

## **BILL ANALYSIS**

Senate Research Center

S.B. 1183  
By: Perry  
Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 2,400 beds available for inpatient psychiatric treatment in state mental health facilities do not meet the statewide need. Competency restoration for mentally ill criminal defendants is authorized under Article 46B.071, Code of Criminal Procedure. Competency restoration generally includes two phases: (1) psychiatric stabilization, and (2) education about the criminal justice process to increase the defendant's ability to participate in presenting a legal defense.

The capacity needed for ongoing intensive care outside of an inpatient hospital bed setting is lacking. This capacity must be expanded if reliance on inpatient psychiatric treatment is to be reduced for those Texans who can be treated effectively and safely in other settings.

This bill addresses various areas of competency restoration to streamline this process and decrease the wait time for mental health beds, in the following ways:

- Reevaluating whether persons charged with non-violent, misdemeanor offenses should be committed to a state mental health facility for competency restoration. Individuals charged with non-violent, Class B misdemeanors face a maximum sentence of 180 days in jail. Placing these individuals on a path to competency restoration at a state mental health facility delays treatment and causes them to languish in jail waiting for a bed. Placing these individuals in a state mental health facility to retain competency to stand trial often is a moot point once competency is restored because the maximum sentence has been exceeded. These individuals would be better served by being connected to treatment in their communities or, if necessary, receiving treatment through a civil inpatient bed. This approach would reduce inpatient bed demand and free up capacity for those individuals who need treatment at a state mental health facility. Successful implementation of this approach will require creation and expansion of local treatment options sufficient to meet demand and the needs of these individuals and their communities;
- Clarifying existing law to provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting that meets appropriate standards. These settings could include outpatient residential, community inpatient, and jail settings. The Council also should recommend broadening judicial discretion in choosing the best use of local competency restoration options, across appropriate settings, to help reduce backlogs in county jails and state hospitals;
- Simplifying the procedure for reimbursing counties for a restored inmate's medication and studying the resources necessary to address this population's medication needs adequately;
- Addressing the effects of trial delays after competency restoration has occurred by prioritizing trials for persons who have been restored to competency; and
- Shifting the legal education component of competency restoration to an appropriate non-medical environment after psychiatric stabilization has been achieved.

As proposed, S.B. 1183 amends current law relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to the period for which a person may be committed to receive certain temporary mental health services.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of the Department of State Health Services is transferred to the executive commissioner of the Texas Health and Human Services Commission in SECTION 26 (Article 46B.090, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 32A.01, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the trial of a criminal action against a defendant who is detained in jail pending trial of the action to be given preference over trials of other criminal actions not described by Subsection (b) (relating to requiring that certain criminal actions with alleged victims younger than 14 be given preference) or (c), rather than Subsection (b) only.

(c) Requires the trial of a criminal action against a defendant who has been determined to be restored to competency under Article 46B.084 (Proceedings on Return of Defendant to Court), except as provided by Subsection (b), to be given preference over other matters before the court, whether civil or criminal.

SECTION 2. Amends the heading to Article 46B.0095, Code of Criminal Procedure, to read as follows:

Art. 46B.0095: MAXIMUM PERIOD OF COMMITMENT OR PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE.

SECTION 3. Amends Articles 46B.0095(a), (b), (c), and (d), Code of Criminal Procedure, as follows:

(a) Prohibits a defendant from being committed to certain facilities or to a jail-based restoration of competency program, ordered to participate in an outpatient program, rather than an outpatient treatment program, or subjected to any combination of inpatient or outpatient treatment or program participation for a cumulative period that exceeds certain terms. Makes conforming and nonsubstantive changes.

(b) Requires the mental hospital, facility, or program provider, rather than the mental hospital or other inpatient or residential facility or outpatient program provider, identified in the most recent order of commitment or order of outpatient participation under this chapter (Incompetency to Stand Trial) to assess the defendant to determine if certain civil proceedings are appropriate.

(c) Provides that the cumulative period described by Subsection (a):

(1) makes a conforming change; and

(2) in addition to any inpatient or outpatient treatment periods or program participation periods described by Subsection (a), includes any time that meets certain conditions, including while the defendant is awaiting transfer to a jail-based restoration of competency program.

(d) Makes a conforming change.

SECTION 4. Amends Article 46B.010, Code of Criminal Procedure, to make a conforming change.

