

BILL ANALYSIS

Senate Research Center

H.B. 1071
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Criminal Justice
5/9/2001
Engrossed

DIGEST AND PURPOSE

Although there are a number of mechanisms in place to divert certain offenders with mental illness or mental retardation from jails to appropriate facilities, current law does not expressly define the procedures for diverting persons to these mental health facilities. As a result, many judges and attorneys are uncertain of how to determine which individuals are appropriate for diversion and may be hesitant to divert individuals to mental health facilities. H.B. 1071 incorporates specific references to the role of local mental health and mental retardation authorities in performing evaluations of defendants and making recommendations to the court in regard to diverting certain offenders from jail to mental health facilities; modifies the contents of the defendant's evaluation report; and modifies provisions relating to mental health examinations and the release of a defendant on personal bond.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

- (a) 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 the local mental health or mental retardation authority or another 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 submit to, rather than custody for, examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a reasonable period not to exceed 21 days. Authorizes the magistrate to order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation (department) for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility, rather than prohibiting the action without the consent of the head of the facility.
- (b) Requires the report to include a description of the procedures used in the examination, the examiner's observations and findings pertaining to whether the defendant is a person who has a mental illness or is a person with mental retardation and whether the defendant is competent to stand trial, and recommended treatment.
- (c) Authorizes the court, after the court receives the examining expert's report relating to the defendant under Subsection (b), to resume criminal proceedings against the defendant, including proceedings related to the defendant's release on personal bond under Article 17.032 or competency proceedings, if required, as provided by Article 46.02 or other proceedings

affecting the defendant's receipt of appropriate court-ordered mental health or mental retardation services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety 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 unless good cause is shown otherwise under certain conditions. Requires 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 as recommended by the local mental health or mental retardation authority under certain conditions.

SECTION 3. Amends Sections 3(a), (b), and (f), Article 46.02, Code of Criminal Procedure, to delete existing text regarding facilities operated by the department and a reference to Subsection (a). Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 5(a), Article 46.02, Code of Criminal Procedure, to require the court, when a defendant has been determined incompetent to stand trial for a felony or misdemeanor because of mental illness or mental retardation, and absent a determination that there is no substantial probability that the defendant will attain competency to stand trial in the foreseeable future, to determine whether the conduct committed by the defendant involved an act, attempt, or threat of serious bodily injury to another person. Requires the court, if the court determines that the defendant's conduct involved an act, attempt, or threat of serious bodily injury to another person, to enter an order committing the defendant to the maximum security unit of any facility designated by the department, to an agency of the United States operating a mental hospital, or to a Veterans Administration hospital for a period not to exceed 18 months. Requires the court, if the court determines that the defendant's conduct did not involve an act, attempt, or threat of serious bodily injury to another person, to enter an order committing the defendant to a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a period not to exceed 18 months. Deletes existing text regarding the determination of a defendant's competence to stand trial. Deletes existing text regarding a designation by the Commissioner of Mental Health and Mental Retardation. Authorizes the court, on request of the local mental health or mental retardation authority, to enter an order committing the defendant to a facility operated by the department.

SECTION 5. (a) Amends Section 51.20(a), Family Code, to make a conforming change.

(b) Provides that this section applies to an examination of a child under the jurisdiction of the juvenile court as provided by Section 51.20, Family Code, as amended by this section, that takes place on or after the effective date of this Act, without regard to whether the child was first placed under the jurisdiction of the juvenile court before, on, or after that date.

SECTION 6. Makes application of this Act, except as provided by Section 5 of this Act, prospective.

SECTION 7. Effective date: September 1, 2001.