

SUBJECT: Victim notification of release of defendant acquitted due to insanity

COMMITTEE: Corrections — favorable, without amendment

VOTE: 8 ayes — Madden, Allen, Cain, Hunter, Parker, Perry, White, Workman
0 nays
1 absent — Marquez

WITNESSES: For — Andria Brannon
Against — None
On — Joe Lovelace, Texas Council of Community Centers; Angie McCown, Texas Department of Criminal Justice; Ross Robinson, Department of State Health Services

BACKGROUND: Code of Criminal Procedure 46.03 4(d)(8) outlines the procedures for notifying crime victims when a court orders a person found not guilty of a crime by reason of insanity to be released on a discharge from a mental health commitment or treatment or released to outpatient mental health care. Court clerks must use victim impact statements or other information to give the name, address, and phone number of victims, guardians, and close relatives of the crime victims to the victim services division of the Texas Department of Criminal Justice (TDCJ). The division is required to notify the victims, guardians, or close relatives of the release.

DIGEST: HB 2124 would move responsibility for notifying crime victims when a person acquitted of a crime by reason of insanity was being released by a court on a discharge or to outpatient care. The responsibility to notify victims or victims' guardians or close relatives would move from TDCJ's victim services division to either the head of the facility where a person was committed or placed or to the director of a center administering outpatient treatment. Court clerks would have to give the victims' information to the head of the facility or director of the MHMR center.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS
SAY:

HB 2124 is necessary to streamline the state's system for notifying crime victims when someone found not guilty of a crime due to insanity is released by a court from a commitment to a state mental hospital or treatment or released to a community MHMR center. TDCJ currently is responsible for notifying victims of a person's release under these circumstances, but the agency does not have the proper tools to do this job. HB 2124 would solve this problem by moving the notification authority to a more appropriate entity.

Requiring TDCJ to notify victims in these cases does not work well because the person accused of the crime is never under TDCJ's custody. After persons are declared not guilty by reason of insanity, they enter the mental health system, not the prison system. TDCJ does not track these cases and has no way of knowing about the events in them.

In recent years, TDCJ has notified only five victims involved in three cases, and the system was awkward and inefficient. Courts do not routinely send victims' contact information to TDCJ. When the agency receives victims' information, it sometimes comes from a local prosecutor's victim assistance coordinator. TDCJ also does not routinely find out about courts' release decisions. In one case, TDCJ found out from a court clerk that a victim assistance coordinator had already notified the victim about a release. Streamlining this information flow could increase the number of victims being notified.

HB 2124 would move the notification responsibility to an entity closer to the release. While state hospitals and community MHMR facilities may not be directly involved with the court's action in these cases, they are involved in the release, which is the most relevant aspect of the case at the time the notification is needed. It would be more appropriate for the mental health entities providing care to provide notification than for the statewide criminal justice agency to do it.

Because of the small number of these cases, it would not be a burden for the heads of state hospitals and administrators of community MHMR centers to create a system to store victims' information and to track the court proceedings of persons found not guilty by reason of insanity. In

fiscal 2010, only about 38 of the 55 people discharged from a commitment to a state hospital after being found not guilty by reason of insanity might qualify for victim notification under HB 2124, and in some of those cases, victims might not have requested notification.

HB 2124 would require only that heads of hospitals and administrators of MHMR centers notify victims of a release. They would not be required or expected to provide more details, to answer victims' questions, or to refer victims to services. There is no reason that notifying victims of someone's release by a court should violate confidentiality provisions or any other obligation of state hospitals or community MHMR facilities.

OPPONENTS
SAY:

The heads of state psychiatric hospitals and the administrators of community MHMR centers would be inappropriate entities to have the responsibility for notifying victims about the release of someone found not guilty by reason of insanity. These entities are not involved with the crime, the trial, or the victims in these cases. In addition, when a person leaves a state hospital or MHMR center for a court to review the case, the hospitals and centers are not necessarily aware of a court's decision.

Heads of state hospitals and MHMR centers are not trained in victim services or the criminal justice system. They might not be able to answer victims' questions about access to services or about the judicial aspects of a case or to properly handle victims' reaction to news of someone's release. Victims might have an expectation that mental health officials give them information about a person's treatment.

It could be difficult for heads of state hospitals and for administrators to comply with HB 2124, given the confidentiality restrictions under which they work.

OTHER
OPPONENTS
SAY:

It might be best to move the responsibility for notifying victims of the release of persons found not guilty due to insanity to the courts or to the local prosecutors' victim assistance coordinator. This would place the responsibility at the local level and with the entity involved in the decision and with access to victims' information.