SUBJECT: Determining competency to stand trial in criminal cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: For — None

Against — None

On — Beth Mitchell, Advocacy, Inc.; Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure, art. 46.02 establishes procedures and standards for determining if a criminal defendant is competent to stand trial. People are considered incompetent if they do not have sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding or with a rational and factual understanding of the proceedings against them.

In general, a decision on competency occurs before a trial begins. If a court finds evidence that the defendant might be incompetent, a hearing must be held and a jury that is different from the trial jury must make the decision. The statutes include procedures allowing incompetent people to be committed to mental health or mental retardation (MHMR) facilities for initial terms of up to 18 months and for additional commitments after that, if necessary.

DIGEST: HB 2014 would repeal the current procedures for determining competency of criminal defendants to stand trial and would replace them with new procedures for:

- informal inquiries into initial questions about incompetency;
- evaluation of defendants by experts;
- competency hearings before a judge or jury;

- initial 120-day commitments to MHMR facilities;
- forcing defendants to take medications;
- extended commitments to MHMR facilities; and
- redetermination of competency.

Standards for considering a person incompetent to stand trial would remain the same as under current law. People would be presumed competent to stand trial unless proved incompetent by a preponderance of the evidence.

HB 2014 would take effect January 1, 2004, and would apply only to defendants against whom proceedings to determine competency had not begun before that date.

Raising the issue. The defense, prosecution, or the court could raise the issue of whether a defendant was competent to stand trial. If a court found evidence to support a finding that the defendant was incompetent, the court would have to order the defendant to be examined by experts.

HB 2014 would set minimum requirements for the experts' background and experience, would require the experts to consider several specific issues when reporting on a defendant's competency, and would require that specific details be included in the expert's report.

Competency hearings. After the examination by the experts, a court would not have to hold a hearing to decide whether a defendant was incompetent to stand trial if:

- neither party requested a jury trial on the issue of incompetency;
- neither party opposed a finding of incompetency; and
- the court did not determine that a hearing was necessary.

A defendant would be entitled to a lawyer before a court-ordered competency evaluation and any related competency proceedings. A court would have to appoint an attorney for an indigent defendant.

A jury no longer would have to make the decision about competency. The court would decide whether a defendant was competent unless the defense or prosecution or the court itself asked the jury to decide. The jury would have to

be different from the one selected to decide whether the defendant was guilty, and its decision would have to be unanimous. If a court or jury decided that a defendant was competent to stand trial, the criminal trial would continue.

If a court found evidence to support the claim that the defendant was incompetent and the prosecution and defense agreed with the claim, the court would proceed with the initial commitment to a mental health or residential care facility as if a jury had found the defendant incompetent.

Initial 120-day commitment to MHMR facility. If a defendant were found incompetent, the court would have to commit the defendant to a mental health or residential care facility or release the defendant on bail. Defendants could be committed to mental health or residential care facilities for up to 120 days for examination and treatment toward attaining competency.

A court could release a defendant on bail if the court found that the defendant posed no danger to others and could be treated safely as an outpatient so as to attain competency to stand trial.

If a defendant were charged with one of 11 specific violent offenses or if the indictment requested a finding that the defendant used a deadly weapon while committing a felony, the court would have to commit the defendant to the maximum security unit of a Texas Department of Mental Health and Mental Retardation (TDMHMR) facility, a mental hospital operated by the federal government, or a Department of Veterans Affairs hospital.

For defendants who did not meet these criteria, courts would have to commit them to a mental health or residential care facility chosen by the local MHMR authority. A facility would have to develop a treatment program, assess and evaluate whether the defendant would obtain competency in the foreseeable future, and report to the court on the defendant's progress. The court could order one 60-day extension of a commitment order.

A defendant who had been committed to a facility would have to be returned to the court that committed as soon as possible after the commitment expired or the facility determined that the defendant was competent or would not attain competency in the foreseeable future.

After a defendant was returned to the committing court, the court would have to decide whether the defendant was competent to stand trial. The court could make the decision based solely on information from the head of the facility, or it could hold a hearing. It would have to hold a hearing if the prosecution, defense, or court objected to the facility's findings. If the defendant were found competent, criminal proceedings could resume.

