

SUBJECT: Revising procedures relating to competency for criminal defendants

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Murr, Allen, Bailes, Martinez Fischer, Rodriguez, Sherman,
Slaton, White

0 nays

1 absent — Burrows

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Jennifer Toon, Coalition of Texans with Disabilities; Mark Brown, Karen Collins, Georgia Keysor, and Joyce Brown, Indivisible Rosedale Huddle; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Matthew Lovitt, National Alliance on Mental Illness Texas; Jackie Hardee, Rosedale Huddle, Indivisible Tex Lege; Maggie Luna, Statewide Leadership Council; Lee Johnson, Texas Council of Community Centers; Alycia Castillo, Texas Criminal Justice Coalition; Nathan Lyon, The Arc of Texas; Jennifer Allmon, The Texas Catholic Conference of Bishops; Julie Wheeler, Travis County Commissioners Court; and 12 individuals)

Against — None

DIGEST: CSSB 49 would revise certain pre-trial and trial procedures relating to criminal defendants suspected of having a mental illness or intellectual disability, revise certain requirements and procedures for jail-based competency restoration programs, and establish certain procedures relating to requests for outpatient treatment following the civil commitment of certain defendants.

Pre-trial procedures. Personal bonds would not be required to contain the standard oath and be signed by the defendant in certain circumstances related to the early identification of persons suspected of having a mental

illness or with an intellectual disability. The oath would not be required if:

- the magistrate determined under current provisions that the defendant had a mental illness or was a person with an intellectual disability, including by using the results of a previous determination under that article;
- the defendant was released on personal bond under current provisions governing such circumstances; or
- the defendant was found incompetent to stand trial.

The bill would authorize justice and municipal courts to dismiss certain complaints if a justice or judge determined probable cause existed to believe that a defendant, including a defendant with a mental illness or an intellectual or developmental disability, lacked the capacity to understand the proceedings or to assist in the defendant's own defense or was unfit to proceed. If the court determined that probable cause existed for such a finding, after providing notice to the state, the court could dismiss the complaint. A dismissal could be appealed. Justices and judges could not accept a plea of guilty or no contest unless it appeared that the defendant was mentally competent and the plea was free and voluntary.

CSSB 49 would expand the list of who had to be given a currently required written report of an interview with a defendant who there is reasonable cause to believe has a mental illness or is a person with an intellectual disability. Copies of the report would have to be given by the magistrate to the sheriff or other person responsible for the defendant's medical records while the defendant was confined in county jail and to either a personal bond office for the county if one exists or the director of the office or department responsible for supervising the defendant while on bail and receiving mental health or intellectual and developmental disability services.

Competency restoration programs. The bill would revise the eligibility requirements for psychiatrists or psychologists who are providing services as part of the current jail-based competency restoration pilot program.

The bill also would revise requirements for the pilot program and establish new requirements, including ones to:

- operate in the jail in a designated space separate from the space used for the jail's general population;
- ensure coordination of general health care;
- provide mental health treatment and substance use disorder treatment to defendants for competency restoration; and
- supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication.

The bill would allow a qualified psychologist to evaluate a defendant's competency and report to the court, performing the same duties as currently authorized for qualified psychiatrists.

The process that occurs when a defendant has not been restored to competency would be revised for the pilot program and for the jail-based competency restoration programs operated by counties. The programs would have to continue to provide services, including during any extension of the defendant's time, unless the program was notified that space at a facility or outpatient competency restoration program appropriate for the defendant was available and the defendant had a specified amount of time remaining in the restoration period or its extension. The bill would require the return for court proceedings of defendants who were not transferred and who had been determined to not be restored to competency.

Courts would retain authority to transfer a defendant subject to an order for jail-based competency restoration services to an outpatient competency restoration program under certain circumstances established by the bill.

Provisions governing the pilot program would expire September 1, 2022, and after that a pilot program that was established could continue to operate subject to the requirements for competency restoration programs operated by counties.

