

SUBJECT: Procedures used when defendant acquitted under insanity defense

COMMITTEE: Criminal Jurisprudence — favorable without amendment

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

SENATE VOTE: On final passage, May 5 — 29-0

WITNESSES: For — Denise Brady, Mental Health Association in Texas; Kevin Keating, Harris County District Attorney’s Office; Jane Starnes, Williamson County District Attorney
Against — None
On — Chris Lopez, Department of State Health Services

BACKGROUND: Under Penal Code, sec. 8.01, it is an affirmative defense to prosecution that, at the time of the conduct charged as a crime, the defendant, as a result of severe mental disease or defect, did not know that his conduct was wrong. Code of Criminal Procedure, ch. 46.03 details the procedures for raising the insanity defense and for what occurs upon a finding of not guilty by reason of insanity. Jurors may not be informed of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

After a defendant is found not guilty by reason of insanity, courts determine whether the conduct committed by a defendant involved an act, attempt, or threat of serious bodily injury. If not, courts are required to transfer defendants to the appropriate court for potential civil commitment proceedings. Civil commitment proceedings can result in inpatient or outpatient services for the defendant.

However, if the conduct did involve an act, attempt, or threat of serious

bodily injury, the criminal court may retain its jurisdiction in the case or transfer the defendant to the appropriate court for civil commitment proceedings, upon consent by the civil court. If the criminal court retains jurisdiction, the person must be committed to the maximum security unit of a state mental health or mental retardation facility. A hearing must be held to determine if the person meets the criteria for involuntary commitment. If the person does not meet the criteria, the person must be released.

If the person meets the criteria for involuntary commitment, courts are required to commit the person to a facility designated by the Department of State Health Services (DSHS) for up to 90 days, with subsequent extensions allowed. The persons can be ordered to participate in outpatient or inpatient supervision and only can be discharged by a court order. If a director of a facility determines that a person no longer meets the criteria for involuntary commitment or that treatment and care could be provided on an outpatient basis, the director must notify the court. A court can order the person's release or hold a hearing on the matter under the Health and Safety Code or Mentally Retarded Persons Act.

Persons acquitted by reason of insanity cannot be committed to a mental hospital or other inpatient or residential facility for a cumulative period of time that exceeds the maximum term allowed for a prison term for the crime. After that term, acquitted persons can be confined only under civil commitment proceedings.

DIGEST:

SB 837 would reorganize current provisions on the insanity defense and procedures in not guilty by reason of insanity cases under the Code of Criminal Procedure. It would add several new provisions to the code, including:

- changing the findings used to determine if an acquitted person would continue under the jurisdiction of the criminal court or be transferred to the civil system;
- detailing when inpatient and residential care could be continued after a person had been stabilized;
- detailing the use of outpatient and community-based treatment and supervision;
- establishing the qualification of experts used to evaluate persons raising the insanity defense; and
- requiring the collection of information about not guilty by reason of insanity cases.

SB 837 would take effect September 1, 2005, and would apply only to offenses committed on or after that date.

Determinations after not guilty by reason of insanity. SB 837 would replace the current requirement that a court make a determination after a finding of not guilty by reason of insanity of whether the conduct involved an act, attempt, or threat of serious bodily injury to another person. The bill instead would require that after a finding of not guilty by reason of insanity courts determine whether the offense involved conduct that:

- caused serious bodily injury to another person;
- placed another person in imminent danger of serious bodily injury;
- or
- consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

If the court found that the conduct did not involve these elements, it would have to proceed under current law upon a finding that conduct did not involve an act, attempt, or threat of serious bodily.

Continuing inpatient or residential care. SB 837 would detail when inpatient treatment or residential care could be continued after an acquitted person had been stabilized and rendered no longer likely to cause serious harm. Inpatient treatment or residential care could be continued only if:

- the person likely would cause serious harm to another if the person failed to follow an ordered treatment regimen;
- the person likely would fail to comply with court-ordered outpatient or community-based treatment as determined by specific factors;
- and
- a needed regimen of outpatient or community-based treatment was not available to a person ordered to receive outpatient or community-based treatment and supervision.

