

BILL ANALYSIS

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S.B. 1326
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the interim, the Texas Judicial Council identified issues affecting criminal defendants who are or may be persons with mental illnesses or intellectual disabilities. Specifically, current law requires sheriffs to notify magistrates if there is cause to believe a defendant in custody is mentally ill. Many times, however, there is no timely transmission of this information from a sheriff to a magistrate. Current law also authorizes magistrates to release a nonviolent defendant with a mental illness on a personal bond and require treatment as a condition of release. Local practices, however, reduce the availability of personal bonds and their use is not widespread. What's more, the 2,400 beds in state mental health facilities available for inpatient psychiatric treatment and competency restoration do not meet the statewide need. While persons charged with non-violent, Class B misdemeanors face a maximum sentence of 180 days in jail, the wait time for Class B defendants with a mental illness who are in jail and in need of competency restoration treatment continues to increase. Accordingly, placing these persons in a state mental health facility to retain competency to stand trial often is a moot point because the maximum sentence has been exceeded with the time the person has spent in jail waiting for a mental health facility bed to become available.

S.B. 1326 would implement Texas Judicial Council recommendations to address those issues. Specifically, it would require sheriffs to provide notice to the relevant magistrate regarding a defendant suspected of having mental illness no later than four hours upon receipt of credible information that the person has a mental illness or intellectual disability; increase flexibility regarding bond availability for mentally ill, non-violent defendants; provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting, including outpatient residential, community inpatient, and jail settings that meet appropriate standards; and broaden judicial discretion to choose the best use of local competency restoration options. These changes would not only ensure that criminal defendants with a mental illness are referred timely to adequate treatment options, but also help reduce backlogs in county jails and free up capacity in state hospitals for other persons who need treatment at a state mental health facility.

As proposed, S.B. 1326 amends current law relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of the Department of State Health Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 29 (Article 46B.090, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 15.17, Code of Criminal Procedure, by adding Subsection (a-1), to require the magistrate, if a magistrate is provided written or electronic notice of credible information that may establish reasonable cause to believe that a person brought before the magistrate has a mental illness or is a person with an intellectual disability, to conduct the proceedings described by Article 16.22 or 17.032 (Release on Personal Bond of Certain Mentally Ill Defendants), as appropriate.

SECTION 2. Amends Article 16.22, Code of Criminal Procedure, as follows:

Art. 16.22. New heading: EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a)(1) Changes references to mental retardation to intellectual disability. Requires the sheriff or other person, not later than four hours after the sheriff or other person having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense determines that reasonable cause may exist to believe that the defendant has a mental illness or is a person with an intellectual disability, to provide written or electronic notice to the magistrate, rather than requiring the sheriff, not later than 72 hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, to provide written or electronic notice of the information to the magistrate. Requires the notice to include any information related to the sheriff's or other person's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. Requires the magistrate, except as provided by Subdivision (2), on a determination that there is a reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, to order the local mental health authority, rather than local mental health or mental retardation authority, or another qualified mental health or intellectual disability, expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003 (Definitions), Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003 (Definitions), Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A) on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) under Section 614.0032(b)(3), Health and Safety Code.

(2) Provides that the magistrate is not required to order the collection of information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the local mental health authority, rather than mental health or mental retardation authority, local intellectual and developmental disability authority, or another mental health or intellectual disability expert, rather than mental retardation expert, described by Subdivision (1). Makes conforming changes.

(3) Authorizes the magistrate, if the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), to order the defendant to submit to an examination in a jail or in another place, rather than mental health facility, determined to be appropriate by the local mental health, rather than mental health or mental retardation, authority or local intellectual and developmental disability authority for a reasonable period not to exceed 48 hours, rather than 21 days. Requires the county in which the committing court is located, if applicable, to reimburse the local mental health authority or local intellectual and developmental disability authority for certain expenses. Deletes existing text authorizing the magistrate to order a defendant to a facility operated by the Department of State Health Services (DSHS) or

the Department of Aging and Disability Services (DADS) for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility. Deletes existing text requiring the head of that facility, if a defendant who has been ordered to a facility operated by DSHS or DADS for examination remains in the facility for a period exceeding 21 days, to cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. Makes nonsubstantive changes.

