

SUBJECT: Jail-based competency restoration, diversion grants, identifying arrestees

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick,
Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

WITNESSES: For — Kathryn Lewis, Disability Rights Texas; Richard Morrison, Green Behavioral Health, Inc.; Gyl Switzer, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; William Mills and Dennis D. Wilson, Sheriffs' Association of Texas; Lee Johnson, Texas Council of Community Centers; (*Registered, but did not testify*: Guadalupe Gordon and Eileen Moxley, Arch Diocese of San Antonio; Matt Moore, Children's Health System of Texas; Linda Townsend, CHRISTUS Health; Reginald Smith, Communities for Recovery; Jim Allison, County Judges and Commissioners Association of Texas; Charles Reed, Dallas County Commissioners Court; Eric Woomer, Federation of Texas Psychiatry; Amanda Boudreault, League of Women Voters of Texas; Bill Kelly, Mayor's Office, City of House; Nelson Jarrin, Meadows Mental Health Policy Institute; Rebecca Fowler, Mental Health America of Greater Houston; Christine Yanas, Methodist Healthcare Ministries; Evy Munro, MIND MSGA UNTHSC; Eric Kunish, National Alliance on Mental Illness; Will Francis, National Association of Social Workers - Texas Chapter; Henry Trochesset, Ricky Scaman, Micah Harmon, and AJ Louderback, Sheriffs' Association of Texas; Mark Mendez, Tarrant County; Laura Nicholes and Rick Thompson, Texas Association of Counties; Anne Celeste Merlo, Texas Catholic Network; Diana Fite, Texas College of Emergency Physicians; Donald Lee, Texas Conference of Urban Counties; Jan Friese, Texas Counseling Association; Carrie Kroll, Texas Hospital Association; Ruth Abrams, Lane Aiena, Steven Hays, Jerome Jeevarajan, G Sealy Massingill, Moez Mithani, Carolyn Parcels, Lee Ann Pearse, Sanjana Puri, Iqra Qureshi, Madelyn

Ricco, Michelle Romero, Anna Shamsnia, Zoe Tramel, and Callan Young, Texas Medical Association; Pruthali Kulkarni, TMA-MSS; Joseph Green, Travis County Commissioners Court; Aidan Utzman, United Ways of Texas; Woodrow Gossom, Wichita County; and 19 individuals)

Against — (*Registered, but did not testify*: Monica Ayres and Lee Spiller, Citizens Commission on Human Rights; and 16 individuals)

On — Tim Bray, Department of State Health Services, Health and Human Services Commission; David Slayton, Texas Judicial Council;
(*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Erin Foley and Sonja Gaines, Health and Human Services Commission)

BACKGROUND: Code of Criminal Procedure, art. 15.17 requires that arrestees go before a magistrate within 48 hours of being arrested to be informed of charges and of certain rights. Art. 16.22 requires a sheriff to notify magistrates within 72 hours if the sheriff has cause to believe that a person in custody has a mental illness or is a person with mental retardation. This can start a process of gathering and assessing information about the arrestee, including whether there is the potential that the defendant is incompetent to stand trial.

Code of Criminal Procedure, art. 17.032 establishes procedures for releasing on personal bond certain arrestees believed to have a mental illness or believed to be a person with mental retardation who was competent to stand trial. Magistrates must release those who qualify, unless good cause is shown to do otherwise. To qualify, arrestees may not be charged with or have a previous conviction for certain violent offenses. Arrestees also must be examined by a mental health expert. Magistrates must determine that appropriate community-based services are available and, unless good cause is shown to do otherwise, require treatment as a condition of release on personal bond if certain conditions are met.

Code of Criminal Procedure, chapter 46B establishes the state's standards and procedures for determining if a criminal defendant is incompetent to

stand trial.

DIGEST:

CSHB 12 would revise the process of gathering and assessing information about an arrestee who may have mental illness or an intellectual disability, amend statutes covering the release on personal bonds of certain mentally ill defendants, establish a statewide jail-based competency restoration program, and establish a program to give grants to local collaboratives to reduce recidivism, arrests, and incarceration of persons with mental illness and to reduce wait times for forensic commitment of persons with mental illness to a state hospital. The bill also would replace references to mental retardation with references to intellectual and developmental disability.

