

1-1 By: Zaffirini S.B. No. 562
 1-2 (In the Senate - Filed January 31, 2019; February 21, 2019,
 1-3 read first time and referred to Committee on Criminal Justice;
 1-4 April 23, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; April 23, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 562 By: Perry

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to criminal or juvenile procedures regarding persons who
 1-20 are or may be persons with a mental illness or intellectual
 1-21 disability.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 8(a), Article 42.09, Code of Criminal
 1-24 Procedure, is amended to read as follows:

1-25 (a) A county that transfers a defendant to the Texas
 1-26 Department of Criminal Justice under this article shall deliver to
 1-27 an officer designated by the department:

1-28 (1) a copy of the judgment entered pursuant to Article
 1-29 42.01, completed on a standardized felony judgment form described
 1-30 by Section 4 of that article;

1-31 (2) a copy of any order revoking community supervision
 1-32 and imposing sentence pursuant to Article 42A.755, including:

1-33 (A) any amounts owed for restitution, fines, and
 1-34 court costs, completed on a standardized felony judgment form
 1-35 described by Section 4, Article 42.01; and

1-36 (B) a copy of the client supervision plan
 1-37 prepared for the defendant by the community supervision and
 1-38 corrections department supervising the defendant, if such a plan
 1-39 was prepared;

1-40 (3) a written report that states the nature and the
 1-41 seriousness of each offense and that states the citation to the
 1-42 provision or provisions of the Penal Code or other law under which
 1-43 the defendant was convicted;

1-44 (4) a copy of the victim impact statement, if one has
 1-45 been prepared in the case under Article 56.03;

1-46 (5) a statement as to whether there was a change in
 1-47 venue in the case and, if so, the names of the county prosecuting
 1-48 the offense and the county in which the case was tried;

1-49 (6) if requested, information regarding the criminal
 1-50 history of the defendant, including the defendant's state
 1-51 identification number if the number has been issued;

1-52 (7) a copy of the indictment or information for each
 1-53 offense;

1-54 (8) a checklist sent by the department to the county
 1-55 and completed by the county in a manner indicating that the
 1-56 documents required by this subsection and Subsection (c) accompany
 1-57 the defendant;

1-58 (9) if prepared, a copy of a presentence or
 1-59 postsentence report prepared under Subchapter F, Chapter 42A;

1-60 (10) a copy of any detainer, issued by an agency of the

2-1 federal government, that is in the possession of the county and that
2-2 has been placed on the defendant;

2-3 (11) if prepared, a copy of the defendant's Texas
2-4 Uniform Health Status Update Form; ~~and~~

2-5 (12) a written description of a hold or warrant,
2-6 issued by any other jurisdiction, that the county is aware of and
2-7 that has been placed on or issued for the defendant; and

2-8 (13) a copy of any mental health records, mental
2-9 health screening reports, or similar information regarding the
2-10 mental health of the defendant.

2-11 SECTION 2. Article 46B.001, Code of Criminal Procedure, is
2-12 amended to read as follows:

2-13 Art. 46B.001. DEFINITIONS. In this chapter:

2-14 (1) "Adaptive behavior" means the effectiveness with
2-15 or degree to which a person meets the standards of personal
2-16 independence and social responsibility expected of the person's age
2-17 and cultural group.

2-18 (2) "Commission" means the Health and Human Services
2-19 Commission.

2-20 (3) "Competency restoration" means the treatment or
2-21 education process for restoring a person's ability to consult with
2-22 the person's attorney with a reasonable degree of rational
2-23 understanding, including a rational and factual understanding of
2-24 the court proceedings and charges against the person.

2-25 (4) "Developmental period" means the period of a
2-26 person's life from birth through 17 years of age.

2-27 (5) "Electronic broadcast system" means a two-way
2-28 electronic communication of image and sound between the defendant
2-29 and the court and includes secure Internet videoconferencing.

2-30 (6) "Executive commissioner" means the executive
2-31 commissioner of the Health and Human Services Commission.

2-32 (7) "Inpatient mental health facility" has the meaning
2-33 assigned by Section 571.003, Health and Safety Code.