(b) Requires, except as otherwise permitted by the magistrate for good cause shown, a written assessment of the information collected under Subsection (a)(1)(A) to be provided to the magistrate:

(1) for a defendant held in custody, not later than 72 hours after the time an order was issued under Subsection (a); or

(2) for a defendant released from custody, not later than the 30th day after the date an order was issued under Subsection (a).

Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Requires the magistrate, rather than requiring the magistrate in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, to provide copies of the written assessment to the defense counsel, the attorney representing the state, rather than prosecuting attorney, and the trial court. Requires the written assessment to include certain information, including whether the defendant is a person who has a mental illness or is a person with an intellectual disability and any appropriate or recommended treatment or service. Makes a conforming change.

(c) Authorizes the trial court, after the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1), rather than Subsection (b), or elects to use the results of a previous determination as described by Subsection (a)(2), to, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 (Release on Personal Bond of Certain Mentally Ill Defendants) if the defendant is being held in custody;

(2) makes a conforming and nonsubstantive change;

(3) makes a nonsubstantive change; or

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K (Specialty Courts), Title 2 (Judicial Branch), Government Code.

(d) Provides that this article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article:

(1) releasing a defendant who has a mental illness, or is a person with an intellectual disability rather than releasing a mentally ill, or mentally retarded defendant from custody on personal or surety bond, including imposing as a condition of release that the defendant submit to an examination or other assessment; or

(2) makes no change to this subdivision.

(e) Requires the magistrate to submit to the Office of Court Administration of the Texas Judicial System (OCA) on a monthly basis the number of written assessments provided to the court under Subsection (a)(1)(B).

SECTION 3. Amends Articles 17.032(a), (b), (c), and (d), Code of Criminal Procedure, as follows:

(a) Redefines "violent offense."

(b) Requires a magistrate, notwithstanding Article 17.03(b) (relating to authorizing only the court before whom the case is pending to release on personal bond a certain defendant), or a bond schedule adopted or a standing order entered by a judge, to release a defendant on personal bond unless good cause is shown otherwise if:

(1) makes a nonsubstantive change;

(2) the defendant is examined by the local mental health, rather than local mental health or mental retardation, authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert under Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Mental Retardation) and makes nonsubstantive changes;

(3) the applicable expert, in a written assessment submitted to the magistrate under Article 16.22, concludes that the defendant has mental illness or is a person with an intellectual disability, and requires treatment not available in jail, rather than is nonetheless competent to stand trial and recommends mental health treatment for the defendant; makes conforming and nonsubstantive changes;

(4) the magistrate determines, in consultation with the local mental health authority, rather than local mental health or mental retardation authority, or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual disability, services for the defendant are available in accordance with Section 534.053 or 534.103, Health and Safety Code, rather than through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability services provider; makes conforming changes; and

(5) the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense.

(c) Requires the magistrate, unless good cause is shown for not requiring treatment, to require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability treatment as recommended by the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert if the defendant meets certain conditions. Makes conforming changes.

(d) Authorizes the magistrate, in addition to a condition of release imposed under Subsection (c), rather than Subsection (c) of this article, to require the defendant to comply with other conditions that are reasonably necessary to ensure the defendant's required appearance in court and the safety of, rather than protect, the community and the victim of the alleged offense.

SECTION 4. Amends Article 32A.01, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires that, insofar as is practicable, the trial of a criminal action be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action to be given preference over trial of other criminal actions not described by Subsection (b) (relating to requiring the trial of a criminal action in which the alleged victim is younger than 14 years of age to be given preference over other matters before the court) or (c).

(c) Requires that, except as provided by Subsection (b), 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) to be given preference over other matters before the court, whether civil or criminal.

