appointed under
4 Chapter [51](#), Family Code; or

5 (F) found unfit to proceed under Subchapter C,
6 Chapter [55](#), Family Code.

7 (2) "Forensic services" means a competency
8 examination, competency restoration services, or mental health or
9 intellectual disability services provided to a current or former
10 forensic patient in the community or at a department facility.

11 SECTION 20. This Act applies only to a proceeding under the
12 Code of Criminal Procedure that begins on or after the effective
13 date of this Act, regardless of when the defendant committed the
14 underlying offense for which the defendant became subject to the
15 proceeding. A proceeding that begins before the effective date of
16 this Act is governed by the law in effect on the date the proceeding
17 began, and the former law is continued in effect for that purpose.

18 SECTION 21. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section [39](#), Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2019.