

SUBJECT: Modifying civil actions by a civilly committed individual

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Felix Klein; Tim Walker; (*Registered, but did not testify:* Allison Greer Francis, CHCS; Jama Pantel, Justices of the Peace and Constables Association of Texas; Thomas Parkinson)

Against — None

On — Jessica Marsh, Texas Civil Commitment Office

BACKGROUND: Health and Safety Code ch. 841 governs the civil commitment of sexually violent predators. Health and Safety Code sec. 841.003 defines "sexually violent predator" as an individual who is a repeat sexually violent offender and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

Concerns have been raised about the significant costs to courts for frivolous or unwarranted litigation brought by indigent individuals exempt from court costs.

DIGEST: HB 3360 would set out procedures governing an action, including an appeal or original proceeding, brought by a civilly committed individual in a court specified under the bill in which an affidavit or unsworn declaration of inability to pay costs was filed by the civilly committed individual.

Definitions. A "civilly committed individual" would be defined as a

sexually violent predator who has been committed to a facility operated by or under contract with the Texas Civil Commitment Office (CCO).

"Trust account" would be defined as a civilly committed individual's trust account administered by CCO or by a facility under contract with CCO.

Dismissal. A court could dismiss a claim brought by a civilly committed individual, either before or after service of process, if the court found that:

- the allegation of poverty in the affidavit or unsworn declaration was false;
- the claim was frivolous or malicious; or
- the individual filed an affidavit or unsworn declaration that the individual knew was false.

In determining whether a claim was frivolous or malicious, a court could consider whether a claim's chances of ultimate success were slight, whether the claim had no arguable basis in law or fact, whether it was clear that the individual could not prove the facts in support of the claim, or whether the claim was substantially similar to a previous claim filed by the individual as specified by the bill. Before or after service of process, the court could hold a hearing for such a determination on motion of the court, a party, or the clerk of the court. Upon such a motion, the court would have to suspend discovery relating to the pending claim.

Upon dismissal, a court could notify CCO of the dismissal, and as specified by the bill, could advise CCO that a mental health evaluation of the individual could be appropriate.

The court could dismiss the entire claim or a portion of the claim, designating the issues and defendants on which the claim could proceed if only a portion was dismissed. The dismissal would not be subject to interlocutory appeal by the civilly committed individual.

Affidavit related to previous filings. A civilly committed individual who filed an affidavit or unsworn declaration of inability to pay costs would

have to file a separate affidavit or declaration:

- identifying the court that ordered the individual's commitment;
- indicating whether any cause of action or allegation in the petition had previously been filed in any other court and specifying certain information about such actions;
- stating the result of any previous action, including whether the action or a related claim were dismissed as frivolous or malicious under applicable law, and the date of the order affirming dismissal if applicable;
- certifying that all applicable grievance processes had been exhausted; and
- certifying that no court had found the individual to be a vexatious litigant under applicable law.

Grievance decision. An individual who filed a claim subject to a grievance system established by the CCO or contracted facility would be required to file an affidavit or unsworn declaration with certain information about the grievance and a copy of the written decision from the grievance system. The court would be required to stay a proceeding on a claim if the claim was filed before the grievance procedure was complete. If the individual failed to file a claim with the court before the 31st day after the grievance decision, the court would be required to dismiss the claim.

Hearing and evidence. A court could hold a hearing under the bill at a facility operated by or under contract with CCO, or with video communications technology permitting the court and the individual to see and hear each other. The video recording of the hearing would be sufficient to serve as a permanent record of the hearing.

A court could request that a person with an admissible document or testimony submit copies of such. A written statement would have to be made under oath or as an unsworn declaration, and a copy of a document submitted would have to be accompanied by a certification executed under oath as specified by the bill. A person submitting a written

statement or document would not be required to appear at the hearing.

A court would have to require that a civilly committed individual be provided with a copy of each written statement or document at least 14 days before the hearing was to begin.

Court fees and costs. A civilly committed individual would be required to file a certified copy of their trust account statement with the court, reflecting the balance of the account at the time the claim was filed and activity in the account during the six months preceding the filing date.

A court could order the individual to pay court costs and fees, and if ordered, the individual would have to pay an amount equal to the lesser of 20 percent of the preceding six months deposits to the trust account or the total amount of the costs and fees, and in each subsequent month, an amount equal to the lesser of 10 percent of that month's deposits to the trust account, or the total amount of remaining unpaid costs. Payments would continue until the total amount was paid or until the individual was released from confinement. An individual could authorize payment in addition to the required payments.

The clerk of the court would have to mail a copy of the order and a certified bill of costs to CCO or the contracted facility, and on receipt of such an order, the office or facility would be required to withdraw the needed money from the individual's trust account, hold the money in a separate account, and forward the money to the court clerk on the earlier of the date the total amount to be forwarded equaled the total amount of court fees, or the date the individual was released.

If the court found that the individual had previously filed an action as specified by the bill where the action was dismissed as frivolous or malicious, the ordered costs of the court would be required to include certain additional expenses that were incurred. On receipt of an order indicating that the court made such a finding, the clerk of the court could not accept for filing another claim by the individual until all fees and costs were paid, unless the claim was for certain relief from a substantial threat

of irreparable injury or serious physical harm to the individual.

An individual could not avoid the required fees and costs by nonsuiting a party or voluntarily dismissing the action, and a court could dismiss a claim should the individual fail to pay the required fees and costs.

Other provisions. To implement the provisions of the bill, a court could develop and use a questionnaire that the civilly committed individual would file.

The Texas Supreme Court would be required, by rule, to adopt a system under which a court could refer a suit under the bill's provisions to a magistrate for review and recommendation. The system could be funded by money appropriated to the Supreme Court or from money received by the Supreme Court through interagency contracts. Any other rule adopted by the Supreme Court could not modify the bill's provisions.

The bill's provisions would not apply to an action brought under the Family Code.

The bill would take effect September 1, 2021, and would apply only to an action filed on or after that date.