SECTION 5. 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 6. Amends Articles 46B.0095(a), (b), (c), and (d), Code of Criminal Procedure, as follows:

(a) Prohibits a defendant to, under Subchapter D (Procedures After Determination of Incompetency) or E (Civil Commitment: Charges Pending) or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility or to a jail-based restoration of competency program, ordered to participate in an outpatient program, or subjected to any combination of inpatient or outpatient treatment or program participation for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient program under Subchapter D or E, the maximum period of restoration is two years. Makes nonsubstantive changes.

(b) Requires the mental hospital, facility, or program provider, rather than mental hospital or other inpatient or residential facility or outpatient treatment program provider, identified in the most recent order of commitment or order of outpatient program, rather than outpatient treatment program, participation under this chapter to assess the defendant to determine if civil proceedings under Subtitle C (Texas Mental Health Code) or D (Persons With an Intellectual Disability Act), Title 7 (Mental Health and Intellectual Disability), Health and Safety Code, are appropriate. Authorizes the defendant to be confined for an additional period in a mental hospital or other facility, rather than mental hospital or other inpatient or residential facility, or jail-based program or ordered to participate for an additional period in an outpatient program, rather than outpatient treatment program, as appropriate, only under certain circumstances.

(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 certain time, including while awaiting, as applicable the defendant's transfer to a mental hospital or other inpatient or residential facility or to a jail-based restoration of competency program; makes nonsubstantive changes;

(B) and (C) makes no changes to these paragraphs.

(d) Makes a conforming change.

SECTION 7. Amends Article 46B.010, Code of Criminal Procedure, as follows:

Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. Provides that if a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility or to a jail-based restoration of competency program, participate in an outpatient program, rather than outpatient treatment program, or be subjected to any combination of inpatient or outpatient treatment or program participation, and the defendant is not tried before the expiration of the maximum period of restoration described by Article 46B.0095 certain actions occur. Makes nonsubstantive changes.

SECTION 8. Amends Article 46B.026, Code of Criminal Procedure, by adding Subsection (d), to require the court to submit to OCA on a monthly basis the number of reports provided to the court under this article.

SECTION 9. 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, 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;

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

(2) if the defendant is charged with an offense punishable as a Class A misdemeanor or any higher category of offense:

(A) commit the defendant to a facility program under Article 46B.073 (Commitment For Restoration to Competency); or

(B) release the defendant on bail under Article 46B.072 (Release on Bail)

SECTION 10. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.0711, as follows:

Art. 46B.0711. RELEASE ON BAIL FOR CLASS B MISDEMEANOR. (a) Requires the court, subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, 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:

(1) release the defendant on bail or continue the defendant's release on bail; and

(2) 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 on the motion of the attorney representing the state, dismiss the charge or to proceed as otherwise required by this subchapter.

(c) Authorizes the court, if the defendant does not successfully complete the outpatient treatment program described by Subsection (a), to:

(1) 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 (Maximum Period of Commitment or Outpatient Treatment Program Participation Determined by Maximum Term for Offense) has not expired; or

(2) on the motion of the attorney representing the state, dismiss the charge.

SECTION 11. 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 12. Amends Article 46B.072, Code of Criminal Procedure, by amending Subsection (a-1) and adding Subsections (e) and (f), as follows:

(a-1) Provides that the court, subject to conditions reasonably related to ensuring, rather than assuring, public safety and the effectiveness of the defendant's treatment, if the court makes certain determinations about a defendant found incompetent to stand trial:

(1) is authorized to release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a felony, rather than with respect to a felony, or to continue the defendant's release on bail; and

(2) is required to release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a Class A misdemeanor, rather than with respect to a misdemeanor, or to continue the defendant's release on bail.

(e) Requires the court, if the defendant successfully completes the outpatient treatment program described by Subsection (a-1), to:

(1) on the motion of the attorney representing the state, dismiss the charge; or

(2) proceed as otherwise required by this subchapter.

(f) Authorizes the court, if the defendant does not successfully complete the outpatient treatment program described by Subsection (a-1), to:

(1) for the remainder of the 120-day period described by Subsection (b), 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

(2) on the motion of the attorney representing the state, dismiss the charge.