2-34 (8) ~~[(2)]~~ "Intellectual disability" means
2-35 significantly subaverage general intellectual functioning that is
2-36 concurrent with deficits in adaptive behavior and originates during
2-37 the developmental period ~~[has the meaning assigned by Section~~
2-38 ~~591.003, Health and Safety Code].~~

2-39 (9) ~~[(3)]~~ "Local mental health authority" has the
2-40 meaning assigned by Section 571.003, Health and Safety Code.

2-41 (10) ~~[(4)]~~ "Local intellectual and developmental
2-42 disability authority" has the meaning assigned by Section 531.002,
2-43 Health and Safety Code.

2-44 (11) ~~[(5)]~~ "Mental health facility" has the meaning
2-45 assigned by Section 571.003, Health and Safety Code.

2-46 (12) ~~[(6)]~~ "Mental illness" means an illness,
2-47 disease, or condition, other than epilepsy, dementia, substance
2-48 abuse, or intellectual disability, that grossly impairs:

2-49 (A) a person's thought, perception of reality,
2-50 emotional process, or judgment; or

2-51 (B) behavior as demonstrated by recent disturbed
2-52 behavior ~~[has the meaning assigned by Section 571.003, Health and~~
2-53 ~~Safety Code].~~

2-54 (13) ~~[(7)]~~ "Residential care facility" has the
2-55 meaning assigned by Section 591.003, Health and Safety Code.

2-56 (14) "Subaverage general intellectual functioning"
2-57 means a measured intelligence two or more standard deviations below
2-58 the age-group mean, using a standardized psychometric instrument.

2-59 ~~[(8)]~~ "Electronic broadcast system" means a two-way
2-60 electronic communication of image and sound between the defendant
2-61 and the court and includes secure Internet videoconferencing.

2-62 ~~[(9)]~~ "Competency restoration" means the treatment or
2-63 education process for restoring a person's ability to consult with
2-64 the person's attorney with a reasonable degree of rational
2-65 understanding, including a rational and factual understanding of
2-66 the court proceedings and charges against the person.]

2-67 SECTION 3. Article 46B.073(c), Code of Criminal Procedure,
2-68 is amended to read as follows:

2-69 (c) If the defendant is charged with an offense listed in

3-1 Article 17.032(a) [~~other than an offense under Section~~
 3-2 22.01(a)(1), Penal Code,] or if the indictment alleges an
 3-3 affirmative finding under Article 42A.054(c) or (d), the court
 3-4 shall enter an order committing the defendant for competency
 3-5 restoration services to a [the maximum security unit of any]
 3-6 facility designated by the commission [~~Department of State Health~~
 3-7 ~~Services, to an agency of the United States operating a mental~~
 3-8 ~~hospital, or to a Department of Veterans Affairs hospital)].~~

3-9 SECTION 4. Subchapter D, Chapter 46B, Code of Criminal
 3-10 Procedure, is amended by adding Article 46B.0831 to read as
 3-11 follows:

3-12 Art. 46B.0831. DETERMINATION WHETHER DEFENDANT IS
 3-13 MANIFESTLY DANGEROUS. A defendant committed to a maximum security
 3-14 unit by the commission may be assessed, at any time before the
 3-15 defendant is restored to competency, by the review board
 3-16 established under Section 46B.105 to determine whether the
 3-17 defendant is manifestly dangerous. If the review board determines
 3-18 the defendant is not manifestly dangerous, the commission shall
 3-19 transfer the defendant to a nonsecure facility designated by the
 3-20 commission.

3-21 SECTION 5. Article 46B.104, Code of Criminal Procedure, is
 3-22 amended to read as follows:

3-23 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
 3-24 VIOLENCE. A defendant committed to a facility as a result of
 3-25 proceedings initiated under this chapter shall be committed to the
 3-26 [~~maximum security unit of any~~] facility designated by the
 3-27 commission [~~Department of State Health Services~~] if:

3-28 (1) the defendant is charged with an offense listed in
 3-29 Article 17.032(a) [~~other than an offense listed in Article~~
 3-30 ~~17.032(a)(6)~~]; or

3-31 (2) the indictment charging the offense alleges an
 3-32 affirmative finding under Article 42A.054(c) or (d).

