

- SUBJECT:** Changing procedures for criminal defendants with mental illnesses
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 9 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Collier, Cortez, Guerra, Zedler
- 0 nays
- 2 absent — Klick, Oliverson
- SENATE VOTE:** On final passage, April 24 — 29-1 (Nichols)
- WITNESSES:** For — Gyl Switzer, Mental Health America of Texas; (*Registered, but did not testify*: Kathryn Lewis, Disability Rights Texas; Nelson Jarrin, Meadows Mental Health Policy Institute; Greg Hansch, National Alliance on Mental Illness Texas; Eric Kunish, National Alliance on Mental Illness Austin; Lee Johnson, Texas Council of Community Centers; Bryan Hebert, United Ways of Texas)
- Against — None
- On — (*Registered, but did not testify*: Rachel Samsel, Department of State Health Services; Courtney Harvey and Lauren Lacefield Lewis, Health and Human Services Commission)
- BACKGROUND:** Code of Criminal Procedure, art. 15.17 requires that arrestees go before a magistrate within 48 hours of being arrested to be informed of charges and of certain rights. Art. 16.22 requires a sheriff to notify magistrates within 72 hours if the sheriff has cause to believe that a person in custody has a mental illness or is a person with mental retardation. This can start a process of gathering and assessing information about the arrestee, including whether there is the potential that the defendant is incompetent to stand trial.
- Code of Criminal Procedure, art. 17.032 establishes procedures for

releasing on personal bond certain arrestees believed to have a mental illness or believed to be a person with mental retardation who was competent to stand trial. Magistrates must release those who qualify, unless good cause is shown to do otherwise. To qualify, arrestees may not be charged with or have a previous conviction for certain violent offenses.

Arrestees also must be examined by a mental health expert. Magistrates must determine that appropriate community-based services are available and, unless good cause is shown to do otherwise, require treatment as a condition of release on personal bond if certain conditions are met. Code of Criminal Procedure, ch. 46B establishes the state's standards and procedures for determining if a criminal defendant is incompetent to stand trial.

Observers have noted lengthy waiting lists for defendants with mental illnesses or intellectual disabilities delay their admission to a state hospital to receive competency restoration services. Rather than requiring these defendants to spend the long waiting period in jail, a county jail-based competency restoration program and amendments to competency restoration procedures would help accelerate the time in which they receive mental health treatment.

DIGEST:

CSSB 1326 would revise the process of gathering and assessing information about an arrestee who may have a mental illness or an intellectual disability, amend statutes covering the release of certain mentally ill defendants on personal bonds, and allow counties to establish a jail-based competency restoration program. The bill also would replace references to mental retardation with references to intellectual and developmental disability.

Identification, screening of arrestees. The bill would place a reference to current proceedings used to identify defendants with mental illness or intellectual disabilities into the Code of Criminal Procedure, art. 15.17 provisions establishing magistrates' duties at initial hearings. Art. 15.17 would require that if magistrates were given notice of credible information that could establish reasonable cause to believe that a person before them

had a mental illness or was a person with an intellectual disability, they would be required to start the proceedings.

The bill would shorten the time frame for sheriffs, including municipal jailers, to provide notice to magistrates about having credible information that may cause them to believe that someone in their custody had a mental illness or was a person with an intellectual disability. The notice would have to be given within 12 hours, rather than 72 hours, after receiving the information. The bill would exclude from this process defendants accused of class C misdemeanors (maximum fine of \$500).

The time frame for local mental health and local intellectual and developmental disability authorities to provide additional information to the magistrate after an assessment would be shortened to require information within 96 hours after the time an order was issued for those held in custody and within 30 days for those released from custody, unless good cause was shown to do otherwise. Currently, information is required within 30 days after being ordered in felony cases and 10 days after orders issued in misdemeanor cases.

The bill would expand the places where courts could order defendants to submit to exams after a refusal to submit to the collection of information. Magistrates could order defendants to submit to exams at the jail or another place determined appropriate by a mental health or local intellectual and developmental disability authority, instead of only at a mental health facility. The maximum time that persons could be ordered to a facility to submit for this exam would be changed from 21 days to 72 hours.

The bill would expand the options that trial courts had after receiving the assessment of the person to include referring the defendant to one of the state's specialty courts, which include mental health courts. Courts currently are authorized to release defendants from custody on a personal or surety bond before, during, or after the collection of information, and the bill would authorize courts to place a condition on a bond in these situations to include a requirement that the person submit to an exam or an

assessment.

