HOUSE
RESEARCH
ORGANIZATION bill analysis 4/11/2005

HB 550
Phillips

SUBJECT: Limiting felony defendant requests for pre-sentence investigative reports

COMMITTEE: Corrections — favorable, without amendment

VOTE: 4 ayes — Madden, D. Jones, Haggerty, Noriega

0 nays

3 absent — R. Allen, Hochberg, McReynolds

WITNESSES: For — None

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure (CCP), art. 42.12, sec. 9 requires, with some exceptions, that before imposing a sentence in a felony case, a judge must direct a probation officer to prepare a written report on the circumstances of the offense, the amount of restitution necessary to adequately compensate a victim, the criminal and social history of the defendant, and any other information requested by the judge relating to the defendant or the offense. The report must contain a proposed supervision plan describing programs and sanctions that the probation department would provide the defendant if the defendant were placed on probation or deferred adjudication.

The report commonly is called a pre-sentence investigation report (PSI). It is designed to help a judge decide the terms of probation but is not available to juries because it can contain hearsay, prejudicial information, and other information that juries cannot consider.

There are exceptions to the requirement in art. 42.12, sec. 9. Under subsection (g), a judge is not required, unless requested by the defendant, to direct a probation officer to prepare a PSI in a felony case if:

- the punishment is to be assessed by a jury;
- the defendant is convicted of or enters a plea of guilty or *nolo*

contendere to capital murder;
- the only available punishment is imprisonment; or
- the judge intends to grant a plea agreement under which the defendant agrees to a prison term.

DIGEST: HB 550 would amend CCP, art. 42.12, sec. 9(g) so that a defendant's request no longer would require a judge to direct a probation officer to prepare a pre-sentence report for a felony case in which:

- the punishment was assessed by a jury;
- the defendant was convicted of or entered a plea of guilty or *nolo contendere* to capital murder;
- the only available punishment was imprisonment; or
- the judge intended to grant a plea agreement under which the defendant agreed to a prison term.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: HB 550 would eliminate the ability of certain felony criminal defendants to waste the resources of the criminal justice system by having a PSI prepared when the report would have no use in their situations or effect on their sentences. These reports should not be required, even at the defendant's request, in cases where probation is not a possibility or where the defendant is being sentenced by a jury, which cannot consider such information. Defendants generally request PSIs under such circumstances only as a tactic to delay the beginning of their prison sentences by the week or two that it can take to prepare the report. HB 550 would address this problem by eliminating the ability of a defendant to request a PSI when it served no purpose.

The bill would not change any of the laws dealing with situations in which judges use PSIs. Even in cases in which PSIs were not required, judges still could order the reports if they wished.

HB 550 would not harm felony defendants with mental impairments who were sent to prison. There are numerous opportunities beyond a judge's review of a PSI for the mental impairments of defendants to be diagnosed and assessed. For example, jails have screening tools that can identify defendants with mental impairments, and prisoners entering the Texas Department of Criminal Justice (TDCJ) system are checked against the state mental health and mental retardation database to see if they have

received services. In addition, each offender admitted to TDCJ receives a medical and mental health screening. While housed in TDCJ facilities, inmates can request medical screenings or they can be referred for assessment or treatment by TDCJ staff. Information from all of these sources can be used to ensure that persons are classified and housed properly in the criminal justice system and that they receive needed services.

OPPONENTS SAY:

By eliminating one potential source of information about an offender, HB 550 could harm a small population of criminal defendants for whom a PSI would be important even if they were sentenced by a jury or to a prison term. For some offenders with mental impairments, a PSI, prepared at their request, could be the only document following them to prison that detailed their impairments and could help ensure they were classified and housed appropriately. If a PSI was not prepared — and could not be requested by the defendant — and the person was not properly assessed through other criminal justice mental health initiatives, the defendant's impairment could go unnoticed or untreated by TDCJ.