Outpatient or community-based treatment and supervision. SB 837 specifically would authorize courts to order persons acquitted by reason of insanity to participate in outpatient or community-based treatment and supervision. The bill would require that a court's primary concern in deciding between outpatient treatment versus residential treatment be the protection of society. An order for outpatient or community-based

treatment could include a regimen of medical, psychiatric, or psychological care or treatment and could include treatment with psychoactive medication.

The court would have to identify the person responsible for administering outpatient or community-based treatment and supervision. Supervision could be provided by the administrator of a community center that provided mental health or mental retardation services, or a court could order an acquitted person to participate in a supervision program funded by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). SB 837 would detail the responsibilities of persons monitoring outpatient and community-based treatment and require them to notify the court and the prosecutor if the acquitted person failed to comply with the regimen and became likely to cause serious harm to another.

SB 837 would detail the procedures for courts to modify or revoke outpatient or community-based treatment and supervision, including procedures for taking persons into custody pending a hearing to modify or revoke treatment or supervision.

SB 837 would continue to cap the amount of time that persons acquitted by reason of insanity could be committed to a facility at the maximum term allowed for the offense but would include time spent in outpatient or community-based treatment and supervision in the cap. Upon expiration of that term, a person could be confined or ordered to receive treatment only under civil commitment proceedings.

Qualifications of experts. SB 837 would establish qualifications for a psychiatrist or psychologist appointed by a court as an expert to examine a defendant who had raised the insanity defense. The qualifications would include having the appropriate licenses and appropriate certifications, experience, or training. Experts also would have to meet a continuing education requirement. SB 837 would allow courts to appoint experts who did not meet the bill's requirements under limited, specified circumstances.

Collection of information about findings of not guilty by reason of insanity. SB 837 would require the executive commissioner of the Health and Human Services Commission to require DSHS to collect information and maintain records concerning persons found not guilty by reason of

insanity. Information would have to include names and addresses of facilities to which persons were committed, the length of a commitment, and post-release outcomes. DSHS would have to file an annual report on the information with the Legislature.

Other provisions. SB 837 would make other changes, including:

- authorizing the dismissal of an indictment on the grounds that the defendant was insane and an entry of the judgment, if all parties agreed and the judge consented;
- detailing procedures used during appeals of not guilty by reason of insanity cases; and
- detailing procedures that a court would have to follow upon receiving, from an acquitted person, the head of a facility where a person was committed, a person responsible for outpatient or community-based treatment, or a prosecutor, a request that a court discharge a person from inpatient or outpatient treatment.

**SUPPORTERS
SAY:**

SB 837 would make the laws governing use of the insanity defense easier for attorneys, courts, and mental health professionals to apply by reorganizing current provisions and moving provisions from the Health and Safety Code that apply in these cases into the Code of Criminal Procedure. SB 837 would not change the substance of what must be proved for a person to be acquitted under the insanity defense.

The bill also would help improve public safety and oversight of the treatment of persons acquitted under the insanity defense by establishing more specific criteria for determining what would happen following a verdict of not guilty by reason of insanity and procedures and standards for outpatient and community-based treatment and supervision. It would establish statewide standards for experts examining persons raising the defense to ensure that all persons receive d evaluations by competent experts. The bill also would require DSHS to gather information about these cases.

The focus of SB 837 is on the procedures involved in not guilty by reason of insanity cases. The bill would not be the appropriate vehicle with which to make substantive changes to the insanity defense itself or the information given to jurors in these cases.

Determinations after a verdict of not guilty by reason of insanity and

continuing inpatient or residential care. SB 837 would establish clear, specific findings for courts to make after verdicts of not guilty by reason of insanity to ensure that acquitted persons were funneled into the civil or criminal court system, as appropriate. The determination that must be made under current law is vague and can result in some persons being placed under an inappropriate court system, which leads to variations in the treatment of defendants. The determinations in SB 837 would help better identify acquitted persons who are dangerous or violent.

