SUBJECT: Early identification of defendants who have mental illness or retardation

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vo

0 nays

2 absent — Hodge, Vaught

SENATE VOTE: On final passage, April 23 — 30-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Under Code of Criminal Procedure, art. 16.33, a sheriff who has received evidence or a statement that a defendant in the sheriff's custody has mental illness or mental retardation must inform the local magistrate, who must arrange for the defendant to receive an evaluation by the local mental-health authority or mental-retardation authority or another qualified expert. The magistrate is not required to order an examination if the defendant had received such an evaluation in the past year.

A written examination report must be submitted to the magistrate not later than 30 days after an examination was ordered in a felony case and not later than 10 days after an examination was ordered in a misdemeanor case, and the magistrate must provide copies of the report to the defense counsel and the prosecutor. The report must include a description of the procedures used in the examination and the examiner's observations and findings pertaining to:

- whether the defendant has a mental illness or mental retardation;
- whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination; and
- recommended treatment.

After a court receives the examining expert's report the court may resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond. The court also may resume or initiate competency proceedings, as required, or other proceedings related to the defendant's receipt of outpatient mental health.

Pending an evaluation of the defendant, a court may:

- release a mentally ill or mentally retarded defendant from custody on personal or surety bond; or
- order an examination regarding the defendant's competency to stand trial.

DIGEST:

SB 1557 would amend Code of Criminal Procedure, art. 16.22 to require that a sheriff, not later than 72 hours after receiving credible information that a defendant in the sheriff's custody had a mental illness or mental retardation, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, provide written or electronic notice of that information to the magistrate.

A magistrate would have to order a local mental health or mental retardation authority or expert to:

- collect information regarding whether the defendant had a mental illness or mental retardation, including information obtained from any previous assessment, and
- provide to the magistrate a written assessment of the information collected.

A court would be allowed consider the written assessment during the punishment phase, as part of the presentence investigation report, or in connection with conditions of placement on community supervision, including deferred adjudication community supervision.

SB 1557 would allow a court before, during, or after the collection of information on the defendant to release a mentally ill or mentally retarded defendant from custody on personal or surety bonds or order an examination regarding the defendant's competency to stand trial.

The bill would take effect on September 1, 2009.

SUPPORTERS SAY:

SB 1557 would increase the type of information officials could use to determine a defendant's mental-health or intellectual-disability status and would help to ensure that the officials who required this information actually received it. The bill would provide mandatory language requiring a sheriff to notify a magistrate of a defendant's possible mental impairment in a written or electronic format. While this requirement exists under current law, there are no specific directions for achieving this transfer of information. Finally, SB 1557 would clarify that the assessment would have to be written and submitted to the court for review. The bill stems from a joint interim study by the Senate Criminal Justice and State Affairs committees.

A defendant's privacy rights as they exist under current law would not change. Information now can be exchanged between courts and criminal justice officials without a release for all offenders with mental illness or mental retardation. This sharing of information allows for more effective treatment and tracking of individuals within the judicial and criminal-justice systems. SB 1557 would improve information-gathering and sharing between officials who needed to be made aware of a defendant's mental health or abilities.

SB 1557 would improve the use of assessments by requiring that they be written and delivered to officials who needed to know the contents in order to make informed decisions about a defendant and that defendant's rights and treatment options. SB 1557 would require that any assessment used must have been conducted within the past 12 months. These assessments would provide recent diagnostic information that could assist jails and courts in understanding any previous diagnosis or treatment that the defendant received. Further, an assessment should be allowed to include relevant information, no matter how old, as a medical history could be critical to an expert's understanding of a defendant's current mental health and abilities.

SB 1557 would allow a court to have access to these assessments because they are critical to a court's determination of a defendant's competency to stand trial and eligibility for and appropriateness of various treatment options and opportunities. It would be better to grant a court appropriate access to this data, so that courts could do a better job of referring defendants to appropriate outpatient treatment options. A court should not have to wait on a motion from a party in order to be made aware of an

assessment and its contents. Courts cannot make use of appropriate treatment options if they are not aware of a defendant's mental illness or mental retardation.

OPPONENTS SAY:

SB 1557 would increase the type of information collected on the mental health and abilities of defendants without providing explicit privacy protections. This bill also would allow for the assessment to include information from any prior assessment of a defendant. A defendant should be evaluated on mental status at the moment. For instance, it would be appropriate to mention that a defendant would be fine as long as he or she was on a regimen of prescription medication. However, it would be inappropriate to mention an assessment that stemmed from criminal acts that occurred perhaps decades ago as a result of mental illness, as that information would not reflect accurately the defendant's current mental health. Compiling this potentially stale data for a judge's consideration might bias the judge's determination.

SB 1557 would expand the authority of a court to make use of mental assessments. It would be better for the information to be introduced into trial hearings by either the prosecutor or the defense attorney. These assessments should be introduced through the adversarial process, where a judge only would see this information if it was brought forward by a party that considered it relevant to the hearing.