

SUBJECT: Revising procedures for determinations of competency to stand trial

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Denny, Escobar, Raymond, Reyna
0 nays
3 absent — Hodge, P. Moreno, Pena

SENATE VOTE: On final passage, April 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure, ch. 46B establishes procedures and standards for determining if a criminal defendant is competent to stand trial. People are considered incompetent to stand trial if they do not have sufficient present ability to consult with their lawyers with a reasonable degree of rational understanding or with a rational and factual understanding of the proceedings against them.

In 2003, the 78th Legislature enacted SB 1057 by Duncan, which extensively revised the procedures governing determinations of competency. In general, a decision on competency occurs before a trial begins. The issue of competency can be raised by either party in a criminal case or by the court. If a court determines after an informal inquiry that there is evidence to support a finding that a defendant may be incompetent, courts are required to stay all proceedings and order an examination of the defendant. A hearing can be held to determine competency unless certain conditions are met, such as when no party opposes a finding of incompetency.

If a defendant is found incompetent, the court must release the defendant on bail or commit the defendant to an initial term of up to 120 days in a mental health or residential care facility or in a maximum security unit of the Department of State Health Services (DSHS) for treatment toward the objective of attaining competency to stand trial.

Defendants must be returned to court after an initial commitment has expired or if the head of the facility to which the person was committed determines that the defendant is competent or that the defendant will not attain competency in the foreseeable future. At this point, a court must make a determination about the defendant's competency to stand trial. A court can order a 60-day extension of the commitment term under certain circumstances.

If it appears to a court after an initial commitment of 120 days that an incompetent defendant against whom charges still are pending could be mentally ill or mentally retarded, courts must proceed with hearings for commitment to a mental health or residential care facility or, in specified circumstances, to the maximum security unit of a DSHS facility. The law also establishes procedures for cases in which a defendant is found incompetent and charges are dismissed, for handling defendants who attain competency, and for extended commitment to facilities for those who do not.

DIGEST:

CSSB 679 would authorize videoconferencing of some hearings related to the competency of criminals defendants to stand trial and make numerous changes to the procedures used in determining competency to stand trial.

Videoconferencing. CSSB 679 would authorize the use of videoconferencing, under certain conditions, between a court and a defendant who had been committed to a facility for hearings. Videoconferencing would be allowed only upon written consent by the defendant or the defendant's attorney and the prosecutor. The system would have to allow defendants to communicate privately with their attorneys.

Upon a motion by the court, the defendant, the defendant's attorney, or the prosecutor, the court could terminate a videoconference at any time and require the defendant to appear in court. The videoconference would have to be recorded and preserved until all appeals had concluded.

Other provisions. CSSB 679 would require a court to conduct a separate trial, instead of a hearing as required under current law, to determine whether a defendant was competent to stand trial. All of the current procedures for the hearing would apply to the trial.

The bill would authorize a court, on the motion of the prosecutor, to dismiss all charges pending against a defendant, regardless of whether there was evidence to support a finding of incompetency or whether the court had made a finding of incompetency. In these situations, courts could undertake civil commitment proceedings.

A person could not be confined in a mental hospital or other residential facility for a term longer than the one authorized for the criminal offense. After that term expired, a person could be confined in a mental hospital or other facility only under a civil commitment.

The bill would specify that a court could make only one commitment and one extension, which is authorized by current law, in connection with the same offense. Any subsequent court orders for treatment would have to be made under the current procedures for extended commitments.

CSSB 679 would set a schedule for returning to court a defendant who had been committed to a facility but underwent a competency hearing before the end of his or her term. A defendant would have to be returned to the committing court as soon as practicable after the 15th day after a report by the head of the facility or within 72 hours of a competency hearing, if either party objected to the report.

The bill would change the deadline given to the head of a facility for filing a report with the court on a defendant's competency. The report, which would include a list of types and dosages of medications used to treat the defendant, would have to be submitted when the head of the facility gave the court notice of the expiration of a commitment term or an opinion about the defendant's competency, instead of when the facility discharged the defendant.

A defendant who was being transferred to a court for a competency hearing from a facility to which he or she had been committed under the extended commitment procedures could not be moved from the facility until 72 hours before the hearing.

Competency hearings held after an original hearing could be held in a court or a facility to which a defendant had been committed or by videoconferencing under procedures authorized by the bill.

CSSB 679 would make other changes, including:

- requiring that the medical or psychiatric testimony required under current law to commit a defendant to a mental health or residential care facility came from an expert who met the qualifications in current law;
- authorizing courts to allow experts to substitute their reports for testimony;
- limiting good cause extensions authorized under current law to 30 days for some hearings;
- adding time spent in jail before an initial competency hearing to the list of factors, such as time spent confined in a mental health facility, for which courts would be required to give defendants credit if they were sentenced to prison terms;
- requiring the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) to review examinations made to determine the fitness of children to proceed in criminal cases and to report on its review to the Legislature and Court of Criminal Appeals, in the same way it reviews and reports on adult examinations under current law; and
- requiring district and juvenile courts to submit monthly to TCOOMMI reports on competency examinations for juveniles.

The bill would make the current law on determinations of competency apply to defendants against whom proceedings were initiated before January 1, 2004, but had not concluded by September 1, 2005.

CSSB 679 would take effect September 1, 2005. In general, provisions dealing with hearings would apply only to competency hearings requested or held on or after the bill's effective date. Provisions dealing with time credits, reports, records, and authorizing the use of videoconferencing would apply to defendants charged with offenses committed before, on, or after the bill's effective date. Other provisions would apply only to defendants charged with offenses committed on or after the bill's effective date.

**SUPPORTERS
SAY:**

CSSB 679 would give courts more flexibility in holding competency hearings by authorizing videoconferencing of some hearings and would address questions raised and problems encountered since the competency law was revised in 2003.

CSSB 679 would make the current law governing determinations of competency apply to defendants against whom proceedings remain pending that were initiated before January 1, 2004, so that all defendants could have the advantage of the streamlined procedures and the protections given to defendants by the 78th Legislature.

Videoconferencing. CSSB 679 would give courts the flexibility to allow videoconferencing for some hearings related to competency to help ensure continuity of care for defendants when necessary. Videoconferencing would help minimize disruptions in defendants' care and treatment by eliminating trips to jail in some cases. There have been instances in which the transfer of a defendant from a treatment facility to jail for a competency hearing has created problems in maintaining the defendant's treatment and drug therapy.

CSSB 679 would implement numerous protections to ensure that defendants' rights were protected during videoconferencing. Written consent would have to be obtained from all parties, and defendants would be allowed to confer privately with their attorneys. In addition, the videoconference could be terminated at any time, and a copy would have to be kept until appeals were exhausted.

Other provisions. Several of the changes in CSSB 679 would clarify the 2003 revisions to competency procedures or make changes to address problems experienced as the law was implemented. For example, the bill more accurately would describe the initial action before a court to determine competency as a trial, rather than a hearing. The bill would allow courts to dismiss pending charges against a defendant on the motion of a prosecutor because there should be no case if a prosecutor decides not to go forward. The bill also would clear up confusion by specifying that there could be only one extension of a commitment per offense.

CSSB 679 would establish a limit of 72 hours on the time that a defendant could be held in a jail after being transferred from a treatment facility to help ensure that defendants were not deprived of care and treatment any longer than necessary.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

Among the changes made by the committee substitute are the addition of the specific requirements that would have to be met for a videoconference hearing.