3-33 SECTION 6. Articles 46B.105(a), (b), and (e), Code of
 3-34 Criminal Procedure, are amended to read as follows:

3-35 (a) Unless a defendant committed to a maximum security unit
 3-36 by the commission is determined to be manifestly dangerous by a
 3-37 review board established under Subsection (b), not later than the
 3-38 60th day after the date the defendant arrives at the maximum
 3-39 security unit, the defendant shall be transferred to:

3-40 (1) a unit of an inpatient mental health facility
 3-41 other than a maximum security unit;

3-42 (2) a residential care facility; or

3-43 (3) a program designated by a local mental health
 3-44 authority or a local intellectual and developmental disability
 3-45 authority.

3-46 (b) The executive commissioner [~~of state health services~~]
 3-47 shall appoint a review board of five members, including one
 3-48 psychiatrist licensed to practice medicine in this state and two
 3-49 persons who work directly with persons with mental illness or an
 3-50 intellectual disability, to determine whether the defendant is
 3-51 manifestly dangerous and, as a result of the danger the defendant
 3-52 presents, requires continued placement in a maximum security unit.

3-53 (e) If the superintendent of the facility at which the
 3-54 maximum security unit is located disagrees with the determination,
 3-55 the matter shall be referred to the executive commissioner [~~of~~
 3-56 ~~state health services~~]. The executive commissioner shall decide
 3-57 whether the defendant is manifestly dangerous.

3-58 SECTION 7. Article 46B.106(a), Code of Criminal Procedure,
 3-59 is amended to read as follows:

3-60 (a) A defendant committed to a facility as a result of the
 3-61 proceedings initiated under this chapter, other than a defendant
 3-62 described by Article 46B.104, shall be committed to:

3-63 (1) a facility designated by the commission
 3-64 [~~Department of State Health Services or the Department of Aging and~~
 3-65 ~~Disability Services, as appropriate~~]; or

3-66 (2) an outpatient treatment program.

3-67 SECTION 8. Articles 46B.107(a) and (d), Code of Criminal
 3-68 Procedure, are amended to read as follows:

3-69 (a) The release of a defendant committed under this chapter

4-1 from the commission [~~Department of State Health Services, the~~
4-2 ~~Department of Aging and Disability Services~~], an outpatient
4-3 treatment program, or another facility is subject to disapproval by
4-4 the committing court if the court or the attorney representing the
4-5 state has notified the head of the facility or outpatient treatment
4-6 provider, as applicable, to which the defendant has been committed
4-7 that a criminal charge remains pending against the defendant.

4-8 (d) The court shall, on receiving notice from the head of a
4-9 facility or outpatient treatment provider of intent to release the
4-10 defendant under Subsection (b) [may, on motion of the attorney
4-11 representing the state or on its own motion], hold a hearing to
4-12 determine whether release is appropriate under the applicable
4-13 criteria in Subtitle C or D, Title 7, Health and Safety Code. The
4-14 court may, on motion of the attorney representing the state or on
4-15 its own motion, hold a hearing to determine whether release is
4-16 appropriate under the applicable criteria in Subtitle C or D, Title
4-17 7, Health and Safety Code, regardless of whether the court receives
4-18 notice that the head of a facility or outpatient treatment provider
4-19 provides notice of intent to release the defendant under Subsection
4-20 (b). The court may conduct the hearing:

- 4-21 (1) at the facility; or
- 4-22 (2) by means of an electronic broadcast system as
4-23 provided by Article 46B.013.

4-24 SECTION 9. Article 46B.151(c), Code of Criminal Procedure,
4-25 is amended to read as follows:

4-26 (c) Notwithstanding Subsection (b), a defendant placed in a
4-27 facility of the commission [~~Department of State Health Services or~~
4-28 ~~the Department of Aging and Disability Services~~] pending civil
4-29 hearing under this article may be detained in that facility only
4-30 with the consent of the head of the facility and pursuant to an
4-31 order of protective custody issued under Subtitle C, Title 7,
4-32 Health and Safety Code.