Release on personal bond for certain defendants. The bill would amend the current directive to magistrates to release certain defendants, unless good cause was shown to do otherwise, on personal bond if certain conditions were met. The current requirement applies when magistrates have an expert's assessment concluding that a person has a mental illness or an intellectual disability and the defendants met other requirements relating to their offense, criminal history, and other factors.

The bill would make the current requirement to release certain defendants on personal bonds apply without regard to a standing order by a judge, a bond schedule, or other statutory provisions restricting courts. The bill would add to the list of conditions that must be met before a magistrate may release these defendants on personal bonds. Magistrates would have to find that the release on personal bond would reasonably ensure the defendant's appearance in court and the safety of the community and the victim and could impose conditions on the bond to ensure these things. In making the finding, the magistrate would have to consider all the circumstances, a pretrial risk assessment, and information from the prosecutor and the defense.

The bill would amend the list of violent offenses that may disqualify these arrestees with mental illness or an intellectual disability from being released on personal bond. The bill would make the prohibition on assault offenses apply only to those whose assault charge or conviction involved family violence.

Jail-based competency restoration. For defendants charged with class B misdemeanors who have been determined incompetent to stand trial, courts would be required to commit the defendants to a jail-based competency program, release them on bond and order them to participate in an outpatient restoration program, or, under certain conditions, commit them to a facility for an initial restoration period. The commitment to the facility could occur only if jail-based and outpatient competency restoration programs were unavailable.

Defendants charged with class B misdemeanors first would have to be released on bail and ordered to participate in an outpatient competency restoration program, if certain conditions were met. The release on bail would have to occur if a court determined that the defendant was not a danger to others and could be safely treated as an outpatient and if an appropriate program was available. The release would have to include an order to participate in an outpatient restoration program for up to 60 days and be subject to the court approving a comprehensive treatment plan.

Those charged with class A misdemeanors or higher also could be committed to a jail-based competency program or, as current law allows, committed for an initial restoration period to a facility or, if certain conditions were met, released on bail.

Defendants could be committed to jail-based competency restoration programs only if the program provider determined that the defendant would begin receiving services within 72 hours of arriving.

The bill would allow counties to jointly develop and implement a jail-based competency restoration program. The bill would establish criteria for providers of the jail-based competency services and their programs, similar to the criteria in current law for the state's pilot program in this area. The bill would add criteria requiring that a program operated in a space separate from that used for the general population of the jail, ensure coordination of general health care, provide mental health and substance use disorder treatment, and supply clinically appropriate psychoactive medications when administering court-ordered medications as applicable and in accordance with other laws governing court-ordered medication.

The bill would require the HHSC executive commissioner to adopt by November 1, 2017, any necessary rules for a county to develop and implement a jail-based competency restoration program.

Competency, education services, trial priority. The bill would establish a statutory definition of competency restoration. Competency restoration

would be defined as treatment or education for restoring people's ability to consult with their lawyer with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings.

Upon receiving notice from a facility or program provider that a defendant had attained competency, a court would have to order the person to receive education about competency services in a jail-based competency restoration program or an outpatient program. If such a defendant had been committed to a facility other than a jail-based facility for restoration, the court would send a copy of the order for education services to the facility where the person was committed and to other involved entities, including the sheriff. The facility would have 10 days to discharge a defendant into the care of the sheriff of the county where the court was located, and the sheriff would be required to transport the person to the jail-based or outpatient competency restoration program for the education services.

Sheriffs would be required to ensure that a defendant for whom they had custody for transportation involving competency restoration was provided with the types and dosages of medication that had been prescribed to the defendant, unless directed otherwise by the treating physician.

The bill would establish a new priority for trial court dockets. Criminal trials involving defendants whose competency to stand trial had been restored would have to be given preference over other civil or criminal matters, except for trials involving victims younger than 14 years old.

Information, reporting. Magistrates would have to submit monthly reports to the Office of Court Administration (OCA) on the number of assessments they received from experts determining competency to stand trial. The information provided to the magistrate would have to be on a new form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). Courts no longer would have to forward certain other competency-related reports to TCOOMMI.

OCA would be required to provide courts information about best practices to address the needs of persons with mental illness in the court system. OCA also would be required to collect and report on information for fiscal 2018 about specialty courts and the outcomes of court participants who were persons with mental illness.

Effective date. The bill would take effect September 1, 2017, and would apply only to a defendant charged with an offense committed on or after that date.