The bill would take effect September 1, 2017, and would apply only to defendants charged with an offense committed on or after that date.

Identification, screening of arrestees. CSHB 12 would place a reference to current proceedings used to identify defendants with mental illness or intellectual disabilities into the Code of Criminal Procedure, art. 15.17 provisions establishing magistrates' duties at initial hearings. Art. 15.17 would require that if magistrates were given notice of credible information that could establish reasonable cause to believe that a person before them had a mental illness or was a person with an intellectual disability, they would be required to start the proceedings.

The bill would shorten the time frame for sheriffs to provide notice to magistrates about having credible information that may cause them to believe that someone in their custody had a mental illness or was a person with an intellectual disability and would include municipal jailers under this requirement. The notice would have to be given within four hours, rather than 72 hours, after receiving the information. CSHB 12 would exclude from this process defendants accused of class C misdemeanors (maximum fine of \$500).

The timeframe for local mental health and local intellectual and developmental disability authorities to provide additional information to the magistrate after an assessment would be shortened to require

information within 72 hours for those held in custody and within 30 days for those released from custody, unless good cause was shown to do otherwise. Currently, information is required within 30 days after being ordered in felony cases and 10 days after orders issued in misdemeanor cases.

The bill would expand the places where courts could order defendants to submit to exams after a refusal to submit to the collection of information. Magistrates could order defendants to submit to exams at the jail or another place determined appropriate by a mental health or local intellectual and developmental disability authority, instead of only at a mental health facility. The maximum time that persons could be ordered to a facility to submit for this exam would be changed from 21 days to 48 hours.

The bill would expand the options that trial courts had after receiving the assessment of the person to include referring the defendant to one of the state's specialty courts, which include mental health courts. Courts currently are authorized to release defendants from custody on a personal or surety bond before, during, or after the collection of information, and CSHB 12 would authorize courts to place a condition on a bond in these situations to include a requirement that the person submit to an exam or an assessment.

Release on personal bond for certain defendants. CSHB 12 would amend the current directive to magistrates to release certain defendants, unless good cause was shown to do otherwise, on personal bond if certain conditions were met. The current requirement applies when magistrates have an expert's assessment concluding that a person has a mental illness or an intellectual disability and the defendants met other requirements relating to their offense, criminal history, and other factors.

The bill would make the current requirement to release certain defendants on personal bonds apply without regard to a standing order by a judge, a bond schedule, or other statutory provisions restricting courts. CSHB 12 would add to the list of conditions that must be met before a magistrate

may release these defendants on personal bonds. Magistrates would have to find that the release on personal bond would reasonably ensure the defendant's appearance in court and the safety of the community and the victim and could impose conditions on the bond to ensure these things. In making the finding, the magistrate would have to consider all the circumstances, a pretrial risk assessment, and information from the prosecutor and the defense.

The bill would amend the list of violent offenses that may disqualify these arrestees with mental illness or an intellectual disability from being released on personal bond. CSHB 12 would make the prohibition on assault offenses apply only to those whose assault charge or conviction involved family violence.

Jail-based competency restoration. CSHB 12 would establish a statewide jail-based competency restoration program.

For those charged with class B misdemeanors who have been determined incompetent to stand trial, courts would be required to commit them to a jail-based competency program, release them on bond and order them to participate in an outpatient restoration program, or, under certain conditions, commit them to a facility for an initial restoration period. The commitment to the facility could occur only if jail-based and outpatient competency restoration programs were not available.

Defendants charged with class B misdemeanors first would have to be released on bail and ordered to participate in an outpatient competency restoration program, if certain conditions were met. The release on bail would have to occur if a court determined that the defendant was not a danger to others and could be safely treated as an outpatient and if an appropriate program was available. The release would have to include an order to participate in an outpatient restoration program for up to 60 days and be subject to the court approving a comprehensive treatment plan.

Those charged with class A misdemeanors or higher also could be committed to a jail-based competency program or, as current law allows,

committed for an initial restoration period to a facility or, if certain conditions were met, released on bail.

Defendants could be committed to jail-based competency restoration programs only if the program provider determined that the defendant would begin receiving services within 72 hours of arriving.