4-33 SECTION 10. Articles 46C.001(1) and (2), Code of Criminal
4-34 Procedure, are amended to read as follows:

4-35 (1) "Commission" means the Health and Human Services
4-36 Commission [~~"Commissioner" means the commissioner of state health~~
4-37 ~~services~~].

4-38 (2) "Executive commissioner" means the executive
4-39 commissioner of the Health and Human Services Commission
4-40 [~~"Department" means the Department of State Health Services~~].

4-41 SECTION 11. Article 46C.104, Code of Criminal Procedure, is
4-42 amended to read as follows:

4-43 Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO
4-44 EXAMINATION. (a) For the purposes described by this chapter, the
4-45 court may order any defendant to submit to examination, including a
4-46 defendant who is free on bail. If the defendant fails or refuses to
4-47 submit to examination, the court may order the defendant to custody
4-48 for examination for a reasonable period not to exceed 21
4-49 days. Custody ordered by the court under this subsection may
4-50 include custody at a facility operated by the commission
4-51 [~~department~~].

4-52 (b) If a defendant who has been ordered to a facility
4-53 operated by the commission [~~department~~] for examination remains in
4-54 the facility for a period that exceeds 21 days, the head of that
4-55 facility shall cause the defendant to be immediately transported to
4-56 the committing court and placed in the custody of the sheriff of the
4-57 county in which the committing court is located. That county shall
4-58 reimburse the facility for the mileage and per diem expenses of the
4-59 personnel required to transport the defendant, calculated in
4-60 accordance with the state travel rules in effect at that time.

4-61 (c) The court may not order a defendant to a facility
4-62 operated by the commission [~~department~~] for examination without the
4-63 consent of the head of that facility.

4-64 SECTION 12. Article 46C.106(b), Code of Criminal Procedure,
4-65 is amended to read as follows:

4-66 (b) The county in which the indictment was returned or
4-67 information was filed shall reimburse a facility operated by the
4-68 commission [~~department~~] that accepts a defendant for examination
4-69 under this subchapter for expenses incurred that are determined by

5-1 the commission [~~department~~] to be reasonably necessary and
5-2 incidental to the proper examination of the defendant.

5-3 SECTION 13. Article 46C.160(b), Code of Criminal Procedure,
5-4 is amended to read as follows:

5-5 (b) The court may order a defendant detained in a facility
5-6 of the commission [~~department or a facility of the Department of~~
5-7 ~~Aging and Disability Services~~] under this article only with the
5-8 consent of the head of the facility.

5-9 SECTION 14. Article 46C.202(a), Code of Criminal Procedure,
5-10 is amended to read as follows:

5-11 (a) Notwithstanding Article 46C.201(b), a person placed in
5-12 a commission [~~department~~] facility [~~or a facility of the Department~~
5-13 ~~of Aging and Disability Services~~] pending civil hearing as
5-14 described by that subsection may be detained only with the consent
5-15 of the head of the facility and under an Order of Protective Custody
5-16 issued under Subtitle C or D, Title 7, Health and Safety Code.

5-17 SECTION 15. Articles 46C.251(a) and (b), Code of Criminal
5-18 Procedure, are amended to read as follows:

5-19 (a) The court shall order the acquitted person to be
5-20 committed for evaluation of the person's present mental condition
5-21 and for treatment to the [~~maximum security unit of any~~] facility
5-22 designated by the commission [~~department~~]. The period of
5-23 commitment under this article may not exceed 30 days.

5-24 (b) The court shall order that:

5-25 (1) a transcript of all medical testimony received in
5-26 the criminal proceeding be prepared as soon as possible by the court
5-27 reporter and the transcript be forwarded to the facility to which
5-28 the acquitted person is committed; and

5-29 (2) the following information be forwarded to the
5-30 facility and [~~as applicable,~~] to the commission [~~department or the~~
5-31 ~~Department of Aging and Disability Services~~]:

5-32 (A) the complete name, race, and gender of the
5-33 person;

5-34 (B) any known identifying number of the person,
5-35 including social security number, driver's license number, or state
5-36 identification number;

5-37 (C) the person's date of birth; and

5-38 (D) the offense of which the person was found not
5-39 guilty by reason of insanity and a statement of the facts and
5-40 circumstances surrounding the alleged offense.