The bill also would enact specific criteria for when to continue inpatient treatment and residential care after a person had been stabilized and no longer was likely to cause serious harm. These criteria would help protect the public by ensuring that inpatient care continued when necessary to prevent the release of a dangerous person, for example, or if community treatment were not available. The criteria also would ensure the release of persons who better would be served in the community. Placing these standards in the statute would make treatment of acquitted persons more uniform throughout the state.

Outpatient or community-based treatment and supervision. While current law allows for some outpatient treatment for acquitted persons, the procedures and standards are imported from the mental health laws and are not necessarily tailored for situations involving persons accused of crimes. SB 837 would tailor these provisions to recognize the unique circumstances involved in these cases and would help fill gaps in current law that have resulted in some acquitted persons committing other violent or serious crimes following release from custody. The bill would be more specific about the responsibilities of those who have oversight of persons in outpatient care, which could help identify persons who might have stopped their treatment and could become dangerous.

The bill would recognize that cases of persons acquitted by reason of insanity are different from those of persons who have not been involved with crimes by requiring that courts consider the protection of society when considering outpatient treatment. The public safety standard is appropriate and reasonable given that an acquitted person under consideration for outpatient treatment already has been determined to have been involved in serious crime.

Because current law is somewhat unclear about what judges can order as part of outpatient treatment, SB 837 would specify what types of treatment

acquitted persons could be ordered to participate in as part of outpatient treatment. The bill specifically would allow the outpatient treatment plans of acquitted persons to include psychoactive medication because currently this can be done only in limited circumstances and medication can be an important tool in keeping persons stabilized and the public safe. The stepped-up monitoring contained in SB 837 could help identify persons who go off their medication, for example, and help those persons resume their outpatient treatment plan or place them into inpatient treatment before they committed another crime.

Most importantly, the bill would expand the outpatient services available to acquitted persons to include those offered by TCOOMMI. This office provides services such as intensive case management and medication monitoring that are more tailored to those in the mental health system than to the needs of someone involved in the criminal justice system.

Qualifications of experts. SB 837 would set standards for the qualifications of experts who examine defendants raising the insanity defense. A lack of standards in current law can result in discrepancies in the qualification of experts across the state. SB 837 would help ensure that all defendants receive equal treatment and were evaluated by qualified experts. The qualifications in SB 837 would track existing standards applied to experts examining defendants to determine whether they are competent to stand trial. These standards have not led to difficulties in finding qualified experts for competency hearings.

Collection of information about not guilty by reason of insanity. Because of a lack of comprehensive data on about not guilty by reason of insanity cases, SB 837 would require that DSHS begin collecting data on these cases. This would give the Legislature and others more information when considering future changes to the insanity defense laws. The requirements in SB 837 should easily be performed by DSHS and could be as simple as entering information about each case into a database.

Other provisions. Many of the other provisions in the bill, such as those detailing procedures for modification and revocation of outpatient treatment and for appeals, would not change the actions that are allowed under current law but would detail more specifically the procedures so that they were clearer to all entities and could be enforced more uniformly.

OPPONENTS

Outpatient or community-based treatment and supervision. SB 837

SAY: could shift the focus of treatment for persons found not guilty by reason of insanity too much toward criminal justice and away from an emphasis on the mental health of acquitted persons. For example, the bill would require that a court's primary concern when considering outpatient care be the protection of society. It would be better to require the court to balance the protection of society with other factors.

The provisions in SB 837 that would allow medication to be a factor in an outpatient release program could be considered coercive. Currently, persons can be given medication forcibly only under very limited circumstances. SB 837 could create a situation in which a person was given a choice between remaining in a facility or being released only upon agreeing to take medication. Forcing persons to take medications would not be an effective means of ensuring compliance.

Qualifications of experts. SB 837's requirements for the qualification of experts to investigate claims of insanity could make it more difficult for courts to find experts and could increase costs, especially in smaller counties that do not have large pools of medical specialists.

OTHER
OPPONENTS
SAY:

SB 837 would not go far enough in revising the insanity defense. The defense itself should be modified to include situations in which a person might have known that his conduct was wrong but could not appreciate that information, and jurors should be given information about the consequences of a verdict of not guilty by reason of insanity.