SECTION 13. Amends Article 46B.073, Code of Criminal Procedure, as follows:

Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY. (a) Provides that this article applies only to a defendant, rather than a defendant not released on bail, who is subject to an initial resolution period based on Article 46B.071 (Options on Determination of Incompetency) and who:

(1) was not released on bail; or

(2) 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 the defendant attaining competency to stand trial, to commit a defendant described by Subsection (a) to a mental health facility, residential care facility, or jail-based restoration of competency program 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) a period of not more than 120 days, if the defendant is described by Subsection (a)(1) and charged with an offense punishable as a felony; 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 violent offenses, to enter an order committing the defendant for psychiatric stabilization to the maximum security unit of any facility designated by DSHS, to an agency of the United States operating a mental hospital, to a Department of Veterans Affairs hospital, or to a jail-based restoration of competency program.

(d) Requires the court, if the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege a certain affirmative finding, to enter an order committing the defendant for psychiatric stabilization to a jail-based restoration of competency program or to a mental health facility or residential care facility determined to be appropriate by certain local authorities.

(e) Requires the court, on notification from the head of a facility or a program provider under Article 46B.079(b)(1) (relating to requiring the head of the facility or outpatient treatment program provider to promptly notify the court when the head of the facility or program provider believes that the defendant has attained competency to stand trial), 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 certain persons. Deletes existing text relating to procedures for a defendant in a county in which DSHS operates a jail-based restoration of competency pilot program, and providing that this subsection expires on September 1, 2019.

SECTION 14. Amends Article 46B.074(a), Code of Criminal Procedure, to authorize a defendant to be committed to a jail-based restoration of competency program, mental health facility, or residential care facility under this subchapter only on competent medical or psychiatric testimony provided by an expert qualified under Article 46B.022 (Experts: Qualifications).

SECTION 15. 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 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 purposes of competency restoration.

SECTION 16. Amends Articles 46B.0755(a), (b), and (d), Code of Criminal Procedure, as follows:

(a) Authorizes the court, notwithstanding any other provision of this subchapter, if the court receives credible evidence indicating that the defendant has been restored to competency at any time after the defendant's incompetency trial under Subchapter C (Incompetency Trial) but before the defendant is transported under Article 46B.075 (Transfer of Defendant to Facility or Outpatient Treatment Program) to the facility or program, rather than a mental health facility, residential care facility, or program, rather than outpatient treatment program, as applicable, to appoint disinterested experts to reexamine the defendant in accordance with Subchapter B (Examination).

(b) Provides that if after reexamination of the defendant the applicable expert's report states an opinion that the defendant remains incompetent, the court's order under Article 46B.0711, 46B.072, or 46B.073 remains in effect, and requires the defendant to be transported to the facility or program as required by Article 46B.075. Requires the court, if after a reexamination of the applicable expert's report states an opinion that defendant has been restored to competency, to withdraw its order under Article 46B.0711, 46B.072, or 46B.073 and proceed under certain subsections. Makes a conforming change.

(d) Makes a conforming change.

SECTION 17. Amends Article 46B.076, Code of Criminal Procedure, as follows:

Art. 46B.076. COURT'S ORDER. (a) Requires the court, if the defendant is found incompetent to stand trial to, not later than a certain date, send a copy of the order to the applicable facility, rather than to the facility to which the defendant is committed, or program, rather than the outpatient treatment program to which the defendant is released. Requires the court to also provide to the facility or program copies of certain documents made available to the court during the incompetency trial. Makes a conforming change.

(b) Requires the court to order that the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the applicable facility or program, rather than proper facility or outpatient treatment program.

SECTION 18. Amends Article 46B.077, Code of Criminal Procedure, as follows:

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) Requires the facility or jail-based program to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail to undertake certain measures.

(b) Requires the facility or program, if the defendant is committed to an inpatient mental health facility, residential care facility, or jail-based restoration of competency program, to report to the court at least once during the commitment period. Requires the treatment program, if the defendant is released to a treatment program not provided by an inpatient mental health facility, residential care facility, or jail-based restoration or competency program, to report to the court at certain times. Makes a nonsubstantive change.

