SUBJECT: Allowing local MHMR authorities to help determine competency

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Hinojosa, Dunnam, Keel, Talton, Garcia, Green, Kitchen, Martinez Fischer

0 nays

1 absent — Shields

WITNESSES: For — Genevieve Hearon, Capacity for Justice; Spencer McClure, Texas Council on Community MHMR Centers; *Registered but did not testify:* Lauralee Harris, Mental Health Association of Tarrant County; Capt. Gregory W. Leveling and Judi Swayne, Denton County MHMR; Joe Lovelace, National Alliance for the Mentally Ill of Texas; Charles C. Holt, Common Cause of Texas; Susan Marshall, The Arc of Texas; Kevin F. Lawrence, Texas Municipal Police Association

Against — None

BACKGROUND: Code of Criminal Procedure (CCP), art. 46.02, sec. 3 outlines the procedure for examining a defendant in an incompetency hearing. The court may appoint disinterested experts to examine the defendant with regard to his or her competency to stand trial and to testify on this issue at any trial or hearing. The court may order the examination on its own motion or by motion of the defendant, defense counsel, or prosecuting attorney.

The court may order any defendant to submit to a competency examination, whether or not the defendant is free on bail. If the defendant does not submit to an examination, the magistrate may order the defendant to custody for the examination for not more than 21 days. The magistrate cannot order the 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 the facility. If the defendant remains in the MHMR facility for more than 21 days, the head of the facility must have the defendant transported to the committing court and placed in the custody of that county's sheriff. The

county must reimburse the MHMR facility for the mileage and per-diem expenses of personnel required to transport the defendant.

The county in which the indictment was returned or information was filed must pay any appointed experts and must reimburse the MHMR facility that accepts a defendant for examination for expenses that MHMR deems reasonably necessary and incidental to examining the defendant.

CCP, art. 46.02, sec. 5 outlines criminal commitment proceedings. When a defendant has been found incompetent to stand trial for any felony or misdemeanor because of mental retardation and there is no substantial probability that the defendant will attain competency to stand trial in the foreseeable future, the court must order the defendant committed to the maximum security unit of an MHMR facility, a federal mental hospital, or a Veterans Administration hospital for a period not to exceed 18 months. When a defendant is found incompetent to stand trial for a misdemeanor because of mental illness and there is no substantial probability that the defendant will attain competency in the foreseeable future, the court must commit the defendant to a designated MHMR facility for a period not to exceed 18 months. The local sheriff must transport the defendant to the facility, where the defendant must be examined and treated with the objective of obtaining competency to stand trial. The court must order a transcript of all medical testimony and a statement of the facts and circumstances surrounding the alleged offense to accompany the patient to the facility.

DIGEST:

CSHB 1093 would allow a magistrate to order an examination of a defendant by the local MHMR authority or another disinterested expert. If the defendant did not submit to the examination, the magistrate could order the defendant to submit to an examination in a mental health facility determined appropriate by the local MHMR for a reasonable period not to exceed 21 days. The magistrate could order a defendant to an MHMR facility for examination only on request of the local MHMR and with the consent of the head of the facility. The county in which the indictment was returned or information was filed would have to pay the local MHMR or other appointed experts.

The written report of the examination would have to include a finding as to whether the defendant was competent to stand trial.

CSHB 1093 would require a court to determine whether the conduct of a defendant charged with a felony or misdemeanor and found to be incompetent because of mental retardation or mental illness involved an act, attempt, or threat of serious bodily injury to another. If the court found this to be the case, the court would have to commit the defendant to the maximum security unit of an MHMR facility, a federal mental hospital, or a Veterans Administration hospital for up to 18 months. If the court found otherwise, it would have to commit the defendant to a mental health facility determined to be appropriate by the local MHMR. On the request of the local MHMR, the court could order the defendant to be committed to a state MHMR facility.

The bill would take effect September 1, 2001, and would apply only to a defendant charged with an offense committed on or after that date.

SUPPORTERS SAY:

CSHB 1093 would help judges evaluate defendants and determine the most appropriate placement by encouraging input from local MHMR authorities. Judges should have the best tools available for dealing with defendants with mental retardation or mental illness, and the local MHMR systems could have experience working with these people. For example, the local MHMR authority could have knowledge about the person's background that might not be observable from a court appearance. MHMR could help the judge understand a defendant's true mental state and culpability.

Local MHMR systems experienced in dealing with these defendants could have input in making placement decisions. It is in the best interests of the defendant and the state to ensure that defendants receive the most appropriate punishment or treatment so that they do not commit new crimes.

The bill would clarify that judges can request the assistance of a local MHMR authority in determining competency. Although judges now can request MHMR assistance, some are hesitant to do so because the statutes do not define this authority explicitly.

CSHB 1093 would not create a conflict of interest for local MHMR employees who testified in competency hearings. These employees are not determining sentencing, but rather whether the defendant is mentally capable of standing trial. Because these employees often have worked with defendants in the past and have access to medical records, they can give

accurate assessments of the defendants' mental capabilities. Also, a judge still would have the option of appointing a disinterested expert to examine the defendant. If judges were concerned about MHMR employees' possible conflicts of interest, they could appoint other experts instead.

OPPONENTS SAY:

CSHB 1071 is unnecessary because judges already can ask local MHMR authorities help determine competency and the need, if any, for jail diversion. Local MHMR authorities would be helpful in determining placement in jail diversion because of their personal knowledge of defendants' illnesses or retardation and the treatment defendants need. However, these authorities are not always well suited to determine a defendant's competency to stand trial, because they often lack experience as expert witnesses and would approach competency cases from the perspective of a "healer" rather than from a public safety perspective. Also, employees of local MHMR authorities could be biased by knowing a defendant and would have a conflict of interest because they work for the state.

NOTES:

HB 1093 as filed would not have required the court to consider whether the defendant's alleged conduct included an act, attempt, or threat of serious bodily injury in determining where to commit the defendant.

The companion bill, SB 1384 by Armbrister, has been referred to the Senate Criminal Justice Committee.

A very similar bill, HB 1071 by Farabee, passed the House on April 30 and has been referred to the Senate Criminal Justice Committee.