

BILL ANALYSIS

Senate Research Center

S.B. 1475
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Criminal Justice
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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.

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 four year, 40-bed 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.

As proposed, S.B. 1475 amends current law relating to the development and use of a jail-based restoration of competency pilot program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Article 46B.090, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. 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 the Department of State Health Services (DSHS) to develop a pilot program for jail-based restoration of competency pursuant to a commitment order issued under

Article 46B.073(e), Code of Criminal Procedure. Requires DSHS to develop the pilot program:

(1) in not more than two counties for which DSHS determines that the operation of a jail-based restoration of competency program will prove to be feasible, efficient, and cost-effective; and

(2) in coordination with the affected counties.

(b) Requires DSHS to contract with a private provider of jail-based restoration of competency services to provide those services under the pilot program.

(c) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to propose and adopt rules necessary to establish the pilot program. Requires the executive commissioner, in adopting rules under this section, 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 a private provider of jail-based restoration of competency services, to contract with DSHS under this article, to demonstrate to DSHS that:

(1) the provider has previously provided jail-based competency restoration services for at least two years;

(2) the provider's jail-based competency restoration program uses a multi-disciplinary treatment team that provides clinical treatment that is directed toward the specific objective of the defendant attaining competency to stand trial and similar to the clinical treatment provided at a DSHS facility;

(3) the provider's jail-based competency restoration program has at least one psychiatrist, assigns staff members to defendants participating in the program at an average ratio no lower than 3.7 to 1, and provides weekly treatment hours commensurate to the treatment hours provided in a state hospital for a competency restoration program;

(4) 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

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

(e) Requires that a contract between DSHS and the provider entered under this article require the provider to collect and submit to DSHS the information specified by rules adopted under Subsection (c).

(f) Requires the designated provider to enter a contract with the county in which the applicable jail included in the program is located. Requires that the contract require the county to:

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

(2) designate a separate treatment space for the provider to conduct individual and group sessions with the defendants participating in the jail-based restoration of competency program;

(3) provide the same basic care to defendants who are participating in the jail-based restoration of competency program as is provided to other inmates of a jail; and

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

(g) Provides that if, in the opinion of the psychiatrist for the provider, a defendant's competency to stand trial has been successfully restored at any time during the defendant's participation in the jail-based restoration of competency treatment program, 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).

(h) Provides that if a defendant's competency to stand trial has, in the opinion of the psychiatrist for the provider, been determined to be unlikely to be restored in the foreseeable future at any time during the defendant's participation in the jail-based restoration of competency treatment program, 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 proceed under Subchapter E (Civil Commitment: Charges Pending) or F (Civil Commitment: Charges Dismissed) or release the defendant on bail as permitted under Chapter 17 (Bail).

(i) Requires DSHS to design the jail-based restoration of competency pilot program in such a manner that if, with respect to a defendant charged with a felony, the defendant's competency to stand trial has not, in the opinion of the psychiatrist for the provider, been successfully restored by the end of 60th day after the date the defendant begins to participate in the jail-based pilot program and the defendant is to be transferred next to a hospital or facility described by Article 46B.073(c) (relating to a defendant being placed under maximum security in a facility upon the conviction of certain offenses) or (d) (relating to a defendant being placed in a mental health facility upon the conviction of certain offenses), Code of Criminal Procedure, for further restoration of competency efforts, the defendant will without unnecessary delay, in accordance with the previously issued order of the court, and as applicable:

(1) enter the first available hospital or facility described by Article 46B.073(c) for the remainder of the period prescribed by Article 46B.073(b) (relating to a defendant being placed in a mental health facility for certain periods of time); or

(2) enter the first available appropriate facility described by Article 46B.073(d) for the remainder of the period prescribed by Article 46B.073(b).

(j) Prohibits the effort to restore the defendant's competency to stand trial under this article and Article 46B.073(e), if the defendant is charged only with an offense punishable as a misdemeanor, from continuing after the end of the 60th day the defendant begins to participate in the jail-based pilot program.

(k) Requires the commissioner of DSHS, 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.

(l) Provides that this section expires September 1, 2017.

SECTION 2. Amends Article 46B.073, Code of Criminal Procedure, by adding Subsection (e), as follows:

(e) Requires the court in a county participating in the pilot jail-based restoration of competency program developed under Article 46B.090, Code of Criminal Procedure, notwithstanding Subsections (b), (c), and (d) of this article, to order the defendant to participate in the jail-based restoration of competency program in accordance with that article with the possibility of further commitment to a hospital or facility described by Subsection (c) or (d), as applicable, if competency to stand trial is not successfully restored under the jail-based program. Provides that this subsection expires September 1, 2017.

SECTION 3. Effective date: September 1, 2013.