SECTION 19. 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, if the charges pending against a defendant are dismissed, to send a copy of the order of dismissal to the sheriff of the county in which the court is located and to the head of the facility, the provider of the jail-based restoration of competency program, or the provider of the outpatient

program, rather than outpatient treatment program, as appropriate. Requires the facility or program, on receipt of the copy of the order, to discharge the defendant into the care of the sheriff for transportation in the manner described by Article 46B.082 (Transportation of Defendant). Makes a conforming change.

SECTION 20. Amends Article 46B.079, Code of Criminal Procedure, as follows:

Art. 46B.079. NOTICE AND REPORT TO COURT. (a) Requires the head of the facility, the provider of the jail-based restoration of competency program, or the provider of the outpatient program, as appropriate, not later than the 15th day before the date on which the initial restoration period is to expire according to the terms of the order or under Article 46B.0095 or other applicable provision of this chapter, to notify the applicable court that the period is about to expire. Makes a conforming change.

(b) Requires the head of the facility, jail-based restoration of competency program provider, or outpatient program provider, rather than outpatient treatment program provider, to promptly notify the court when the head of the facility or program provider, rather than outpatient treatment program provider, believes that:

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

(2) creates this subdivision from existing text; the defendant has attained competency to stand trial; or

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

(c) Requires the head of the facility or program provider, when the head of the facility or program provider gives notice to the court under Subsection (a), (b)(2), or (b)(3), rather than (b), to also file a final report with the court stating the reason for the proposed discharge under this chapter and including a certain list. Makes conforming changes.

(d) Makes a conforming change.

SECTION 21. Amends Article 46B.080(a), Code of Criminal Procedure, to change a reference to treatment program provider to program provider.

SECTION 22. Amends Article 46B.081, Code of Criminal Procedure, as follows:

Art. 46B.081. RETURN TO COURT. Requires that a defendant committed or released on bail under this subchapter, subject to Article 46B.082(b) (relating to the transportation of defendants), 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 46B.079, but not later than the date of expiration of the period for restoration specified by the court under Article 46B.0711, 46B.072, or 46B.073.

SECTION 23. Amends the heading to Article 46B.082, Code of Criminal Procedure, to read as follows:

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

SECTION 24. 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 to which the defendant is committed or the provider of the outpatient 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), a defendant committed to a facility or jail-based program or ordered to participate in an outpatient program, rather

than outpatient treatment program, has not been transported to the court that issued the order under Article 46B.0711, 46B.072, or 46B.073, as applicable, 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 DSHS or the Health and Human Services Commission, rather than DADS, as appropriate, for certain expenses. Makes conforming changes.

SECTION 25. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Articles 46B.0825 and 46B.0826, 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 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:

(1) notice regarding the defendant's entry into the program for purposes of receiving competency restoration education services; and

(2) subsequent notice as otherwise required under Article 46B.079 (Notice and Report to Court).

Art. 46B.0826. ADMINISTRATION OF MEDICATION WHILE IN CUSTODY OF SHERIFF. Requires a sheriff or other person having custody of a defendant for transportation as required by Article 46B.075, 46B.082, or 46B.0825 to, according to information available at the time and unless directed otherwise by a physician treating the defendant, ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant.

SECTION 26. 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 the head of the facility or the program provider, if the head of the facility, the jail-based restoration of competency program provider, or the outpatient program provider believes that the defendant is a person with mental illness and meets the criteria for court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, to have submitted to the court a certificate of medical examination for mental illness. Makes conforming changes.

(b) Requires the head of the facility or the program provider, if the head of the facility, the jail-based restoration of competency program provider, or the outpatient program provider believes that the defendant is a person with an intellectual disability, to have submitted to the court an affidavit stating the conclusions reached as a result of the examination. Makes conforming changes.

SECTION 27. 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 change to this subdivision;

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07 (Definitions), Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, a jail-based restoration of competency program, or an outpatient program, rather than outpatient treatment program;

(B) is committed to an inpatient mental health facility, a residential care facility, or a jail-based restoration of competency program for the purpose of competency restoration and makes a nonsubstantive change;

(C) makes no change 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) for whom a correctional facility that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, a jail-based restoration of competency program, or an outpatient program provider, rather than an outpatient treatment program provider, has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

(4) makes no change to this subdivision.

