Texas Legislature Addresses Insanity Defense

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In December 2004, the Texas Senate Committee on Jurisprudence (“Committee”) issued an Interim Report to the 79th Texas Legislature. The Committee was charged with conducting an interim study of several issues and providing recommendations to the 79th Legislature. One of the charges directed the Committee to “[s]tudy insanity defense laws, specifically evaluating the impact of changing the defense of ‘not guilty by reason of insanity’ to ‘guilty, but insane.’” The Committee recommended no change in the current defense of not guilty by reason of insanity (“NGRI”), but did recommend improvements in the collection of the commitment records of persons found NGRI. The Committee also recommended that Article 46.03 of the Texas Code of Criminal Procedure be amended to “make the language more concise and easier for attorneys, judges, and mental health professionals to follow” and that “provisions concerning release standards and post-release monitoring should be made explicit.”

The Committee report noted that the Texas Department of State Health Services is responsible for collecting records of individuals found NGRI, but the Committee was “disturbed by the lack of data regarding the NGRI population” and found that the “data is inconclusive and spotty at best.” According to the Committee, better tracking of a patient’s location and crime committed “should lead to fewer aberrations and fewer early releases of unstable and potentially dangerous individuals.”

The Committee recommended that the release standards for NGRI patients be tightened, based on testimony that the current supervision and release standards for NGRI patients are confusing, particularly with respect to a judge’s authority to order outpatient monitoring and supervision of individuals found NGRI. The Committee observed that closer judicial supervision might prevent individuals acquitted by reason of insanity from committing future crimes.

Texas Senate Bill 837 adds a new Chapter 46C to the Code of Criminal Procedure that enacts many of the Committee’s recommendations. S.B. 837 mandates improved data collection of NGRI acquitted persons, clarifies required credentials for expert witnesses in insanity cases, and significantly increases a judge’s authority to monitor NGRI.

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2 Id. at 7.
3 Id.
4 Id. at 37.
5 Id.
6 Id. at 39.
7 Id.
8 S.B. 837, 79th Leg., R.S. (Tx. 2005) [hereinafter, S.B. 837]. S.B. 837 was passed by the Legislature and has been sent to the Governor for signature.
acquitted persons if the offense for which they were acquitted involves “dangerous” conduct.

Under S.B. 837, if a defendant is found NGRI, the court is required to determine whether the offense for which the person was acquitted involved conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon. If the court determines that the offense involved such dangerous conduct, the court retains jurisdiction over the acquitted defendant for the maximum term provided by law for the offense of which the person was acquitted or until the court specifically discharges the person and terminates its jurisdiction.

For example, assume that a person is charged with murder and that the maximum sentence for the offense under the circumstances of the crime is 20 years. If the person is acquitted by reason of insanity, the court retains supervision over the individual for 20 years. During such period, the court may order that the acquitted defendant be hospitalized for treatment, or may order that the defendant receive outpatient or community-based treatment. After the 20-year period, the defendant may still be confined for treatment or ordered to participate in outpatient treatment, but any such further mandated treatment is according to the standards for civil commitment proceedings. A defendant found NGRI for an offense involving nondangerous conduct is subject to mandated treatment or confinement only pursuant to civil commitment standards.

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9 TEX. CODE CRIM. PRO. Art. 46C.157.
10 TEX. CODE CRIM. PRO Art. 46C.158.
11 The procedure for discharge and termination is set forth in TEX. CODE CRIM. PRO Art. 46C.268.
12 TEX. CODE CRIM. PRO. Art. 46C.251 et. seq.
13 TEX. CODE CRIM. PRO Art. 46C.002 (b).
14 TEX. CODE CRIM. PRO Art. 46C.201.