The Health and Human Services Commission would be authorized to develop and implement the jail-based competency restoration program in any county that chose to participate. The bill would establish criteria for providers of the jail-based competency services and their programs, similar to the criteria in current law for the state's pilot program in this area. CSHB 12 would add criteria requiring that a program operated in a space separate from that used for the general population of the jail, ensure coordination of general health care, provide mental health and substance use disorder treatment, and supply clinically appropriate psychoactive medications when administering court-ordered medications as applicable and in accordance with other laws governing court-ordered medication.

Grant program to reduce recidivism, arrest, incarceration. The Health and Human Services Commission would be required to establish a program to give grants to county-based community collaboratives to:

- reduce recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and
- decrease the wait time for forensic commitment of persons with mental illness to a state hospital.

To receive a grant, community collaboratives would have to include a county, local mental health authority from the county, and each hospital district in the county. The collaboratives would have to provide matching funds from non-state sources that were at least equal to the grant.

For each request for grant funds, the commission would have to estimate the number of cases of serious mental illness in low-income households in the county included in the collaborative. Low-income households would

be defined to mean households with total income at or below 200 percent of the federal poverty guidelines. The estimate would have to be used to determine the amounts of grants per a formula in the bill.

CSHB 12 would establish acceptable uses for the grant funds, including the continuation of a mental health jail diversion program, the establishment or expansion of a program, the provision of certain types of treatment and services, the establishment of a rapid response team, and the provision of certain types of beds.

The bill would establish what collaboratives would have to include with petitions asking for grant funds and the deadlines for submitting petitions, awarding grants, and submitting reports on the effects of the grant money in achieving certain outcomes.

Competency, education services, trial priority. The bill would establish a statutory definition of competency restoration. Competency restoration would be defined as treatment or education for restoring people's ability to consult with their lawyer with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings.

Upon receiving notice from a facility or program provider that a defendant had attained competency, a court would have to order the person to receive education about competency services in a jail-based competency restoration program or an outpatient program. If such a defendant had been committed to a facility other than a jail-based facility for restoration, the court would send a copy of the order for education services to the facility where the person was committed and to other involved entities, including the sheriff. The facility would have 10 days to discharge a defendant into the care of the sheriff of the county where the court was located, and the sheriff would be required to transport the person to the jail-based or outpatient competency restoration program for the education services.

Sheriffs would be required to ensure that a defendant for whom they had

custody for transportation involving competency restoration was provided with the types and dosages of medication that had been prescribed to the defendant, unless directed otherwise by the treating physician.

The bill would establish a new priority for trial court dockets. Criminal trials involving defendants whose competency to stand trial had been restored would have to be given preference over other civil or criminal matters, except for trials involving victims younger than 14 years old.

Information, reporting. Magistrates would have to submit monthly reports to the Office of Court Administration on the number of assessments they received from experts determining competency to stand trial. The information provided to the magistrate would have to be on a new form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). Courts no longer would have to forward certain other competency-related reports to TCOOMMI.

The Office of Court Administration (OCA) would be required to provide courts information about best practices to address the needs of persons with mental illness in the court system. OCA also would be required to collect and report on information for fiscal 2018 about specialty courts and the outcomes of court participants who were persons with mental illness.

**SUPPORTERS
SAY:**

CSHB 12 would improve the screening process used for arrestees who may have mental illness or an intellectual disability and would create a jail-based competency restoration program to relieve pressure on state hospitals and to better serve defendants needing competency restored. It would create a statewide grant program to support local programs to divert appropriate individuals with mental illness or intellectual disabilities from jails and lessen their involvement in the criminal justice system. Many of the bill's provisions would implement recommendations from the House's Select Committee on Mental Health and the Texas Judicial Council's Mental Health Committee.

Identification, screening of arrestees. CSHB 12 would improve the

coordination of information among officials responsible for the early identification of arrestees with potential mental illness or intellectual disability. These improvements would diminish delays in the identification and treatment in these situations, leading to better outcomes.

