

## **BILL ANALYSIS**

Senate Research Center  
76R3034 PEP-F

S.B. 421  
By: Shapiro  
Criminal Justice  
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As Filed

### **DIGEST**

Currently, some of the language contained in Chapter 46, Code of Criminal Procedure, is archaic and inconsistent with current mental health terminology. Examinations to establish mental illness and mental retardation under this section require revision to be in accordance with the health provisions of the Code of Criminal Procedures guidelines. The 1980 Supreme Court case, Vitek v. Jones, ruled that it is unconstitutional to transfer prison inmates to state mental hospitals, but a contradictory provision in the current law remains.

This bill would alter the legal terms in the current statute to read in the preferred, “people first” language; require a mental health examiner find that the defendant in a criminal case to meet the criteria set forth in the Mental Health provisions of the Code of Criminal Procedure when establishing mental illness or mental retardation; requires a mental health examiner to be a physician or licensed psychologist; requires a person with mental illness who is found to be incompetent to stand trial and has committed a misdemeanor to be committed to a residential care facility; and repeals Section 46.01, Code of Criminal Procedure (Mental Illness After Conviction).

### **PURPOSE**

As proposed, S.B. 421 establishes criteria to be used in the determination of mental competency in the prosecution of criminal cases and to the disposition of defendants found to be incompetent before trial or after conviction.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 46.02, Code of Criminal Procedure, by redesignating Section 1 as Section 1A and adding Section 1, as follows:

Sec. 1. DEFINITION. Defines “residential care facility.” Makes conforming change.

SECTION 2. Amends Sections 3(d) and (e), Article 46.02, Code of Criminal Procedure, to require an examiner to submit a report concerning whether the defendant is a person with mental illness requiring court-ordered inpatient mental health services under Title 7C, Health and Safety Code, or is a person with mental retardation requiring commitment to a residential care facility under Title 7D, Health and Safety Code. Deletes a provision regarding criteria for mental illness. Deletes a provision defining retardation under the Mentally Retarded Persons Act of 1977. Requires a physician to submit a Certificate of Medical Examination for Mental Illness if a determination is made that the defendant is a person with mental illness, rather than mentally ill. Requires a physician or licensed psychologist to submit an affidavit, if a determination is made in accordance with standards in Section 593.005, Health and Safety Code, that the defendant is a person with mental retardation, rather than a mentally retarded person. Deletes a provision designating the approved facilities for the examination. Makes nonsubstantive changes.

SECTION 3. Amends Sections 4(a), (h), and (i), Article 46.02, Code of Criminal Procedure, to require the court to proceed under SECTION 7 or release the defendant, if the court determines the defendant is a person with a mental illness or retardation, rather than mentally ill or mentally retarded person. Deletes provisions requiring inpatient mental health. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Sections 5(a), (b), and (i), Article 46.02, Code of Criminal Procedure, to require the court to commit a defendant, determined incompetent to stand trial solely for a felony because of mental illness or retardation, to a maximum security unit. Requires the court to enter an order to commit a defendant, who has been determined incompetent to stand trial for a misdemeanor due to mental retardation with no probability of attaining competency, to a residential care facility designated by the Commissioner of Mental Health and Mental Retardation for no more than 18 months. Prohibits a person from being committed to a residential care, rather than a mental retardation facility, without medical or psychiatric testimony. Requires a Certificate of Medical Examination for Mental Illness to be filed with the court, if the head of the facility determines the defendant meets the criteria for court-ordered inpatient mental health services, under Title 7C, Health and Safety Code. Requires the head of a facility to submit an affidavit if the head of the facility determines the defendant to be a person with mental retardation, under the guides defined in Section 591.003, Health and Safety Code. Makes conforming changes.

SECTION 5. Amends Section 6, Article 46.02, Code of Criminal Procedure, to set forth requirements for trial proceedings. Requires the court to impanel a jury to determine if the defendant is a person with mental retardation or competent to stand trial, if there is on file with the court a determination of mental retardation in accordance with Section 593.005, Health and Safety Code. Deletes a provision specifying an Affidavit of Examination of Alleged Mentally Retarded Person to meet the requirement to impanel a jury to determine competency to stand trial. Authorizes a local mental health and mental retardation authority, rather than a diagnostic center, to conduct the examination. Provides that proceedings for commitment to a residential care facility are governed by Title 7D, Health and Safety Code, to the extent that the subtitle applies and does not conflict with this article. Deletes text regarding applicable provisions. Requires the jury to state whether the defendant meets the criteria for commitment, if the jury determines the defendant to be a person with mental retardation. Provides that an application for mental health services to have the defendant declared as a person with a mental retardation, may not be required. Provides that provisions of Subtitles C and D, Title 7, Health and Human Code relating to notice of hearing do not apply. Requires appeals from criminal court proceedings under this section to be to the court of appeals as in the proceedings for court-ordered inpatient mental health services. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 7, Article 46.02, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 7. Amends Section 8, Article 46.02, Code of Criminal Procedure, to require notification of a discharge of a person with pending criminal charges, unless provided for in Subsection (c) of the section. Deletes a requirement for commitment to a maximum security unit. Deletes a provision for the maximum number of days a defendant is to be placed in a maximum security unit pending placement. Makes conforming and nonsubstantive changes.

SECTION 8. Repealer: Article 46.01, Code of Criminal Procedure (Mental Illness After Conviction).

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 1999.

SECTION 11. Emergency clause.