SECTION 5. Amends Article 46B.026, Code of Criminal Procedure, by adding Subsection (d), to require the court to submit monthly to the Office of Court Administration of the Texas Judicial System the number of reports provided to the court under this article.

SECTION 6. Amends Article 46B.071(a), Code of Criminal Procedure, as follows:

(a) Requires the court, on a determination that a defendant is incompetent to stand trial and is subject to an initial restoration period, rather than is incompetent only, and except as provided by Subsection (b) (relating to certain required actions by the court on a determination of incompetency to stand trial), to:

(1) if the defendant is charged with an offense punishable as a Class B misdemeanor:

(A) commit the defendant to a program, rather than facility, under Article 46B.073 (Commitment for Restoration to Competency). Creates this paragraph from existing text; or

(B) release the defendant on bail under Article 46B.0711. Redesignates existing Subdivision (2) as Paragraph (B); or

(2) if the defendant is charged with an offense punishable as a class A misdemeanor or any higher category of offense commit the defendant to a facility or program under Article 46B.073; or release the defendant on bail under Article 46B.072 (Release on Bail).

SECTION 7. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.0711, as follows:

Art. 46B.0711. RELEASE ON BAIL FOR A CLASS B MISDEMEANOR. (a) Requires the court, subject to certain conditions, and if the court determines that a defendant charged with an offense punishable as a Class B misdemeanor and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, to release the defendant on bail or continue the defendant's release on bail; and order the defendant to participate in an outpatient treatment program for a period not to exceed 90 days.

(b) Requires the court, if the defendant successfully completes the outpatient treatment program described by Subsection (a), to dismiss the charge on the motion of the attorney representing the state; or proceed as otherwise required by this subchapter.

(c) Authorizes the court, if the defendant does not successfully complete the outpatient treatment program, to for the remainder of the 90-day period described by Subsection (a)(2), commit the defendant to a jail-based restoration of competency program under Article 46B.073 if the maximum period of restoration described by Article 46B.0095 has not expired; or dismiss the charge on the motion of the attorney representing the state.

SECTION 8. Amends the heading to Article 46B.072, Code of Criminal Procedure, to read as follows:

Art. 46B.072. RELEASE ON BAIL FOR CLASS A MISDEMEANOR OR FELONY.

SECTION 9. Amends Article 46B.072, Code of Criminal Procedure, by amending Subsection (a-1) and adding Subsections (e) and (f), as follows:

(a-1) Requires the court, subject to certain conditions, to release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a Class A

misdemeanor, rather than a misdemeanor or continue the defendant's release on bail. Makes nonsubstantive changes.

(e) Requires the court, if the defendant successfully completes the outpatient treatment program described by Subsection (a-1), to dismiss the charge on the motion of the attorney representing the state; or proceed as otherwise required by this subchapter (Procedures After Determination of Incompetency).

(f) Authorizes the court, if the defendant does not successfully complete the outpatient treatment program, to for the remainder of the 120-day period described by Subsection (b) (relating to requiring the court to release certain defendants found incompetent to stand trial on bail), commit the defendant to a facility or to a jail-based restoration of competency program under article 46B.073 if the maximum period of restoration described by Article 46B.0095 has not expired, or dismiss the charge on the motion of the attorney representing the state.

SECTION 10. Amends Article 46B.073, Code of Criminal Procedure, as follows:

Article 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY. (a) Provides that this article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071 (Options on Determination of Incompetency) and who was not released on bail; or if released on bail, is made subject to this article by action of the court under Article 46B.0711(c) or 46B.072(f).

(b) Requires the court, for further examination, psychiatric stabilization, and treatment toward the specific objective of a defendant attaining competency to stand trial, to commit the defendant described by Subsection (a) to a mental health facility, residential care facility, or jail-based restoration of competency program, rather than a mental health or residential care facility, for the applicable period as follows:

(1) a period of not more than 60 days, if the defendant is described by Subsection (a)(1) and charged with an offense punishable as a misdemeanor;

(2) makes a conforming change; or

(3) the remainder of the restoration period specified by the court under Article 46B.0711 or 46B.072, as applicable.

(b-1) Authorizes a defendant charged with an offense punishable as a Class B misdemeanor to be committed under this subchapter only to a jail-based restoration of competency program.

