

BILL ANALYSIS

Senate Research Center
86R1778 GCB-F

S.B. 562
By: Zaffirini
Criminal Justice
4/14/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, when a person with a mental illness is charged—not convicted—with a violent or sexual crime and the person is not competent to stand trial, a judge is required to send the defendant to a maximum security bed at Vernon or Rusk State Hospitals. Once the defendant is at Vernon or Rusk, the Dangerousness Review Board conducts a dangerousness assessment of the defendant to determine whether a maximum security unit (MSU) is the appropriate setting for him or her. Because of the lack of maximum security beds available statewide, a person with a mental illness is left waiting in jail without treatment and without his or her case moving forward for an average of 164 days until a maximum security bed opens at Vernon or Rusk.

Many defendants do not meet the clinical standard for dangerousness despite the seriousness of the alleged offense and end up being transported somewhere else. It clearly is inefficient to have a person deteriorating in jail for months waiting to occupy a maximum security bed when they never belonged there in the first place.

To address this issue, S.B. 562 would provide judges with the option to receive an assessment of manifest dangerousness by the Dangerousness Review Board via telepsychiatry. The Dangerousness Review Board would draw on its existing statewide network of mental health professionals with the requisite forensic experience to conduct these assessments. Based on the assessment, the Dangerousness Review Board then would recommend a setting to the court. This option solely changes the time in which an assessment is performed and has the potential to reduce the MSU waiting list while reserving limited MSU beds for defendants who are truly a danger to themselves or others. Those persons committed to non-MSU facilities as a result of this new process would experience shorter wait times in county jails and thus a quicker path to a state hospital or other treatment facility.

Relatedly, the Texas Judicial Council heard reports that mental health information was not being transferred with inmates from county jails to state jails. S.B. 562 would address this issue by ensuring that mental health information would be transferred with an inmate from county jail to state jail to enhance the continuity of care.

As proposed, S.B. 562 amends current law relating to the delivery of certain mental health information regarding a defendant transferred from a county to the custody of the Texas Department of Criminal Justice, the commitment of certain defendants for competency restoration, and the use of telepsychiatry in determining whether a defendant is manifestly dangerous before commitment.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to executive commissioner of the Health and Human Services Commission in SECTION 5 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 8(a), Article 42.09, Code of Criminal Procedure, to include a copy of any mental health records, mental health screening, or similar information regarding the mental health of the defendant among the items that a county that transfers a defendant to the

Texas Department of Criminal Justice (TDCJ) under this article is required to deliver to an officer designated by TDCJ. Makes nonsubstantive changes.

SECTION 2. Amends Articles 46B.073(c) and (d), Code of Criminal Procedure, as follows:

(c) Authorizes, rather than requires, a court if a defendant is charged with certain offenses or the indictment alleges an affirmative finding under Article 42A.054(c) or (d) (relating to the use of a deadly weapon during a crime) to enter an order committing the defendant to certain facilities for competency restoration services. Authorizes the court to base its decision whether to commit the defendant to a facility described by this subsection on a determination made by a review board established under Article 46B.105(b) (relating to a review board with members appointed by the commissioner of state health services) that the defendant is manifestly dangerous. Authorizes the court to request that the review board make a determination of whether the defendant is manifestly dangerous in the manner provided by Article 46B.105(b-1), including by assessing the defendant through telepsychiatry. Provides that if the court requests a review board to make a recommendation under this subsection, Article 46B.105(e) (relating to a disagreement with the determination by the facility superintendent) does not apply to the determination made by the review board and requires the review board to provide its determination directly to the court.

(d) Requires the court to enter an order committing a defendant to whom this article applies and who is not committed to a facility described by Subsection (c) to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority or to a jail-based competency restoration program. Deletes existing text relating to a defendant who is not charged with a certain offense and whose indictment does not allege a certain affirmative finding.

SECTION 3. Amends Article 46B.105, Code of Criminal Procedure, by adding Subsection (b-1), as follows:

(b-1) Authorizes a review board established under Subsection (b) to make a determination of whether a defendant is manifestly dangerous by assessing the defendant through telepsychiatry and by reviewing appropriate records necessary for an assessment of the danger the defendant presents, as provided by rules adopted for that purpose by the executive commissioner of the Health and Human Services Commission (executive commissioner). Defines "telepsychiatry."

SECTION 4. Provides that Article 46B.073, Code of Criminal Procedure, as amended by this Act, applies to an order for commitment entered under that article on or after the effective date of this Act, regardless of when the offense with which the defendant is charged was committed.

SECTION 5. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt or amend rules regarding a determination of whether a defendant is manifestly dangerous as necessary to conform with the changes in law made by this Act to Articles 46B.073 and 46B.105, Code of Criminal Procedure.

SECTION 6. Effective date: September 1, 2019.