

BILL ANALYSIS

Senate Research Center
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S.B. 867
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a county has a bed allotment for commitments of mentally ill persons (civil commitments) and criminal defendants (forensic commitments) from the county to state mental health hospitals (state hospital). A defendant may also be ordered to a state hospital if the defendant is found not guilty by reason of insanity. However, there are not enough beds in Texas state hospitals to accommodate the necessary civil and forensic commitments. This is exacerbated by the fact that forensic patients are spending more time in state hospitals than they would have spent in jail or prison for the offense for which they were committed.

S.B. 465 of the 79th Legislature, Regular Session, 2005, provided the authority for civil courts with probate jurisdiction to order forensic patients to take medications, but did not expressly authorize these probate courts to charge the county which committed a defendant to a hospital in the county in which the probate court is located for costs related to the medication hearings. This has placed a burden on the probate courts in counties that have state hospitals.

As proposed, S.B. 867 makes several changes to the Code of Criminal Procedure and the Health and Safety Code with the intent of freeing bed space and reducing the burden on probate courts. It provides that a court is not required to order a new mental health examination of a defendant if an examination was held by a local mental health or mental retardation authority within a year prior to a defendant's arrest. It changes the maximum term of commitment under Chapter 46B of the Code of Criminal Procedure for defendants so that they do not remain in an inpatient competency restoration program longer than the maximum sentence for the offense for which the person was committed to the program. The bill requires costs for medication hearings to be borne by the county in which the criminal proceedings against a defendant who is to be medicated were brought.

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:

Article 16.22. EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Creates this subdivision from existing text. Provides an exception to this subdivision in Subdivision (2).

(2) Provides that the magistrate is not required to order an examination described by Subdivision (1) (to determine if the defendant has a mental illness or mental retardation) if, in the year preceding the defendant's applicable arrest, it is determined that the defendant has a mental illness or is mentally retarded by the local mental health or mental retardation authority or other disinterested expert described by Subdivision (1). Authorizes a court that elects to use the evaluation's results to proceed under Subsection (c).

(3) Creates this subdivision from existing text. Provides that an order under this subdivision is made regarding the failure or refusal to submit to an examination required under Subdivision (1). Changes the possible facilities that a magistrate may order a defendant under this subdivision to be placed in from facilities operated by the Texas Department of Mental Health and Mental Retardation to those operated by the Department of State Health Services or the Department of Aging and Disability Services. Makes conforming and nonsubstantive changes.

(b) Provides that the previous requirement that a written report of the examination be submitted to the magistrate within 30 days of the order of examination applies only to felony cases. Requires the report to be submitted 10 days after the order of examination in a misdemeanor case. Makes nonsubstantive changes.

(c) Provides that if the court elects to use the results of an evaluation under Subsection (a)(2), the court is authorized to resume the criminal proceedings previously set forth in this subsection relating to a defendant's release on personal recognizance bond or to receipt of outpatient, community-based restoration treatment as a condition of the defendant's release.

SECTION 2. Amends Subchapter A, Chapter 46B, Code of Criminal Procedure, by amending Article 46B.009 and adding Article 46B.0095, as follows:

Art. 46B.009. TIME CREDITS. Deletes Subsection (b), which prohibited a defendant from being committed to a mental hospital or other in-patient or residential facility for a period longer than that provided for by law for the offense for which the defendant was to be tried and authorized the defendant, on expiration of that maximum term, to be confined for an additional period in such a facility only pursuant to civil committee proceedings. Makes a conforming change.

Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY MAXIMUM TERM FOR OFFENSE. Prohibits a defendant from being committed to a mental hospital or other in-patient or residential facility for a period longer than that provided for by law for the offense for which the defendant was to be tried and authorizes the defendant, on expiration of that maximum term, to be confined for an additional period in such a facility only pursuant to civil commitment proceedings.

Art 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. Requires the court, on the motion of the attorney representing the state, to dismiss a misdemeanor charge against a defendant if the court commits the defendant and, after having been restored to competency under Article 46B.084 (Proceedings on Return of Defendant to Court), the defendant is not tried before the second anniversary of the date on which the order of commitment was entered.

SECTION 3. Amends Article 46B.079(b), Code of Criminal Procedure, to change the day on which a defendant committed under this subchapter (Procedures After Determination of Incompetency) whose commitment term has not yet expired is to be returned to the committing court from the 15th day to the 10th day after the applicable parties receive service on a report filed regarding the defendant's ability to attain competency.

SECTION 4. Amends Article 46B.082(b), Code of Criminal Procedure, to require the head of a Department of State Health Services facility to promptly transport a defendant committed to any part of the facility, rather than the maximum security unit of the facility, to the committing court, in addition to other provisions. Makes conforming changes.

SECTION 5. Amends Article 46B.084(c), Code of Criminal Procedure, to require a hearing regarding an objection to the sole usage of a report filed under Article 46B.080(c) and no other factors to determine a defendant's competency to stand trial to be held within 20 days, rather than 30 days, of the date of the objection. Makes a conforming change.

SECTION 6. Amends Subchapter E, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.1035, as follows:

Art. 46B.1035. APPLICATION OF OTHER LAW. (a) Provides that, in proceedings conducted under this subchapter for a defendant described by Article 46B.102(a) (a person with mental illness), an application for court-ordered temporary or extended mental health services may not be required, the provisions of Subtitle C (Texas Mental Health Code), Title 7, Health and Safety Code relating to notice of hearing do not apply, and appeals from the criminal court proceedings are to the appeals court as in the proceedings for court-ordered inpatient mental health services under that subtitle.

(b) Provides that, in proceedings conducted under this subchapter for a defendant described by Article 46B.103(a) (a person with mental retardation), an application to have the person declared mentally retarded may not be required, the provisions of Subtitle D (Persons with Mental Retardation Act), Title 7, Health and Safety Code relating to notice of hearing do not apply, and appeals from the criminal court proceedings are to the appeals court as in the proceedings for commitment to a residential care facility under that subtitle.

SECTION 7. Amends Section 571.018(a), Health and Safety Code, to provide that the costs for a hearing regarding the court-ordered administration of psychoactive medication to a person awaiting trial or acquitted in a criminal case as described by Section 574.107 are excepted from payment by the entities previously set forth in subsection.

SECTION 8. Amends Section 574.107, Health and Safety Code, to provide that the county in which applicable charges are pending or were adjudicated is required to pay the costs of a hearing held under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) evaluating the court-ordered administration of psychoactive medication to certain mental patients set forth in this section.

SECTION 9. Repealer: Article 46B.103(d) (Civil Commitment Hearing: Mental Retardation), Code of Criminal Procedure.

SECTION 10. (a) Makes application of this Act prospective to a defendant charged with an offense committed on or after the Act's effective date.

(b) Makes application of Sections 571.018(a) and 574.107, Health and Safety Code, as added by this Act, prospective.

SECTION 11. Effective date: September 1, 2007.