(c) Requires the court, if the defendant is charged with certain offenses, to enter an order committing the defendant for psychiatric stabilization to certain facilities. Makes conforming and nonsubstantive changes.

(d) Makes conforming changes.

(e) Requires the court, on notification from the head of a facility or a program provider under Article 46B.079(b)(1), to order the defendant to receive competency restoration education services in a jail-based restoration of competency program or in an outpatient competency restoration education program, as appropriate.

(f) Requires the court, if a defendant for whom an order is entered under Subsection (e) was committed for psychiatric stabilization to a facility other than a jail-based restoration of competency program, to send a copy of that order to the sheriff of the county in which the court is located and the head of the facility to

which the defendant was committed for psychiatric stabilization. Deletes existing text requiring certain competency restoration services at a jail to be provided to certain defendants committed to the jail.

SECTION 11. Amends Article 46B.074(a), Code of Criminal Procedure, to make a conforming and a nonsubstantive change.

SECTION 12. Amends Article 46B.075, Code of Criminal Procedure, as follows:

Art. 46B.075. New heading: TRANSFER OF DEFENDANT TO FACILITY OR PROGRAM. Requires an order issued under Article 46B.0711, 46B.072, or 46B.073, rather than Article 46B.072 or 46B.073, to place the defendant in the custody of the sheriff for transportation to the facility or program, rather than outpatient treatment program, as applicable, in which the defendant is to receive treatment for the purposes of competency restoration.

SECTION 13. Amends Articles 46B.0755(a), (b), and (d), Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 14. Amends Article 46B.076, Code of Criminal Procedure, as follows:

(a) Requires the court to send a copy of the order to the applicable facility or the program, rather than the facility to which the defendant is committed or the outpatient treatment program to which the defendant is released, if the defendant is found incompetent to stand trial. Makes conforming changes.

(b) Makes conforming changes.

SECTION 15. Amends Article 46B.077, Code of Criminal Procedure, as follows:

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) Requires the facility or jail-based program, rather than facility only, to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail to take certain actions.

(b) Makes conforming and nonsubstantive changes.

SECTION 16. Amends Article 46B.078, Code of Criminal Procedure, as follows:

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. Requires the court that issued the order under Article 46B.0711, 46B.072, or 46B.073, rather than Article 46B.072 or 46B.073 only, if the charges pending against a defendant are dismissed, to send a copy of the order of dismissal to certain persons, including the provider of the jail-based restoration of competency program. Makes a conforming change.

SECTION 17. Amends Article 46B.079, Code of Criminal Procedure, as follows:

Art. 46B.079. NOTICE AND REPORT TO COURT. (a) Requires certain persons, including the provider of the jail-based restoration of competency program, to notify the applicable court that the initial restoration period is about to expire not later than a certain date.

(b) Requires certain persons, including the provider of the jail-based restoration of competency program, to promptly notify the court when the head of the facility or program provider believes that:

(1) the defendant has attained psychiatric stabilization but has not attained competency to stand trial;

(2) the defendant has attained competency to stand trial; or

(3) redesignates existing Subdivision (2) as Subdivision (3) and makes no further changes to this subdivision.

(c) Requires the head of the facility or program provider, when certain persons give notice to the court under Subsection (a), (b)(2), or (b)(3), rather than Subsection (a) or (b), to file a certain report. Makes conforming changes.

(d) Makes a conforming change.

SECTION 18. Amends Article 46B.080(a), Code of Criminal Procedure, to make a conforming change.

SECTION 19. Amends Article 46B.081, Code of Criminal Procedure, as follows:

Art. 46B.081. RETURN TO COURT. Requires a defendant committed or released on bail under this subchapter, subject to 46B.082(b), to be returned to the applicable court as soon as practicable after notice to the court is provided under Article 46B.079(a), (b)(2), or (b)(3), rather than Article 46B.079, but not later than a certain period specified by the court under Article 46B.0711, 46B.072, or 46B.073, rather than Article 46B.072 or 46B.073 only.

SECTION 20. Amends the heading to Article 46B.082, Code of Criminal Procedure, as follows:

Art. 46B.082. TRANSPORTATION OF DEFENDANT TO COURT.