Forcibly administering court-ordered medications. HB 2014 would establish a procedure for forcing defendants to take psychoactive medications. It would apply only to a defendant who had been determined incompetent and later determined to be competent and was the subject of a plan prepared by a mental health or residential care facility that required the defendant to take psychoactive medications.

If a defendant refused to take medications as required by a care plan, the director of a correctional facility would have to notify the court within one day, and the court would have to notify the prosecution and defense promptly. The prosecutor could file a motion to compel the defendant to take the medication. The court, after a hearing, could authorize the director of the correctional facility to have the medication administered by reasonable force, if necessary.

A court could issue an order to compel medication only if it was supported by two physicians, one of whom would have to be the doctor prescribing the medication as part of the defendant's care program. The court would have to find by clear and convincing evidence that:

- the medication was medically appropriate, was in the defendant's best medical interest, and did not present side effects that caused harm greater than its medical benefits;
- the state had a clear and compelling interest in the defendant's maintaining competency to stand trial;
- no other less invasive means existed to maintain the defendant's competency; and
- the medication would not prejudice unduly the defendant's rights or use of defensive theories during a trial.

Extended commitment to MHMR facility. If it appeared to a court after the initial 120-commitment that an incompetent defendant against whom charges were still pending could be mentally ill or mentally retarded, the court would have to hold a hearing to decide whether the defendant should be committed to a mental health or residential care facility. For mentally ill people, the proceedings would be governed by the Mental Health Code, and for mentally retarded people, by Health and Safety Code regulations under the Persons with Mental Retardation Act, except that the criminal court would conduct the proceedings. People committed under these regulations would have to be treated as required by the respective codes.

A defendant would have to be committed to the maximum security unit of a TDMHMR facility if charged with one of 11 specific violent offenses or if the criminal indictment requested a finding that the defendant used a deadly weapon while committing a felony. Unless a specially appointed review board found the defendant to be manifestly dangerous, within 60 days of arriving at the maximum security unit, the defendant would have to be transferred to another type of facility.

Release of defendants committed to these facilities would be subject to disapproval by the court if the court or the prosecutor had notified the head of the facility that charges were pending against the defendant. A court could hold a hearing to decide whether release from the facility was appropriate under the criteria in the Mental Health Code or the Mental Retardation Act. If the court decided that release was not appropriate, it would have to order the facility not to release the defendant.

If the defendant was found incompetent and the charges were dismissed, the court would have to decide whether the person had a mental illness or mental retardation. If there was evidence to support one of these findings, the court would have to order that the defendant be transferred to another court for civil commitment proceedings that could result in the person's being committed to a mental health or residential care facility. If the court did not find evidence of mental illness or mental retardation, it would have to release the defendant.

Redetermination of competency. If charges against a defendant had not been dismissed, the court could determine at any time whether a defendant had been restored to competency. Requests to examine a defendant's

competency could be made by the head of a facility where the defendant had been committed, by the prosecution or defense, or on the court's own motion.

A court would have to find a defendant competent to stand trial if the defense, prosecution, and court agreed that the defendant had regained competency. If the parties disagreed, the court could hold a hearing on the issue. The court would have to hold a hearing if requested by the head of a MHMR facility. A judge would make the determination unless any party requested that a jury decide.

The bill would establish guidelines for subsequent requests for determinations of competency, and if a defendant was found competent to stand trial, the criminal trial could proceed.

If a defendant were found incompetent to stand trial and the charges were dismissed, the court would have to decide whether there was evidence to support a finding that the person was mentally ill or mentally retarded. If there was evidence to support one of these findings, the court would have to transfer the defendant to a civil court for commitment proceedings.

SUPPORTERS SAY:

HB 2014 would streamline and clarify the process used to determine if criminal defendants are competent to stand trial and would remove redundant passages from current law. It would establish a fair, efficient system that could be applied consistently throughout the state. The bill would implement recommendations from a task force created by the 77th Legislature to address complaints that current law on determining competency is confusing, complex, repetitive, and difficult for attorneys and judges to use.

Much of the process for determining competency would remain the same as under current law. The bill would not change the current standards for deciding when a person is incompetent.