The bill would accelerate the deadline for passing along initial information that there was cause to believe an arrestee was a person with mental illness or an intellectual disability to make sure that magistrates had all available information at the hearing held within 48 hours of an arrest. Armed with this notice, magistrates could begin the process of gathering further information and make informed decisions about handling the arrestee. The bill would include municipal jailers in this requirement to pass along notices to magistrates because in some cases jailers can be involved in the initial handling of arrestees. CSHB 12 would not require municipal jailers to perform any assessment or take on any new duties, but only to provide notices of information they received to magistrates. Having municipal jailers passing along these notices would make sure the process was followed for appropriate defendants without burdening the jailers.

Sheriffs and jailers would be able to meet the timelines in CSHB 12. To meet the requirements, officials just have to pass along whatever information they may have to magistrates, not perform any new duties. The early identification and appropriate handling of inmates with mental illness or intellectual disabilities would end up saving resources and help cases be resolved appropriately.

The bill would expand courts' options by allowing court-ordered exams to take place at the jail or another facility determined appropriate by local mental health authorities. By shortening the timeframes under which the exams had to occur and under which written assessments had to be given back to the courts, it also would ensure courts received information in a more timely way and arrestees did not languish in jail. The shorter timeframes would not burden those doing assessments. The bill would give courts additional options to ensure appropriate handling of defendants by allowing the referral of defendants to specialty courts after

receiving information from an assessment.

The bill would include the current duty of magistrates to conduct proceedings in these cases in the statute with provisions establishing the duties of magistrates during the initial hearings that must occur within 48 hours of an arrest. This would tie the two statutes together to help ensure the process took place but would not impose any new duties.

Release on personal bond for certain defendants. CSHB 12 would make sure courts used the current process and criteria to release eligible defendants with mental illness or intellectual disabilities on personal bond. Currently, some courts may not release these defendants but instead apply a bond schedule or standing order developed for all cases as guidelines for release without considering the provisions in current law. These defendants should be handled under the specific law carefully crafted to apply to them, and CSHB 12 would ensure that happened. The bill would protect public safety by requiring magistrates to make certain findings, including one about the safety of the community, before releasing someone on bond.

CSHB 12 also would remove assault from the list of offenses that can prohibit these releases on personal bond to keep the list focused on the most serious and violent crimes. However, the bill would make sure that when assault involved family violence or someone who could come in contact with the defendant again, release on personal bond would not be an option.

Jail-based competency restoration. CSHB 12 would establish a way for defendants to have their competency restored outside of state hospitals. Currently, most restorations occur in these facilities, which also are used by Texans with mental illness who are not involved in the criminal justice system. Criminal defendants can have long waits in jail for a bed at a state hospital, delaying competency restoration and the resolution of the criminal cases and straining local resources.

CSHB 12 would address this by creating a jail-based restoration program,

which would increase courts' options in ways that also would better serve these defendants. With the tiered system that would be established by the bill, courts could order restoration services through outpatient programs, a jail-based program, or the state hospitals.

The jail-based system would be especially useful for those accused of class B misdemeanors. While the maximum jail term for class B misdemeanors is 180 days, in some cases defendants can spend that amount of time waiting for a bed in a state hospital to have competency restored or waiting for a bed and participating in a restoration program. Some cases may have to be dismissed before competency is restored or the case resolved. This can mean that the defendant did not complete treatment and may cycle back through the criminal justice system. While in a state hospital, they may be removed from their community and support system and may be using a bed that might be better used for those accused of more serious crimes. By increasing options for restoring competency, CSHB 12 would allow these cases to be handled effectively and resolved sooner. Courts would continue to have the option of using commitment to a facility for restoration if appropriate.

The jail-based competency restoration programs that CSHB 12 would establish would be an appropriate setting to have competency restored. A program would have to be in a part of the jail that was separate from the general population and would have to meet other standards of care and treatment. Without this option, defendants could spend time in jail waiting for an open bed for restoration instead of starting the restoration process.

The bill would address another problem that can occur if defendants lose their competency after returning to jail due to being given different medications. This can mean another wait for a state hospital bed and a delay in treatment and proceedings. The bill would address this by making sheriffs responsible for ensuring defendants they are transporting were provided with the types and doses of prescribed medication.

CSHB 12 would not create any new standards for deciding who would be involved in competency restoration. The bill focuses on the process used

in these cases and could reduce confinements by allowing defendants to receive competency restoration sooner and in a less restrictive setting than the current law allows.