SECTION 21. Amends Article 46B.082(b), Code of Criminal Procedure, as follows:

(b) Requires the head of the facility or provider of the jail-based program in which the defendant is participating, if before the 15th day after the date on which the court received notification under Article 46B.079(a), (b)(2), or (b)(3), rather than Article 46B.079, a defendant committed to a facility or jail-based program or ordered to participate in an outpatient program has not been transported to the court that issued the order under certain articles, including article 46B.0711, to cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. Requires the county in which the court is located to reimburse the certain entities, including the Texas Health and Human Services Commission (HHSC), rather than the Department of Aging and Disability Services, for certain expenses. Makes conforming changes.

SECTION 22. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.0825, as follows:

Art. 46B.0825. DISCHARGE AND TRANSPORTATION OF DEFENDANT AFTER PSYCHIATRIC STABILIZATION. (a) Requires the applicable facility, as soon as practicable after receiving a copy of an order under Article 46B.073(f)(2), to discharge the defendant into the care of the sheriff of the county in which the court is located, and requires the sheriff or the sheriff's designee to transport the defendant to the jail-based restoration of competency program or outpatient competency restoration education program, as appropriate.

(b) Requires a jail-based restoration of competency program or outpatient competency restoration education program that receives a defendant under this article to give to the court notice regarding the defendant's entry into the program for purposes of receiving competency restoration education services; and subsequent notice as otherwise required under Article 46B.079 (Notice and Report to Court).

SECTION 23. Amends Article 46B.083, Code of Criminal Procedure, as follows:

Art. 46B.083. New heading: SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY OR PROGRAM. (a) Requires certain persons, including the jail-based restoration of competency program provider, if those persons believe that the defendant is a person with mental illness and meets certain criteria, to have a certificate of medical examination for mental illness submitted to the court. Makes a conforming change.

(b) Makes conforming changes.

SECTION 24. Amends Articles 46B.086(a), (b), (c), and (d), Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to a defendant:

(1) makes no changes to this subdivision;

(2) who either:

(A) remains confined under certain conditions while awaiting transfer to certain facilities, including a jail-based restoration of competency program, or an outpatient program, rather than outpatient treatment program;

(B) makes conforming changes;

(C) makes no changes to this paragraph;

(D) is subject to Article 46B.0711, if the court has made the determinations required by Subsection (a) of that article; or

(E) redesignates existing Paragraph (D) as Paragraph (E) and makes no further changes to this paragraph;

(3) makes conforming changes; and

(4) makes no changes to this subdivision.

(b) Requires the director of the facility or program provider, as applicable, to notify the court if a defendant described by Subsection (a) refuses to take psychoactive medications as required. Makes conforming changes.

(c) and (d) Makes conforming changes.

SECTION 25. Amends the heading to Article 46B.090, Code of Criminal Procedure, to read as follows:

Art. 46B.090. JAIL-BASED RESTORATION OF COMPETENCY PROGRAM IMPLEMENTED BY COMMISSION.

SECTION 26. Amends Articles 46B.090(a), (a-1), (b), (c), (f), (g), (i), (j), (k), (l), and (m), Code of Criminal Procedure, as follows:

(a) Defines "commission" and "executive commissioner" and deletes the existing definition of "department."

(a-1) Authorizes HHSC to develop and implement a jail-based restoration of competency program in any county in this state that chooses to participate in the program. Requires HHSC, in developing the program, to coordinate and allow for input from a participating county. Deletes existing text requiring the Department of State Health Services (DSHS),

if certain conditions are met, to implement a pilot program in one or two counties that choose to participate in the program.

(b) Requires HHSC, rather than DSHS, to contract with a provider of jail-based competency restoration services to provide services under a program implemented under this article, rather than if DSHS develops a pilot program. Authorizes HHSC to contract with a different provider for each program.

(c) Requires the executive commissioner of HHSC to adopt rules as necessary to implement the program under this article, including rules that specify the types of information HHSC is required to collect for use in evaluating a program. Deletes existing text requiring the commissioner of DSHS, not later than November 1, 2013, to adopt rules as necessary to implement the pilot program, and in adopting rules to specify the type of information DSHS is required to collect during the operation of the pilot program for use in evaluating the outcome of the pilot program.

