

SUBJECT: Revising Texas Council on Offenders with Mental Impairments

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Allen, Hopson, Stick, Alonzo, Haggerty, Mabry
0 nays
1 absent — Farrar

SENATE VOTE: On final passage, April 3 — 31-0 on Local and Uncontested Calendar

WITNESSES: For — None
Against — None
On — Dee Kifowit, Texas Council on Offenders with Mental Impairments

BACKGROUND: The Texas Council on Offenders with Mental Impairments (TCOMI) is a 30-member board composed of public appointees and representatives of state agencies that deal with systematic issues concerning criminal offenders with special needs, including identifying needed services for offenders with mental impairments and other offenders. The governor, with the advice and consent of the Senate, appoints nine at-large members who must have expertise in areas specified in the statutes, such as mental health or the criminal justice system, or hold specified positions, such being a judge, a prosecutor, or a defense attorney. The council's budget and staff are part of the Texas Department of Criminal Justice (TDCJ).

DIGEST: CSSB 591 would change the name of the Texas Council on Offenders with Mental Impairments to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, and change references to the state office charged with performing TCOMI's work to the Texas Correctional Office on Offenders with Medical or Mental Impairments.

Composition of the committee. The bill would change the composition of the committee to eliminate a member from an established pretrial services agency, to include one at-large member whose expertise could further the mission of the committee, and to include two at-large members with expertise in the criminal justice system or the juvenile justice system. The criminal judge on the committee would have to be from a criminal district court, and the Court of Criminal Appeals would have to submit a list of district judges who were candidates for the committee.

The governor's appointments would be made from lists of candidates submitted by entities listed in the bill, including attorney's associations, medical associations, the Texas Association of Counties, and the Texas Sheriff's Association. Candidates submitted by the Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association would have expertise and training in medical forensics, forensic psychology, or forensic psychiatry.

Board members no longer would serve staggered six-year terms but would serve at the pleasure of the Texas Board of Criminal Justice.

Duties. The committee would advise the Texas Board of Criminal Justice and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments. The definition of who the office dealt with would be expanded to include offenders who were elderly, physically disabled, terminally ill, or significantly ill. A provision that appears in a different place in the statutes and requires TCOMI to perform its duties for elderly, significantly ill, or physically handicapped offenders would be deleted.

The office would have to review the examinations given to some criminal defendants to determine whether they were competent to stand trial. With the assistance of the four at-large advisory committee members with expertise in mental health, mental retardation, or developmental disabilities, the office would review the competency examinations and periodically report their findings to the Legislature and the Court of Criminal Appeals.

A current requirement that the council establish a pilot program implementing a cooperative community-based alternative system to divert certain offenders

from the criminal justice system would be changed so that the office would have to maintain at least one such diversion program. Authorization for other statutorily required or authorized community-based diversion programs would be expanded to include offenders who were physically disabled and terminally ill. CSSB 591 would require that reports on these programs be submitted to the Texas Board of Criminal Justice, instead of to the Legislature. The office could maintain certain pilot programs dealing with juvenile offenders.

The office would submit its biennial report to the Texas Board of Criminal Justice and to governing boards of other state agencies with representatives on the committee instead of to the governor, lieutenant governor, and House speaker.

Statutes governing the committee. CSSB 591 would remove from current law certain standard provisions that apply to numerous governing bodies, including ones dealing with conflict-of-interest, grounds-for-removal, employee information, complaints, training programs, equal employment opportunity, public access to the council, and requirements that policymaking responsibilities and management responsibilities be separate. Current requirements that the governor appoint a presiding officer and that the group meet a minimum number of times each year would be eliminated.

Government Code, ch. 2110 provisions dealing with state agency advisory committees would apply to the committee, except for the provision limiting advisory committees to a maximum of 24 persons. Current provisions allowing committee members to be reimbursed for expenses would be eliminated.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 591 would rename TCOMI to better reflect its duties and formally place the TCOMI employees under the TDCJ where they have been placed by previous Legislatures in other statutes and in the general appropriations act. The actual duties and workings of TCOMI would not change, but its job would be clearer to the public, state agencies, and others who looked at its governing statutes.

Composition of the committee. CSSB 591 would revamp the membership of the committee so that its members would better reflect the duties of the committee. Giving the committee another at-large member with expertise in the criminal or juvenile justice systems would allow the appointment of an expert with any type of experience that was needed, or even a generalist who could look at the system as a whole.

The bill would make it easier for the Governor's Office to make qualified appointments by requiring certain entities to draw up candidate lists. This would expedite the governor's appointments by having qualified candidates identified by groups with knowledge in specific areas. Certain candidates would be required to have expertise and training in forensics to ensure that the office could perform its new job of reviewing the examinations given to determine competency for some criminal defendants.

Duties. CSSB 591 formally would expand the duties of the committee and office to reflect what TCOMI currently does. Other parts of TCOMI's statutes require that TCOMI work with all kinds of special needs offenders, including elderly, physically disabled, and significantly ill offenders. CSSB 591 would include these types of offenders in the formal list of those served by the office placed at the beginning of TCOMI's governing laws.

CSSB 591 explicitly would state what is found in other parts of the code — that the members of TCOMI are an advisory group to the director of the TCOMI office and TDCJ.

The office would be given the duty to review and report on the competency exams given to some criminal defendants. Currently, the quality and content of the reports vary widely, but with changes in the competency procedures that have been enacted by the 78th Legislature in SB 1057 by Duncan, effective January 1, 2004, the reports should become more standardized. A statewide entity should look at these reports to monitor the effectiveness of the new requirements and procedures.

The committee would have the leeway to establish appropriate procedures to carry out its duty to assess the reports. It would be better to let the committee establish an appropriate, workable process than to establish an inflexible one in the statutes. The committee would have representatives from all groups

involved in the competency process, including judges, defense attorneys, and prosecutors who would facilitate its development of a mechanism for performing this duty.

CSSB 591 would change language dealing with pilot programs to reflect the fact that the appropriations bills have made the programs permanent.

Statutes governing the committee. Because the committee is an advisory board — and not a governing body — CSSB 591 would remove standard provisions applied to other state governing boards. Current provisions dealing with conflict of interests, grounds for removal, training programs, and more should not apply to TCOMI members because the committee does not promulgate rules, regulate anyone, or take enforcement actions. In addition, because board members must have certain types of expertise, it would be next to impossible to appoint board members without violating some of the current law provisions, such as those concerning conflicts of interest.

CSSB 591 instead would make the more appropriate Government Code regulations for advisory committees apply to the committee since it advises the TCOMI office, TDCJ, and others. TDCJ, which governs TCOMI and hires its employees, is required to meet the standard rules and procedures applied to state agencies. Reimbursement for expenses, just like all other aspects of the committee, would be governed by the standard provisions applied to all other advisory committees from the Government Code and the general appropriations bill.

OPPONENTS
SAY:

Composition of the committee. It would be inappropriate to eliminate the six-year staggered terms of committee members and to have them serve at the pleasure of the Texas Board of Criminal Justice. The board would not appoint the members and should have no role in removing them.

Duties. It is unclear how the committee would carry out its new duty to assess criminal defendants' competency reports. There is no statutory process set up to send the reports to the committee and no guidelines on how they should be assessed.

NOTES:

SB 591 as engrossed by the Senate dealt only with appointing members to TCOMI who had experience in conducting competency evaluations.