Outpatient treatment following civil commitment. The bill would establish who could request that courts modify an order for inpatient treatment or residential care following civil commitment so that the defendant was instead ordered to participate in outpatient treatment. The bill also would establish how a court would proceed upon such a request.

The bill would establish deadlines for the court to make determinations on such requests. On receipt of a request to modify an order, the court would have to require the local mental health authority or behavioral health authority to submit a statement about whether treatment and supervision for the defendant could be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services were available.

If the head of the facility believed the defendant was a person with mental illness who met the criteria for court-ordered outpatient mental health services, the head of the facility would have submit to the court a certificate of medical examination for mental illness stating that the defendant met the criteria for court-ordered outpatient mental health services.

Proceedings for commitment of the defendant to a court-ordered outpatient treatment program would be governed by the Texas Mental Health Code to the extent it did not conflict with the bill, except that the criminal court would conduct the proceedings regardless of whether the criminal court was also the county court.

Outpatient treatment programs could not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant were pending.

Other provisions. The bill would require the Texas Commission on Jail Standards to adopt by December 1, 2021, rules and procedures of jails that require a prisoner with a mental illness be provided with each prescription medication that a qualified medical professional or mental health

professional determined was necessary for the care, treatment, or stabilization of the prisoner.

The bill would make other changes, including:

- establishing that a magistrate would not be required to order certain interviews or information collected about defendants suspected of having a mental illness or intellectual disability if the defendant was no longer in custody;
- requiring a court that sentenced a person convicted of a criminal offense to credit to the term of the person's sentence for the time the person participated in an outpatient competency restoration program;
- establishing when a period of competency restoration began and when extensions of the initial period begin; and
- revising eligibility requirements relating to psychiatrists and psychologists serving as certain court-appointed experts for certain criminal defendants.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSSB 49 would continue the state's efforts to improve the criminal justice system's handling of those with mental health issues who are accused of crimes. The bill would reflect work from the Judicial Commission on Mental Health, would implement best practices around the handling of these defendants, and would harmonize provisions across numerous statutes to ensure uniform handling of defendants.

Pre-trial procedures. CSSB 49 would address some of the practical concerns that have been identified with the current processes for handling those accused of a crime who were suspected of having a mental illness. The bill would expand who must receive reports on assessments of such defendants to ensure that those who might hold or supervise an individual were provided vital information to handle the individual safely. The bill also would give justice and municipal courts authority to dismiss cases in which adults charged with class C misdemeanors may be unfit to proceed,

similar to their authority in cases with child defendants.

CSSB 49 would waive requirements for certain screenings of those accused of a crime if they already are released from custody because it has proved impractical and would waive certain requirements for individuals who clearly cannot legally make an oath. The bill would align procedures used in justice and municipal courts with those used in other courts to ensure fair, uniform handling of defendants and would require courts to provide credit to defendants on their sentences for participation in outpatient or competency treatment.

Competency restoration programs. The bill would make numerous revisions to reconcile requirements for the jail-based competency restoration pilot program operated by the Health and Human Services Commission with those that can be operated by counties and would revise qualifications for experts on competency evaluations to be consistent with other requirements. Other changes would address the issue of when competency orders begin and ensure consistency in these cases. The bill would address lag times while a defendant waited for a bed for competency restoration services by clarifying that orders begin on the later of when an order is signed or the services begin.

Outpatient treatment following civil commitment. The bill also would establish clear procedures for when an individual receiving inpatient competency services might be served with outpatient treatment. This would allow courts to consider a step down in the placement of a defendant when appropriate.

Other provisions. Other provisions would ensure uniform, appropriate handling of defendants, including a requirement for the Commission on Jail Standards to adopt reasonable rules relating to access to prescribed medications, which would reflect current practices.

CRITICS
SAY:

Some of the changes in CSSB 49 could have unintended consequences that might extend its provisions to criminal defendants for which they were not intended.

NOTES: The House companion bill, HB 4212 by Moody, was considered by the House Corrections Committee in a public hearing on April 7 and approved by the House on May 13.