Grant program to reduce recidivism, arrest, incarceration. CSHB 12 would establish a statewide grant program for local collaboratives to divert offenders with mental illness from the criminal justice system. These program could reduce the number of persons in jails with mental illness and reduce wait times for those needing to have competency restored and could encompass a wide range of strategies including early intervention. The program would be based on a successful jail diversion pilot program operated by Harris County. Programs to divert appropriate individuals from local jails and lessen their involvement in the criminal justice system would be better for those with mental illness while easing pressure on resources and preserving them for the most serious cases.

These cooperatives would promote coordination among counties, local mental health agencies, service providers, and other entities. The bill would require matching funds by the cooperatives and allow them to develop their own programs to ensure programs were supported by local entities and tailored to local needs. CSHB 12 would set parameters and expectations on the programs that would be funded with the grants to make sure they were focused on the desired outcomes of reducing recidivism, the frequency of arrest, and incarceration.

The grant program in the bill would be statewide, instead of being targeted for specific counties because the issues being addressed are statewide. Both larger and smaller counties can have problems with resources, so the bill would spread the grant funds statewide and would take into account need by using the formula in the bill. Apportioning the money statewide would ensure that all Texans had access to help from the grant funds.

Competency, education services, trial priority. CSHB 12 would fill a gap in current law by establishing a statutory definition of competency restoration so all parties could be working under the same guidelines.

The bill would establish a process for those whose competency had been restored to receive education about competency and the criminal justice process in a more appropriate setting than often occurs under current law. Currently, these education services may take place in a medical environment where a person received competency restoration services. It would be more appropriate and cost effective for these defendants to be released from the facility and receive services in an outpatient or jail-based competency program.

The bill would support continuity of care for defendants whose competency had been restored by requiring certain sheriffs to ensure the same medications were provided, unless directed otherwise by a physician. This would help keep defendants competent and prevent them from returning to the competency-restoration process due to a change in their medication.

The bill would help address situations in which trial delays can negatively affect a defendant's competency by making these cases a priority for courts. Preventing defendants from cycling through the competency system would save time and money and lead to better outcomes for defendants as their cases would be resolved sooner.

Information, reporting. CSHB 12 would improve reporting and data gathering in cases involving defendants with mental illness and intellectual disabilities and competency restoration. Courts would have to report to OCA on the number of assessments of defendants so that their frequency and use of assessments statewide could be analyzed, and a uniform assessment form would be developed. The bill also would have OCA collect data from specialty courts about defendants with mental illness so that the effectiveness of these programs on factors such as recidivism could be analyzed and would require OCA to help courts by providing them with best practices to address the needs of persons with mental illness.

OPPONENTS

The shorter deadlines that would be established by CSHB 12 could strain

SAY: resources in some counties or with some entities assessing defendants. For example, it could be difficult to get the initial notice that someone may have mental illness or an intellectual disability to a magistrate within four hours as the bill would require. Larger counties with more resources also have more demands on those resources, and smaller counties may not have the resources for such a quick movement of the information.

Jails may not be the appropriate environment to establish options for competency restoration. These programs might be more appropriate for a medical, not criminal justice, environment.

The jail diversion grant program that would be created by the bill should ensure that enough resources were focused on the state's urban areas, which have the greatest population and in many cases the largest needs.

CSHB 12 would continue the system of not treating individuals alleged to have a mental illness the same as other defendants. The bill would not adequately address problems with current law that make it too easy to determine a defendant is incompetent to stand trial, which leads to too many people in our state hospital system.

NOTES: CSHB 12 would cost the state \$54.1 million in fiscal 2018-19, according to the Legislative Budget Board's fiscal note, with costs per year totaling \$27 million. The jail-based competency restoration program would cost \$17.6 million annually for 10 beds in the state's 10 counties with the highest level of need, with the demand for services at the state hospitals being reduced, but continuing to exceed capacity. The LBB estimates the grant program that the bill would establish would cost the state \$9.4 million per year. The House-passed version of SB 1, the fiscal 2018-19 budget, included \$25 million per year contingent on the passage of HB 12 or similar legislation.