

SUBJECT: Credits against maximum cumulative period to restore competency

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson

0 nays

2 absent — Canales, Hunter

SENATE VOTE: On final passage, April 30 — 31-0, on local and uncontested calendar

WITNESSES: For — (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Patricia Cummings, Texas Criminal Defense Lawyers Association)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 46B.009 requires a court to credit certain periods of confinement in a mental health facility, residential care facility, or jail to the term of a person's sentence who has been convicted of a criminal offense.

Code of Criminal Procedure, art. 46B.0095 states that defendants cannot under provisions of the law that cover incompetency to stand trial for a crime be committed to a mental hospital or other facility or ordered to participate in outpatient treatment or both for a cumulative period that exceeds the maximum jail term carried by the offense, except under certain circumstances.

The 82nd Legislature enacted competing statutes in 2011 through HB 2725 by Hartnett and HB 748 by Menéndez. Code of Criminal Procedure, art. 46B.0095(d) enacted by HB 748 *allows* a court to provide credit to a defendant for certain periods of confinement, in addition to any good conduct time the defendant had been granted. Code of Criminal Procedure, art. 46B.0095(d) enacted by HB 2725 *requires* the defendant

to receive credit for the period and does not include any provision regarding good conduct time.

Similar competing provisions were added to Code of Criminal Procedure, art. 46B.10(2). If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a hospital or other inpatient or residential facility, participate in an outpatient treatment program, or be subjected to both inpatient and outpatient treatment, and the defendant is not tried before the expiration of the maximum cumulative period, on the motion of a prosecutor under the provision enacted by HB 748, the court is *required* to dismiss the charge. On the motion of the defendant's attorney under the provision enacted by HB 2725, the court is *allowed* to dismiss the charge under certain circumstances.

DIGEST: SB 1326 would repeal Code of Criminal Procedure, art. 46B.0095(d) enacted by HB 748 in 2011, which allows courts to credit to defendants time spent confined in a correctional facility before an initial order of commitment or an initial order for outpatient treatment. It also would repeal the provision of the bill that allows courts to credit good conduct time to these defendants.

This repeal would leave in statute as art. 46B.0095(d) provisions enacted by HB 2725 in 2011, which requires courts to credit defendants for time spent in a correctional facility before an initial order or commitment or outpatient treatment. SB 1326 would institute a new provision allowing courts to credit defendants for good conduct time earned during their confinement.

The bill also would reenact art. 46B.010, which requires misdemeanor charges against a defendant in these cases to be dismissed under certain circumstances, including upon a motion by the prosecutor. The bill would reenact the section by eliminating the provision enacted as part of HB 748, and leaving the provision enacted by HB 2725.

Under the remaining provision, if a court ordered a defendant charged

with a misdemeanor to be committed to a mental hospital or other facility, to participate in outpatient treatment, or both, and the defendant was not tried before the maximum period allowed for the restoration of competency, the court could dismiss the charge upon a motion by the defendant's attorney, if the court found that the defendant had not been tried before the expiration of the maximum period of restoration.

The bill would take effect September 1, 2015, and would apply only to a defendant to which any proceeding under Art. 46B was conducted on or after the effective date.

**SUPPORTERS
SAY:**

SB 1326 would reduce confusion among courts as to what the current law is regarding the use of good conduct time credit toward the maximum cumulative period allowed for restoration of a defendant's competency to stand trial.

Under current law, a court is required to commit a defendant determined incompetent to stand trial to a mental health facility or a residential care facility for further examination and treatment to restore the defendant's competency to stand trial. However, these defendants do not receive any time credits toward this time committed to restoration. This bill would grant defendants good conduct time credits toward the maximum cumulative period.

Granting credit for time spent in a correctional facility before being committed to a mental hospital or other treatment facility toward the maximum cumulative period would align with current law that allows credit to be earned during the commitment for competency restoration toward a subsequent sentence. This bill would merely be conforming to a similar practice already in statute.

This bill also would clear up conflicting language between two sections of the same article. The 82nd Legislature enacted bills that created two alternatives in the code, but did not provide the courts with any guidance about the circumstances to which each provision would apply. This bill would repeal one section and make it discretionary for a judge to dismiss

a misdemeanor case on the motion of the defendant's attorney after a finding that a defendant was not tried before the expiration of the maximum cumulative period of restoration. The bill still would require a judge to dismiss such a misdemeanor case on the motion of the prosecutor.

OPPONENTS
SAY:

No apparent opposition.