

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1475
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

By law, all criminal defendants must be competent to stand trial and assist in their defense. Those who are found by a court to be incompetent to stand trial are committed to a state mental health hospital, residential care facility, or an outpatient treatment program for competency restoration treatment. Most persons found incompetent to stand trial are treated at state mental health hospitals or private facilities, which are managed by the Department of State Health Services (DSHS), until their competency is restored or for the maximum statutorily prescribed time—60 or 120 days depending on the offense.

For years, the state mental hospital system has had inadequate bed capacity to provide immediate competency restoration treatment to defendants. As a result, many defendants must wait weeks, even months, in county jails before receiving the competency restoration treatment at a state mental health hospital or other facility.

In 2012, a Texas court ruled that keeping incompetent individuals in jail for an unreasonable amount of time prior to being admitted to a state mental health facility or residential health facility to receive treatment violated their due process rights. The court's order required DSHS to make beds available for incompetent defendants within 21 days from the date it receives a criminal court's commitment order. DSHS increased bed capacity in 2012 to accommodate competency restoration needs, but there has been, and will continue to be, significant costs to the state in order pay for additional beds either at state hospitals or by contracting with private facilities.

C.S.S.B. 1475 allows DSHS to develop a jail-based restoration of competency pilot program which will provide defendants with competency restoration treatment for up to 60 days in a county jail that is participating in the pilot program. The bill creates a competency restoration treatment pilot program in one or two county jails. DSHS is authorized to contract with a mental health provider that has expertise in jail-based restoration of competency programs and to select up to two county jails that are willing to provide the pilot treatment program.

C.S.S.B. 1475 amends current law relating to a jail-based restoration of competency pilot program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of the Department of State Health Services in SECTION 2 (Article 46B.090, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 46B.073, Code of Criminal Procedure, by adding Subsection (e), as follows:

- (e) Requires a defendant for whom an order is issued under this article committing the defendant to a mental health facility or residential care facility, notwithstanding Subsections (b) (relating to requiring the court to commit a defendant to a mental health facility for certain time periods), (c) (relating to requiring the court to enter an order committing a defendant to the maximum security unit of any facility for committing

certain offenses), and (d) (relating to requiring the court to enter an order committing the defendant to a mental health facility determined to be appropriate by a certain local authority) and notwithstanding the contents of the applicable order of commitment, in a county in which the Department of State Health Services (DSHS) operates a jail-based restoration of a competency pilot program under Article 46B.090, to be provided competency restoration services at the jail under the pilot program if the service provider at the jail determines the defendant will immediately begin to receive services. Requires the defendant, if the service provider at the jail determines the defendant will not immediately begin to receive competency restoration services, to be transferred to the appropriate mental health facility or residential care facility as provided by the court order. Provides that this subsection expires September 1, 2017.

SECTION 2. Amends Subchapter D, Article 46B, Code of Criminal Procedure, by adding Article 46B.090, as follows:

Art. 46B.090. JAIL-BASED RESTORATION OF COMPETENCY PILOT PROGRAM.

(a) Requires DSHS, if the legislature appropriates to DSHS the funding necessary for DSHS to operate a jail-based restoration of competency pilot program as described by this article, to develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. Requires DSHS, in developing the pilot program, to coordinate and allow for input from each participating county.

(b) Requires DSHS to contract with a provider of jail-based competency restoration services to provide services under the pilot program if DSHS develops a pilot program under this article.

(c) Requires the commissioner of DSHS, not later than November 1, 2013, in consultation with a stakeholder workgroup established by DSHS as provided by Subsection (d), to adopt rules as necessary to implement the pilot program. Requires the commissioner, in adopting rules under this article, to specify the types of information DSHS is required to collect during the operation of the pilot program for use in evaluating the outcome of the pilot program.

(d) Requires the commissioner of DSHS to establish a stakeholder workgroup to participate in developing and establishing rules for the pilot program. Requires the stakeholder workgroup to be composed of one member who is a sheriff; one member who represents a local mental health authority; one member who is a county commissioner, county judge, or elected county officer; one member who is a district attorney or county attorney with criminal jurisdiction; one member who is a defense attorney; one member who is a judge of a district criminal court or county criminal court; two members who are mental health advocates; and any other member DSHS considers appropriate to appoint to the stakeholder workgroup.

(e) Provides that this subsection and Subsection (d) expire not later than the 30th day after the date rules are adopted under Subsection (c).

