

SUBJECT: Defendants and offenders with mental impairments

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Nixon  
0 nays  
3 absent — Farrar, Keel, A. Reyna

WITNESSES: For — Susan Schaffer, The Arc of Texas; Roger Webb, Texas Planning Council for Developmental Disabilities; Christine Devall, The Mental Health Association in Texas; Mary Joe Magruder, Texas Planning Council for Developmental Disabilities and Disability Policy Consortium; Charles Locklin and Jackie Shannon, Texas Alliance for the Mentally Ill  
Against — None  
On — Dee Kifowit, Texas Council on Offenders with Mental Impairments

DIGEST: CSHB 1747 would set a 72-hour time limit within which a sheriff would have to notify a magistrate after receiving evidence or a statement that *may* establish reasonable cause to believe that a defendant has a mental illness or is a person with mental retardation. A defendant's behavior or a prior evaluation would have to be considered in deciding whether reasonable cause existed to believe the defendant had a mental illness or mental retardation. If reasonable cause existed, the magistrate would be required to order an examination of the defendant by a disinterested expert with experience or qualifications in mental health or mental retardation.  
  
CSHB 1747 would move from Art. 46.02 of the Code of Criminal Procedure to Art. 16.22 provisions outlining procedures for dealing with defendants who fail or refuse to submit to exams, handling defendants committed to the Texas Department of Mental Health and Mental Retardation (TDMHMR) facilities, and the handling of a report of a defendants' exam.

CSHB 1747 would add defendants with mental retardation to current requirements that certain non-violent offenders with mental illness be released on personal bond. Magistrates would have to require, unless good cause is shown why they should not, as a condition of release on personal bond that these offenders receive treatment if their mental illness or mental retardation was chronic or if their ability to function independently would continue to deteriorate if they were not treated.

The bill also would add defendants with mental retardation to current provisions that outline judges' authority in cases in which defendants with mental illness are placed on community supervision (probation).

CSHB 1747 would include directors of community supervision and corrections departments in the list of those that must adopt memorandums of understanding about a continuity of care program for offenders with mental impairments and that must operate that system in the criminal justice system.

The bill would alter the definition of those for whom information can be exchanged by the agencies that are responsible for developing the continuity of care plan for offenders with mental impairments. CSHB 1747 would allow information exchanges about "special needs offenders," who would be defined as convicted felons and persons placed on community supervision after being granted deferred adjudication.

The Texas Council on Offenders with Mental Impairments' (TCOMI) duties relating pilot projects for offenders who are not incarcerated would be expanded to include all offenders and would no longer exclude those who have committed a violent offense specified in Code of Criminal Procedure Art. 42.12, sec. 3g.

TCOMI would be required to conduct a study to determine how medical and psychological assessments are conducted in county jails. The study would have to include input from county governments and examine the numbers of assessments, the entities responsible for the assessments, processes of sharing the information, and costs and benefits of the assessments. The study would have to be submitted to the Legislature no later than February 1, 1999.

CSHB 1747 would change the designation of officers who may receive certification as a “special officer for mental health assignment” to “special officer for offenders with mental impairments” and would expand the list of persons eligible to be certified. The term “other peace officer” would be added to the current authorization for sheriffs, sheriff's deputies, constables and justices of the peace and authorization of municipal police officers removed. The officers’ training would have to be in mental impairments instead of the current requirement that it be in mental health issues.

The bill would take effect September 1, 1997.

**SUPPORTERS  
SAY:**

CSHB 1747 is needed needed to refine current law on offenders with mental impairments and to include offenders with mental retardation in the laws. It is only fair that offenders with mental retardation be treated on par with those who are mentally ill. The bill is a result of an interim study by the Joint Committee on Criminal Justice and People with Mental Disabilities.

Setting a 72-hour time limit for sheriffs to notify magistrates about persons who may have a mental illness or mental retardation would ensure that these persons are identified in a timely manner and do not languish in jail awaiting an exam. The 72-hour limit is reasonable and would not burden sheriffs. Moving provisions concerning examining defendants for mental illness and mental retardation from one part of the code to another would place the provisions with other statutes dealing with the same topic.

It is only fair to add defendants with mental retardation to current statutes that require certain non-violent offenders to be released on personal bond, subject to numerous conditions. CSHB 1747 would require, instead of allow, judges to require these defendants to submit to treatment. This would ensure that these defendants are not released unsupervised on personal bond. This requirement would not restrict judges' authority because the bill would allow judges to bypass the requirement if good cause was shown for not requiring treatment.

CSHB 1747 also would include offenders with mental retardation in provisions that outline judges' authority in cases in which persons are placed on community supervision. This would help ensure a full range of options when a mentally retarded defendant was placed on probation.

Including community supervision and corrections departments in memorandums of understanding about a continuity of care program for offenders with mental impairments would ensure that this link in the criminal justice system is included in planning and treatment efforts.

The bill would allow the Council on Offenders with Mental Impairments to include all offenders in their pilot programs. Similarly, the bill would expand current authority for information to be exchanged by agencies to include offenders who have been given deferred adjudication. These changes would help ensure full information is available and that offenders — no matter what their offense or status — were included in available programs.

A study of the assessments done in county jails of offenders with mental impairments would help identify the numbers and processes used for these assessments. This could help reduce the number of assessments done, saving money for local entities and for the state.

Changes in the statute authorizing the special deputy program would allow any peace officer to be certified in the program and expand their training and name to include dealing with offenders who are mentally retarded. Removing municipal police officers from the list of those who can be certified would not eliminate them from the program because they would fall under the broader definition authorizing other peace officers.

**OPPONENTS  
SAY:**

Some of CSHB 1747's provisions could be overly broad and other could restrict sheriffs' and judges' authority and discretion. For example, CSHB 1747 would broaden statutes concerning offenders and defendants with mental illness to include persons with mental retardation. This expansion could be premature without a reliable measure of how many persons fit this description.

Setting a time limit for sheriffs to notify magistrates that a person may have a mental illness or mental retardation could overly restrict the operations of local sheriffs.

Judges' discretion to release persons on personal bond should not be further

eroded by expanding current provisions that require release in some circumstances to include persons with mental retardation. In addition, judges should retain complete discretion in deciding who they require to attend treatment as a condition of release and should not have to show good cause if they do not want to require treatment.

Expanding authority for information exchanges to include persons put on community supervision as part of deferred adjudication could be unfair to these persons, who have not been judged guilty and may want to keep information about themselves from being exchanged.

Programs of the Texas Council on Offenders with Mental Impairments should not be expanded to include all offenders. They should continue to be restricted to non-violent offenders, and violent offenders should be dealt with differently.

NOTES:

Among the changes made by the committee substitute were requiring TCOMI to conduct a study of the medical and psychological assessments done in county jails and requiring that a defendant's behavior or the result of a prior exam indicating a need for referral for mental health or mental retardation assessment be considered when determining whether reasonable cause exists to believe that a defendant has a mental illness or mental retardation.

The companion bill, SB 1212 by Moncrief, has been referred to the Senate Criminal Justice Committee.