



86TH TEXAS LEGISLATIVE UPDATE SPOTLIGHT: SB 562

Changes to Maximum Security Designation- Chapter 46(B): Competency to Stand Trial

- A major feature of this bill is that it removed the requirement that a court order a defendant accused of certain violent crimes to be sent to a maximum security unit of a state hospital for competency restoration. CCP 46.B.073 now states that if a defendant is charged with any of the offenses under CCP 17.032(a), or if the indictment contains an affirmative finding of a deadly weapon, the court shall enter an order committing the defendant to competency restoration at a facility designated by the Health and Human Services Commission.
- The bill added article 46B.0021 which states that the Texas Health and Human Services Commission “may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.”
- S.B. 562 added Art. 46B.0831 “A defendant may be assessed at any time by a review board to determine if he/she is manifestly dangerous, and if the board determines the defendant is not, he/she does not have to be transferred to a maximum security unit regardless of the offense. A review board may also transfer the defendant out of a maximum security unit if the defendant is already housed there. If the superintendent of the facility in which the defendant is housed disagrees with board’s determination, the executive commissioner of the HHSC will decide whether defendant is manifestly dangerous.
- Courts previously were not required to hold a hearing when a defendant was scheduled to be released by the facility in which he/she was housed. Now, under S.B. 562, if the court receives notice from a facility or treatment provider that a defendant is going to be released, it now **MUST** hold a hearing to determine whether release is appropriate. If no notice was provided by the facility to the court, upon the motion of the state or defense counsel, the court has discretion as to whether it will hold such a hearing.

Changes to Maximum Security Designation - Chapter 46(C)- NGRI

- The bill also took out the requirement under CCP 46C.260 that a person found not guilty by reason of insanity must be sent to a maximum security unit. Under the amended CCP 46C.260, a person found not guilty by reason of insanity will no longer be automatically sent to maximum security unit. If a person is sent to a maximum security unit, they must be evaluated for manifest dangerousness within 60 days or be transferred to a non-maximum-security unit.
- S.B. 562 also adds the same HHSC manifest dangerousness review board procedures to CCP 46C as it did to CCP 46B.

Information to be delivered to the TDCJ

- The bill amended Texas Code of Criminal Procedure (CCP) 42.09 to require that a county who transfers a defendant to TDCJ shall also now deliver “a copy of any mental health records, mental health screening reports, or similar information regarding the mental health of the defendant.” (This information is now included in what is commonly known as the “pen packet.”)

Expunction

- The bill amends CCP 55.01 to add that a person’s records be expunged if the court finds the indictment or information was dismissed or quashed because the defendant completed a mental health court program created under Texas Government Code Chapter 125 or because the defendant completed such a program as a result of pre-trial diversion.
 - A defendant is only eligible for this expunction one time, and
 - it must be within 30 days after the court dismisses the case, with the State’s consent.

Definitions

- The bill adds “a person with an intellectual disability” to the definition of “forensic patient” in Section 532.013(a) of the Health and Safety Code.
- The following definitions were added or changed in CCP 46B.001: “adaptive behavior,” “commission,” “developmental period,” “executive commissioner,” “intellectual disability,” “mental illness,” and “subaverage general intellectual functioning.”

Mental Health Court Programs

- Under the amendment to Government Code Chapter 125, counties with populations of more than 200,000 must now apply for federal and state funds to establish a mental health court program.
- This bill also authorized commissioners courts of two or more counties to establish a regional mental health court program.