(d) Requires a provider of jail-based competency restoration services to contract with DSHS under Subsection (b) to demonstrate to DSHS that:

(1) the provider has previously provided jail-based competency restoration services for one or more years or is a local mental health authority that has previously provided competency restoration services;

(2) the provider's jail-based competency restoration program:

(A) uses a multidisciplinary treatment team to provide clinical treatment that is directed toward the specific objective of restoring the defendant's competency to stand trial and similar to the clinical

treatment provided as part of a competency restoration program at an inpatient mental health facility;

(B) employs or contracts for the services of at least one psychiatrist;

(C) assigns staff members to defendants participating in the program at an average ratio not lower than 3.7 to 1; and

(D) provides weekly treatment hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;

(3) the provider is certified by a nationwide nonprofit organization that accredits health care organizations and programs, such as the Joint Commission on Healthcare Staffing Services; and

(4) the provider has a demonstrated history of successful jail-based restoration of competency outcomes.

(g) Requires that a contract under Subsection (b) require the designated provider to collect and submit to DSHS the information specified by rules adopted under Subsection (c).

(h) Requires the designated provider to enter a contract with the participating county or counties. Requires that the contract require the participating county or counties to:

(1) ensure the safety of defendants who participate in the jail-based restoration of competency pilot program;

(2) designate a separate space in the jail for the provider to conduct the pilot program;

(3) provide the same basic care to the participants as is provided to other inmates of a jail; and

(4) supply clinically appropriate psychoactive medications to the mental health service provider for purposes of administering court-ordered medication to the participants in accordance with Article 46B.086 (Court-Ordered Medications) of this code and Section 574.106 (Hearing and Order Authorizing Psychoactive Medication), Health and Safety Code.

(i) Requires the psychiatrist for the provider to conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. Requires the psychiatrist to conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the pilot program. Requires the psychiatrist to submit to the court a report concerning each evaluation required under this subsection.

(j) Provides that if at any time a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist for the provider determines that the defendant has attained competency to stand trial, the psychiatrist for the provider is required to promptly issue and send to the court a report demonstrating that fact and the court is required to consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for purposes of Articles 46B.0755(a) (relating to authorizing the court to appoint disinterested experts to reexamine the defendant) and (b) (relating

to requiring the defendant to be transported to a facility if the defendant is determined to be incompetent).

(k) Provides that if at any time during a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist for the provider is required to promptly issue and send to the court a report demonstrating that fact; and

(2) the court is required to proceed under Subchapter E (Civil Commitment: Charges Pending) or F (Civil Commitment: Charges Dismissed) and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant, as provided under Subchapter E or F, as applicable, or release the defendant on bail as permitted under Chapter 17 (Bail).

(l) Provides that if the psychiatrist for the provider determines that a defendant ordered to participate in the pilot program has not been restored to competency by the end of the 60th day after the date the defendant began to participate in the pilot program:

(1) for a defendant charged with a felony, the defendant is required to be transferred, without unnecessary delay and for the remainder of the period prescribed by Article 46B.073(b), to the first available facility that is appropriate for that defendant as provided by Article 46B.073(c) or (d); and

(2) for a defendant charged with a misdemeanor, the court is authorized to order a single extension under Article 46B.080 (Extension of Order) and the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by Article 46B.073(d) for the remainder of the period under the extension; proceed under Subchapter E or F; release the defendant on bail as permitted under Chapter 17; or dismiss the charges in accordance with Article 46B.010 (Mandatory Dismissal of Misdemeanor Charges).

(m) Provides that, unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article 46B.0095 (Maximum Period of Commitment or Outpatient Treatment Program Participation Determined By Maximum Term for Offense), apply to a defendant receiving competency restoration services under the pilot program in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(n) Requires the commissioner of DSHS, if DSHS develops and implements a jail-based restoration of competency pilot program under this article, not later than December 1, 2016, to submit a report concerning the pilot program to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues and over criminal justice issues. Requires that the report include the information collected by DSHS during the pilot program and the commissioner's evaluation of the outcome of the program as of the date the report is submitted.

(o) Provides that this article expires September 1, 2017.

SECTION 3. Provides that the change in law made by this Act applies only to a defendant against whom proceedings have not been initiated under Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure, as amended by this Act, before the effective date of this Act.

Provides that the determination of incompetency for a defendant against whom proceedings have been initiated under Chapter 46B, Code of Criminal Procedure, before the effective date of this Act is covered by the law in effect when the proceedings were initiated, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2013.