

SUBJECT: Revising procedures for sending defendants for competency restoration

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Collier, K. Bell, J. González, Murr, Pacheco

0 nays

4 absent — Zedler, Hunter, P. King, Moody

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure arts. 46B and 46C establish the procedures followed when a criminal defendant charged with certain violent crimes is incompetent to stand trial or not guilty by reason of insanity.

Art. 46B.073(c) requires courts to commit defendants charged with certain violent offenses or an offense involving a deadly weapon who need their competency restored to the maximum security unit of any facility designated by the Department of State Health Services, to a federal agency operating a mental hospital, or to a Department of Veterans Affairs hospital. Under art. 46B.105, unless a defendant is determined to be manifestly dangerous by a review board, the defendant must be transferred from a maximum security unit to another facility within 60 days of arrival. Art. 46C.260 establishes similar procedures for certain defendants found not guilty by reason of insanity.

Some have noted that current law uses the offense, rather than a clinical determination, to determine where a defendant will be sent for competency restoration, resulting in many defendants who do not meet the standard for dangerousness being sent to the North Texas State Hospital in Vernon. They note that this exacerbates waiting lists for those in county jails waiting to transfer to facilities for competency restoration.

DIGEST:

CSSB 562 would revise procedures used when defendants charged with certain violent crimes are incompetent to stand trial or found not guilty by reason of insanity. Instead of having to commit these defendants to the maximum security unit of certain facilities, courts would be required to commit them to a facility designated by the Health and Human Services Commission (HHSC). The bill would allow HHSC to designate only a facility operated by the commission or under a contract with the commission.

The bill would allow defendants committed by HHSC to a maximum security unit for competency restoration to be assessed, at any time before the defendant was restored to competency, by a review board to determine if the defendant was manifestly dangerous. If the board determined the defendant was not manifestly dangerous, HHSC would be required to transfer the defendant to a non-maximum security facility.

The bill would revise the procedure followed when a defendant having competency restored was being released from a facility or treatment if the court or prosecutor had notified the facility or treatment provider that criminal charges were still pending against the defendant. Instead of courts being authorized to hold a hearing to determine if the release was appropriate, courts would be required to hold a hearing. Courts would be given new authorization to hold such hearings in the absence of notice from the facility or treatment provider about intent to release the defendant.

For those committed to facilities after being found not guilty by reason of insanity, HHSC would determine to which facility the person would be committed. Those who were not determined to be manifestly dangerous would be transferred to a facility designated by HHSC.

The bill would revise certain definitions related to this process, including adding a person with an intellectual disability to the definition of forensic patient. The bill would make other changes, including requiring counties to include information on mental health records, mental health screening reports, or similar information when transferring defendants to the Texas

Department of Criminal Justice.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019. It would apply to proceedings that began on or after the bill's effective date.