5-41 SECTION 16. Article 46C.260, Code of Criminal Procedure, is
5-42 amended to read as follows:

5-43 Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NON-MAXIMUM
5-44 SECURITY [~~NONSECURE~~] FACILITY. (a) A person committed to a
5-45 facility under this subchapter shall be committed to a [~~the maximum~~
5-46 ~~security unit of any~~] facility designated by the commission
5-47 [~~department~~].

5-48 (b) A person committed under this subchapter shall be
5-49 transferred to the designated facility [~~maximum security unit~~]
5-50 immediately on the entry of the order of commitment.

5-51 (c) Unless a [~~the~~] person committed to a maximum security
5-52 unit by the commission is determined to be manifestly dangerous by a
5-53 review board under this article [~~within the department~~], not later
5-54 than the 60th day following the date of the person's arrival at the
5-55 maximum security unit the person shall be transferred to a
5-56 non-maximum security [~~nonsecure~~] unit of a facility designated by
5-57 the commission [~~department or the Department of Aging and~~
5-58 ~~Disability Services, as appropriate~~].

5-59 (d) The executive commissioner shall appoint a review board
5-60 of five members, including one psychiatrist licensed to practice
5-61 medicine in this state and two persons who work directly with
5-62 persons with mental illnesses or with mental retardation, to
5-63 determine whether the person is manifestly dangerous and, as a
5-64 result of the danger the person presents, requires continued
5-65 placement in a maximum security unit.

5-66 (e) If the head of the facility at which the maximum
5-67 security unit is located disagrees with the determination, then the
5-68 matter shall be referred to the executive commissioner. The
5-69 executive commissioner shall decide whether the person is

6-1 manifestly dangerous.

6-2 SECTION 17. Section 532.013(a), Health and Safety Code, is
6-3 amended to read as follows:

6-4 (a) In this section:

6-5 (1) "Forensic patient" means a person with mental
6-6 illness or a person with an intellectual disability who is:

6-7 (A) examined on the issue of competency to stand
6-8 trial by an expert appointed under Subchapter B, Chapter 46B, Code
6-9 of Criminal Procedure;

6-10 (B) found incompetent to stand trial under
6-11 Subchapter C, Chapter 46B, Code of Criminal Procedure;

6-12 (C) committed to court-ordered mental health
6-13 services under Subchapter E, Chapter 46B, Code of Criminal
6-14 Procedure; [~~or~~]

6-15 (D) found not guilty by reason of insanity under
6-16 Chapter 46C, Code of Criminal Procedure;

6-17 (E) examined on the issue of fitness to proceed
6-18 with juvenile court proceedings by an expert appointed under
6-19 Chapter 51, Family Code; or

6-20 (F) found unfit to proceed under Subchapter C,
6-21 Chapter 55, Family Code.

6-22 (2) "Forensic services" means a competency
6-23 examination, competency restoration services, or mental health or
6-24 intellectual disability services provided to a current or former
6-25 forensic patient in the community or at a department facility.

6-26 SECTION 18. This Act applies only to a proceeding under the
6-27 Code of Criminal Procedure that begins on or after the effective
6-28 date of this Act, regardless of when the defendant committed the
6-29 underlying offense for which the defendant became subject to the
6-30 proceeding. A proceeding that begins before the effective date of
6-31 this Act is governed by the law in effect on the date the proceeding
6-32 began, and the former law is continued in effect for that purpose.

6-33 SECTION 19. This Act takes effect immediately if it
6-34 receives a vote of two-thirds of all the members elected to each
6-35 house, as provided by Section 39, Article III, Texas Constitution.
6-36 If this Act does not receive the vote necessary for immediate
6-37 effect, this Act takes effect September 1, 2019.

6-38 * * * * *