

BILL ANALYSIS

Senate Research Center

H.B. 1747
By: Place (Moncrief)
Criminal Justice
4-29-97
Engrossed

DIGEST

Recently, a House Joint Interim Committee conducted a study on criminal justice and persons with mental disabilities. This bill would amend various statutory provisions relating to criminal justice and persons with mental disabilities as recommended by the interim report.

PURPOSE

As proposed, H.B. 1747 amends several statutory provisions relating to the arrest and detention of defendants with mental impairments. Additionally, this bill would amend provisions relating to continuity of care for offenders with special needs.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the directors of community supervision and corrections departments in SECTION 7 (Sections 614.013(a), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 16.22, Code of Criminal Procedure, as follows:

Art. 16.22. New heading: EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a) Requires the sheriff, no later than 72 hours after receiving evidence or a statement that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, to notify the magistrate of that fact. Requires a defendant's behavior or the result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment to be considered in determining whether reasonable cause exists to believe the defendant has a mental illness or is a person with mental retardation. Requires the magistrate, on a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with mental retardation, to order an examination of the defendant by a disinterested expert experienced and qualified in mental health or mental retardation to determine whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with mental retardation as defined by Section 591.003, Health and Safety Code. Authorizes the magistrate, if the defendant fails or refuses to submit to examination, to order the defendant to custody for examination for a reasonable period not to exceed 21 days. Prohibits the magistrate from ordering a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation (MHMR) for examination without the consent of the head of that facility. Requires the head of a facility, if a defendant who has been ordered to a facility operated by MHMR for examination remains in the facility for a period exceeding 21 days, to cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. Requires that county to reimburse MHMR facility for mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) Requires a written report of the examination to be submitted to the magistrate within 30 days of the order of examination, and the magistrate to furnish copies of the report to

the defense counsel and prosecuting attorney. Requires the report to include certain information. Deletes text in reference to actions taken in accordance with Article 46.02, Code of Criminal Procedure.

(c) Authorizes the court, after the court receives the examining expert's report relating to the defendant under Subsection (b), rather than Section 3(d), Article 46.02, of this code, to resume the criminal proceedings against the defendant or competency proceedings, if required, as provided by Article 46.02 of this code.

SECTION 2. Amends Articles 17.032(b) and (c), Code of Criminal Procedure, to require a magistrate to release a defendant on personal bond if, among other conditions, the defendant is examined by a mental health expert under Article 16.22 of this code, rather than Article 16.22-3(b); the examining expert, in a report submitted to the magistrate under Article 16.22, concludes that the defendant has a mental illness or is a person with mental retardation, rather than is mentally ill and is nonetheless competent to stand trial, recommends mental health treatment for the defendant; and the magistrate determines, in consultation with a local mental retardation service provider, among others, that appropriate mental retardation services for the defendant are available through MHMR under Section 534.053, Health and Safety Code, or through another mental retardation services provider. Requires, rather than authorizes, the magistrate, unless good cause is shown for not requiring treatment, to require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or mental retardation treatment under certain conditions. Makes conforming changes.

SECTION 3. Amends Section 11(d), Article 42.12, Code of Criminal Procedure, to require the judge, under certain conditions, to require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health or mental retardation treatment if, among other options, the defendant's mental impairment is chronic in nature, or the ability to function independently will continue to deteriorate if the defendant does not receive mental health or mental retardation services. Makes conforming changes.

SECTION 4. Amends Sections 415.037(a) and (c), Government Code, to authorize the Commission on Law Enforcement Officer Standards and Education (commission) to certify a sheriff, sheriff's deputy, constable, or other peace officer, or a justice of the peace as a special officer for offenders with mental impairments, rather than mental health assignment, if the officer has, among other conditions, successfully completed a training course on offenders with mental impairments, rather than in mental health issues, administered by the commission; and passed an examination administered by the commission that is designed to test the officer's knowledge and recognition of the characteristics and symptoms of mental illness, mental retardation, and mental disabilities, and knowledge of mental health crisis intervention strategies for people with mental impairments. Makes conforming changes.

SECTION 5. Amends Section 574.035(a), Health and Safety Code, to authorize the jury, or the judge if the right to a jury is waived, to determine that a proposed patient requires court-ordered extended mental health services only if the jury or judge finds, from clear and convincing evidence, that, among other conditions, the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Article 46.02, rather than Section 5 of Article 45.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

SECTION 6. Amends Section 614.007, Health and Safety Code, to delete reference to an offense described in Section 3g, Article 42.12, Code of Criminal Procedure.

SECTION 7. Amends Sections 614.013(a) and (c), Health and Safety Code, to require the directors of community supervision and corrections departments, among others, by rule, to adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. Makes conforming changes.

SECTION 8. Amends Section 614.017, Health and Safety Code, to authorize an agency authorized by this chapter to provide continuity of care for a special needs offender, among other options, to

receive information relating to a special needs offender, rather than a convicted felon. Defines "agency" and "special needs offender." Makes conforming changes.

SECTION 9. Amends Chapter 614, Health and Safety Code, by adding Section 614.018, as follows:

Sec. 614.018. COUNTY JAIL MEDICAL AND PSYCHOLOGICAL ASSESSMENTS. Requires the Texas Council on Offenders with Mental Impairments (council) in cooperation with the Commission on Jail Standards, MHMR, and the Texas Department of Criminal Justice to conduct a study to determine the manner in which medical and psychological assessments are conducted in county jails. Requires the study to include an examination of certain assessments. Requires the council to actively seek the input of representatives from county governments who are involved in the assessment of county jail inmates. Requires the council to file a copy of the study, a synopsis of the results of the study, and the council's recommendations with the legislature no later than February 1, 1998. Provides that this section expires March 1, 1999.

SECTION 10. Effective date: September 1, 1997.

SECTION 11. Emergency clause.