

SUBJECT: Procedures for handling, treatment of defendants incompetent to stand trial

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — McReynolds, Madden, Hodge, Marquez, S. Miller, Ortiz,
Sheffield

0 nays

4 absent — Dutton, England, Kolkhorst, Martinez

WITNESSES: *(On original version:)*

For — Brent Carr, County Criminal Court 9, Tarrant County; Lin Morrisett, Tarrant County Probate Court #2; *(Registered, but did not testify: Donald Lee, Texas Conference of Urban Counties; Mark Mendez, Tarrant County; Cindy Segovia, Bexar County Commissioners Court)*

Against — *(Registered, but did not testify: Deborah Fowler and Rebecca Lightsey, Texas Appleseed)*

On — Lee Spiller, Citizens Commission on Human Rights; *(Registered, but did not testify: Lauren Dewitt, Citizens Commission on Human Rights)*

DIGEST: **Release of mentally ill or mentally retarded defendant from custody.**
CSHB 3907 would require sheriffs releasing from custody defendants with mental illness or mental retardation to notify the local mental health or mental retardation authority of the impending release and, if possible, to release the defendant during normal business hours. This would not apply to releases upon final disposition of criminal proceedings.

If defendants were being released from custody because they had reached the maximum period they could be committed to a facility or treated while trying to regain competency, the court would be required to consider whether the defendant could benefit from continued treatment. If courts found that to be true, they would have to include in the release order a requirement that sheriffs arrange for the release to occur during normal business hours and that they notify the local mental health or mental retardation authority.

Competency restoration in correctional facility. CSHB 3907 would allow judges to order care or treatment for defendants found incompetent to stand trial who were in a correctional facility pending release on bail and who would be treated in an outpatient program.

Filing of applications for administering medications. CSHB 3907 would authorize physicians treating patients who had been ordered to receive inpatient mental health services after having been determined incompetent to stand trial to file an application in the criminal court in which the matter was pending for the administration of psychoactive medication. This would be an alternative to the current authorization to file such a request in the court with probate jurisdiction. Under CSHB 3907, the request could be filed regardless of the patient's refusal if:

- the physician believed that the patient lacked the capacity to decide about taking the medication;
- the physician determined that the medication was the proper course of treatment; and
- the patient refused to take the medication.

These applications would be subject to current law requirements and procedures in the Code of Criminal Procedure sec. 46B.086, governing court-ordered medications, with some exceptions.

CSHB 3907 would expand the authority to hold a hearing to determine whether the administration of psychoactive medications would be ordered to include the judge of the criminal court who ordered the patient to receive mental health services under the provisions in the Code of Criminal Procedure.

**SUPPORTERS
SAY:**

CSHB 3907 would address some practical problems that have arisen when certain mentally ill or mentally retarded defendants are released from custody and with procedures used to determine treatment for some defendants ruled incompetent to stand trial. The bill would not diminish any procedural protections or rights that these defendants have under current law.

Concerns about a forced medication procedure in the original bill have been addressed by eliminating that provision in the committee substitute.

Release of mentally ill or mentally retarded defendant from custody.

Releasing mentally ill or mentally retarded defendants from custody during the evening or night hours can result in an unsafe situation for them. They are vulnerable to being preyed upon or can have trouble accessing help and services. By requiring release during the day, CSHB 3907 would increase the physical safety of mentally ill or mentally retarded defendants. Requiring notification of the release to local mental health or mental retardation authority would increase the likelihood that the defendants would receive treatment upon release.

Competency restoration in correctional facility. CSHB 3907 would address situations in which defendants were waiting to be released on bail from a correctional facility and needed treatment but were not receiving it because they were going to outpatient treatment once released. CSHB 3907 would allow their treatment to begin while they were in custody so that no time was lost in treating their conditions and they did not deteriorate.

Filing of applications for medications and hearings on requests. CSHB 3907 would establish an alternative route for requests for forced medication for defendants ruled incompetent who had been ordered to receive inpatient treatment services. CSHB 3907 would allow these requests to go to the criminal court instead of the probate court and would eliminate some steps that were not applicable under those circumstances. Requests still would go before a court, and defendants would not lose any of the rights, privileges, or due process protections they had under current law.

CSHB 3907 would allow, but not require, hearings on authorizing medications for persons ruled incompetent to stand trial to be held in the criminal court in which the case was handled. Transferring cases to probate court, as required under current law, can delay the proceedings at least two days which can result in a deterioration of a defendant's condition. The criminal court is the one with the most knowledge about a case and is in the best position to make a timely, appropriate decision about a defendant.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute eliminated from the original bill a provision that would have established a procedure for directors of correctional facilities or outpatient facilities to ask for and administer medications by force to some defendants. The committee substitute also eliminated a provision in the original bill that would have allowed outpatient treatment programs in correctional facilities operated by local mental health authorities or mental retardation authorities to be appropriate locations for competency restoration for defendants determined incompetent to stand trial.