(b) Requires the director of the facility or program provider, rather than the director of the correctional facility or outpatient treatment program provider, as applicable, if a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, to notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal. Requires the motion to compel medication to be filed not later than a certain day, except that, for a defendant in an outpatient program the motion may be filed at any time. Makes a conforming change.

(c) and (d) Makes conforming changes.

SECTION 28. Amends the heading to Article 46B.090, Code of Criminal Procedure, as follows:

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

SECTION 29. 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." Deletes existing definition of "department."

(a-1) Changes reference to DSHS to HHSC. 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 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. Makes nonsubstantive changes.

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

Authorizes HHSC to contract with a different provider for each program. Makes a conforming change.

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

(f) Requires a provider of jail-based competency restoration services, to contract with HHSC, rather than DSHS, under Subsection (b), to demonstrate to HHSC, rather than DSHS, 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 and makes a nonsubstantive change;

(B) is a local mental health authority in good standing with HHSC, rather than 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, rather than competency restoration program:

(A) provides clinical treatment and competency restoration through the use of a multidisciplinary treatment team, rather than 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 is 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 or psychologist;

(C) provides jail-based competency restoration services through trained and experienced staff, rather than assigns staff members to defendants participating in the program at an average ratio not lower than 3.7 to 1 and makes a nonsubstantive change;

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

(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, Health and Safety Code and deletes Subdivisions (3) and (4).

Deletes existing Subdivisions (3) and (4) relating to the provider being certified by a certain nonprofit organization and having a demonstrated history of successful jail-based competency restoration outcomes.

(g) Requires a contract under Subsection (b) to require a designated provider to collect and submit to HHSC the information specified by rules adopted under Subsection (c). Makes conforming and nonsubstantive changes.

(i) Requires the psychiatrist or psychologist for the provider to conduct at least two full psychiatric or psychological evaluations of the defendant during the period the defendant receives competency restoration services in the jail. Requires the psychiatrist or psychologist 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 program, rather than pilot program. Requires the psychiatrist or psychologist to submit to the court a report concerning each evaluation required under this subsection.

(j) Provides that if at any time during the defendant's participation in a program implemented under this article, rather than the jail-based restoration of competency pilot program, the psychiatrist or psychologist for the provider determines that the defendant has attained competency to stand trial certain actions result. Makes a conforming change.

(k) Makes conforming changes.

(l) Provides that if the psychiatrist or psychologist for the provider determines that a defendant ordered to participate in a program implemented under this article, rather than 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 program, rather than the pilot program.

(1) makes no change to this subdivision; and

(2) for a defendant charged with a misdemeanor, the court may:

(A) order a single extension under Article 46B.080 and, notwithstanding Article 46B.073(b-1), 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;

(B) through (D) makes no changes to these paragraphs.

(m) 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, rather than the pilot 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 30. 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 jointly to 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 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 restoration of competency, and supply 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, Health and Safety Code.

(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 the psychiatrist or psychologist 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 Article 46B.0755(a) (relating to authorizing the court to appoint disinterested experts to reexamine a defendant, if the court receives credible evidence indicating that the defendant has been restored to competency after their incompetency trial and before transportation) or (b) (relating to the defendant being found incompetent after reexamination).

(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 31. Amends Section 614.0032(b), Health and Safety Code, as follows:

(b) Requires TCOOMMI, among certain other requirements, to approve and make generally available in electronic format a standard form for use by experts in reporting mental health assessment results under Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Mental Retardation), Code of Criminal Procedure.

SECTION 32. Repealer: Articles 46B.090(h) (relating to the requirements of the contract between a designated provider and the participating county or counties), (n) (relating to requiring the commissioner to submit a report concerning the pilot program to the presiding officers of certain standing committees of the senate and house of representatives), and (o) (relating to the expiration date of the article), Code of Criminal Procedure.

SECTION 33. Makes application of this Act prospective.

SECTION 34. Effective date: September 1, 2017.