(f) Requires a provider of jail-based competency restoration services, to contract with HHSC, rather than DSHS, to demonstrate to HHSC that:

(1) the provider:

(A) has previously provided jail-based competency restoration services for one or more years and is certified by a nationwide nonprofit organization that accredits behavioral health care organizations and programs;

(B) is a local mental health authority in good standing with HHSC, rather than is a local mental health authority that has previously provided competency restoration services; or

(C) operates under a contract with a local mental health authority in good standing with HHSC; and

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

(A) provides clinical treatment and competency restoration through the use of a multidisciplinary treatment team; deletes existing text setting forth specific requirements for the clinical treatment provided by the multidisciplinary treatment team;

(B) employs or contracts for the services of at least one psychiatrist or psychologist, rather than one psychiatrist;

(C) provides jail-based competency restoration services through trained and experienced staff, rather than assigns staff members to defendants participating in the program at a certain average ratio;

(D) ensures the safety of participants, rather than provides weekly treatment hours commensurate to certain other hours;

(E) operates in the jail in a designated space that is separate from the space used for the general population of the jail;

(F) provides general health care, mental health treatment, and substance use disorder treatment to participants, as necessary, for restoration of competency; and

(G) supplies clinically appropriate psychoactive medications for purposes of administering court-ordered medication to participants as applicable and in accordance with Article 46B.086 of this code and Section 574.106 (Hearing and Order Authorizing Psychoactive Medication), Health and

Safety Code. Deletes existing Subdivisions (3) and (4) requiring the provider to have certain certifications and have a demonstrated history of success in certain jail-based programs.

(g) Makes a conforming and nonsubstantive change.

(i) and (j) Makes conforming changes.

(k) Requires the psychiatrist or psychologist for the provider to take certain actions if at any time during a defendant's participation in a program implemented under this article, rather than participation in the jail-based restoration of competency pilot program, the psychiatrist or psychologist for the provider makes certain determinations.

(l) Authorizes the court for a defendant charged with a misdemeanor, if the psychiatrist or psychologist makes certain determinations, to order a certain extension, notwithstanding Article 46B.073(b-1). Makes conforming changes.

(m) Includes competency restoration education services among certain programs to which the provisions of this chapter apply.

SECTION 27. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.091, as follows:

Art. 46B.091. JAIL-BASED RESTORATION OF COMPETENCY PROGRAM IMPLEMENTED BY COUNTY. (a) Defines "commission."

(b) Authorizes a county or counties to jointly develop and implement a jail-based restoration of competency program.

(c) Requires a county that implements a program under this article to employ or contract with a provider of jail-based competency restoration services that is certified by a nationwide nonprofit organization that accredits behavioral health care organizations and programs; is a local mental health authority in good standing with HHSC; or provides competency restoration services under a contract with a local mental health authority in good standing with HHSC.

(d) Requires a jail-based restoration of competency program to provide jail-based competency restoration services through trained and experienced staff; provide clinical treatment and competency restoration through the use of a multidisciplinary treatment team; ensure the safety of participants; operate in the jail in a designated space that is separate from the space used for the general population of the jail; provide general health care, mental health treatment, and substance use disorder treatment to participants, as necessary for the restoration of competency; and supply clinically appropriate psychoactive medications for purposes of administering certain court-ordered medications to participants.

(e) Authorizes HHSC to inspect on behalf of the state any aspect of a jail-based restoration of competency program.

(f) Provides that if at any time during a defendant's participation in the jail-based restoration of competency program a psychiatrist or psychologist for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist or psychologist 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 consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for the purposes of Article 46B.0755(a) or (b).

(g) Provides that unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article 46B.0095, apply to a defendant receiving competency restoration services, including competency restoration education services, under a program implemented under this article in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

SECTION 28. Amends Section 574.034(g), Health and Safety Code, as follows:

(g) Requires an order for temporary inpatient or outpatient mental health services to state that treatment is authorized for not longer than 45, rather than 90, days unless the judge finds that a longer period is necessary. Deletes existing text prohibiting the order from specifying a shorter period.

SECTION 29. Repealers: Articles 46B.090(h) (relating to a requirement for the designated provider to enter into a certain contract), (n) (relating to a required report on the pilot program), and (o) (relating to providing that this article expires September 1, 2019), Code of Criminal Procedure.

SECTION 30. (a) Makes application of this Act, except as provided by Subsection (b), prospective.

(b) Makes application of Section 574.034(g), Health and Safety Code, as amended by this Act, prospective.

SECTION 31. Effective date: September 1, 2017.