HB 2014 would make the process more efficient by no longer requiring that competency hearings be held when all parties agree that a defendant is incompetent. Currently, even if the prosecution, defense, and court agree that a defendant is incompetent, a jury must be impaneled and a hearing held. Courts sometimes resort to rounding up people working or hanging around the courthouse to sit on a "pickup" jury that rubber-stamps the conclusion of

the defense and prosecution. In other situations, a court goes to the expense, time, and trouble of impaneling a jury that invariably agrees with all parties that the defendant is incompetent. HB 2014 would eliminate the need for this perfunctory exercise. However, a defendant could choose whether to have a judge or jury make the decision if there was not agreement.

HB 2014 would set standards for the qualifications of experts who examine defendants and would set minimums for what they must report. Current law does not set these requirements, resulting in discrepancies in the qualification of experts and in incomplete or inadequate reports. Reports sometimes have contained inappropriate information such as incriminating statements. This bill would ensure that reports were consistent and would contain adequate information for courts to make fair, accurate decisions about competency. These requirements also would help equalize evaluations throughout the state so that all defendants receive equal treatment and are evaluated by qualified, experienced experts.

In the long run, these provisions should save money, since reports would contain the necessary information and expertise to make proper decisions about competency and placement in facilities. This could help facilitate plea agreements, thereby eliminating trials and commitment to facilities that are more costly than necessary. Texas has substantial medical expertise, so it should not be difficult to find people who meet the bill's criteria.

HB 2014's provisions for forcibly medicating a defendant would not violate a defendant's constitutional rights. Current law allows forcibly medicating a person who is civilly committed to a mental health facility. The provisions of HB 2014 passed the scrutiny of constitutional law experts while being developed by the task force.

HB 2014 contains many safeguards to protect defendants and to ensure that they would be forced to take medications only when appropriate. For example, a court order for forcibly medicating a defendant would have to be based on the testimony of two doctors, clear and compelling state interest, and findings that the medication would not prejudice unduly the defendant's rights or use of defensive theories at trial. There would have to be no less intrusive means of handling the situation, and the medication would have to be medically appropriate, such using a new-generation medication if that was

what the treatment plan called for. If a treatment plan called for a new-generation drug, a defendant would not be given a different drug after leaving a mental health facility and going to a jail to await trial.

These provisions could help stop a vicious cycle in which defendants go to mental health facilities and, with the use of medications, become competent to stand trial, but then stop taking the medications and become incompetent and are recommitted to the facilities to regain competency. This is unfair to the defendant who is cycling on and off of medications and is expensive for the state. It can cost about $350 per day to restore a defendant to competency at a state hospital.

The state should not put a policy decision on hold to wait for a U.S. Supreme Court decision. If the court issues a decision that would make the Texas law unconstitutional, the law simply would be invalid, and the Legislature could change the law the next time it met.

OPPONENTS SAY:

HB 2014's requirements for the qualification of experts to investigate claims of incompetency could make it more difficult for courts to find experts and would increase costs, especially in smaller counties without a big pool of medical specialists. Counties in this situation could be forced to spend large sums to bring an expert into the area for the evaluation or to pay “top dollar” to one or two local qualified experts.

The provisions allowing defendants to be medicated forcibly would violate their rights under the U.S. Constitution, including the right to be free from unwanted physical and mental intrusions. The bill also could violate a person’s liberty interest to bodily integrity. It would allow medication to be forced on a person who had not even been tried or convicted of a crime and without a determination that the person was dangerous.

Forcing medication on defendants could violate their rights to a fair trial by changing the defendants’ demeanor and interfering with their ability to assist in their defense. For example, side effects of the medication could make it difficult for a defendant to pay attention to what occurs in a courtroom and to understand questions, or could suppress the evidence of a defendant’s claim of diminished capacity.

HB 2014 would not guarantee that defendants would receive the same medication that made them competent to stand trial. State mental health facilities could administer the new-generation medications while jails administered older drugs.

It could be unwise to place the procedure for compelling medication in law. The U.S. Supreme is considering a case involving forcibly medicating a defendant to restore competency. It might be better to enact a procedure through rules now and to wait for the outcome of the case.

NOTES:

The companion bill, SB 1057 by Duncan, passed the Senate by voice vote on April 15 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 22, making it eligible for consideration in lieu of HB 2014.