

- SUBJECT:** Revising court procedures for criminal defendants with mental illness
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 6 ayes — Murr, Allen, Burrows, Rodriguez, Sherman, White
0 nays
3 absent — Bailes, Martinez Fischer, Slaton
- WITNESSES:** For — (*Registered, but did not testify:* Melissa Shannon, Bexar County Commissioners Court; Jennifer Toon, Coalition of Texans with Disabilities; Jama Pantel, Justices of the Peace and Constables Association of Texas; Karen Munoz and Jorge Renaud, LatinoJustice; Matthew Lovitt, National Alliance on Mental Illness-Texas; Maggie Luna, Statewide Leadership Council; Savannah Eldrige, Statewide Leadership Council, Be Frank 4 Justice and National Freedom Movement; Lee Johnson, Texas Council of Community Centers; Josh Kemp and Douglas Smith, Texas Criminal Justice Coalition; Kevin Stewart, Texas Psychological Association; Koretta Brown, The Alliance For A New Justice System; Alex Cogan, The Arc of Texas; Veronica Morales; Sarah Murphy; Thomas Parkinson; Arasely Reyes;)
Against — None
On — Bill Boyce, Judicial Commission on Mental Health; Jane Bland, Supreme Court of Texas; (*Registered, but did not testify:* April Zamora, Texas Department of Criminal Justice)
- BACKGROUND:** Interested parties have proposed that the Legislature revise laws relating to persons who may have mental illness or intellectual and developmental disability to implement recommendations from the Texas Supreme Court's Commission on Mental Health.
- DIGEST:** CSHB 4212 would revise certain pre-trial and trial procedures relating to defendants suspected of having a mental illness or intellectual disability,

revise certain requirements and procedures for jail-based competency restoration programs, and revise court procedures relating to outpatient treatment following civil commitment of certain defendants.

Pre-trial, trial procedures. Personal bonds would not be required to contain the standard oath and be signed by the defendant in certain circumstances related to the early identification of persons suspected of having a mental illness or with an intellectual disability. The oath would not be required if:

- the magistrate determined under current provisions that the defendant had a mental illness or was a person with an intellectual disability, including by using the results of a previous determination under that article;
- the defendant was released on personal bond under current provisions governing such circumstances; or
- the defendant was found incompetent to stand trial.

The bill would authorize justice and municipal courts to dismiss certain complaints if a justice or judge determined probable cause existed to believe that a defendant, including a defendant with a mental illness or an intellectual or developmental disability, lacked the capacity to understand the proceedings or to assist in the defendant's own defense or was unfit to proceed. If the court determined that probable cause existed for such a finding, after providing notice to the state, the court could dismiss the complaint. A dismissal could be appealed.

Justices and judges could not accept a plea of guilty or no contest unless it appeared that the defendant was mentally competent and the plea was free and voluntary.

Competency restoration programs. The bill would revise the eligibility requirements for psychiatrists or psychologists who are providing services as part of the current jail-based competency restoration pilot program. The bill also would revise requirements for the pilot program and establish new requirements, including ones to:

- operate in the jail in a designated space separate from the space used for the jail's general population of the jail;
- ensure coordination of general health care;
- provide mental health treatment and substance use disorder treatment to defendants for competency restoration; and
- supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication.

The process that occurs when a defendant has not been restored to competency would be revised for the pilot program and the jail-based competency restoration programs operated by counties. The programs would have to continue to provide services, including during any extension of the defendant's time, unless the program was notified that space at a facility or outpatient competency restoration program appropriate for the defendant was available and the defendant had a specified amount of time remaining in the restoration period or its extension. The bill would require the return for court proceedings of defendants who were not transferred and who had been determined to not be returned to competency.

Courts would retain authority to transfer defendant subject to an order for jail-based competency restoration services to an outpatient competency restoration program under certain circumstances established by the bill.

Provisions governing the pilot program would expire September 1, 2022, and after that a pilot program that was established could continue to operate subject to the requirements for competency restoration programs operated by counties.

Outpatient treatment following civil commitment. The bill would establish who could request that courts modify an order for inpatient treatment or residential care following civil commitment to instead order a defendant to participate in an outpatient treatment program and would establish how a court would proceed upon such a request.

On receipt of a request to modify an order the court would have to require the local mental health authority or behavioral health authority to submit a statement about whether treatment and supervision for the defendant could be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services were available to the defendant. The bill would establish deadlines for the court to make determinations on such requests.

If the head of the facility believed the defendant was a person with mental illness who met the criteria for court-ordered outpatient mental health services, the head of the facility would have submit to the court a certificate of medical examination for mental illness stating that the defendant met the criteria for court-ordered outpatient mental health services.

Proceedings for commitment of the defendant to a court-ordered outpatient treatment program would be governed by the Texas Mental Health Code to the extent it did not conflict with the bill, except that the criminal court would conduct the proceedings regardless of whether the criminal court was also the county court.

Outpatient treatment programs could not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant were pending.

Other provisions. The bill would make other changes, including:

- establishing that a magistrate would not be required to order certain interviews or information collected about defendants suspected of having a mental illness or intellectual disability if the defendant is no longer in custody;
- requiring courts sentencing a person convicted of a criminal offense to credit to the term of the person's sentence for time the person participated in an outpatient competency restoration program;
- establishing when a period of competency restoration began and

- when extensions of the initial period begin;
- revising eligibility requirements relating to psychiatrists and psychologists serving as certain court-appointed experts for certain criminal defendants; and
 - requiring the Texas Commission on Jail Standards to adopt by December 1, 2021, rules and procedures of jails that require a prisoner with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determined was necessary for the care, treatment, or stabilization of the prisoner.

The bill would take effect September 1, 2021.