

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1326
By: Zaffirini
Criminal Justice
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Committee Report (Substituted)

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. (Original Author's / Sponsor's Statement of Intent)

C.S.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 is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 32 (Article 46B.091, Code of Criminal Procedure) of this bill.

Rulemaking authority previously granted to the commissioner of the Department of State Health Services is transferred to the executive commissioner in SECTION 31 (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 municipal jailer, not later than 12 hours after the sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives credible information that may establish reasonable cause 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 that the notice include any information related to the sheriff's or municipal jailer'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), 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 72 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 96 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 that the written assessment 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 if the defendant is being held in custody;

(2) makes a conforming and a 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). Makes nonsubstantive changes;

(3) the applicable expert, in a written assessment submitted to the magistrate under Article 16.22 concludes that the defendant has a mental illness or is a person with an intellectual disability, and is nonetheless competent to stand trial, and recommends mental health treatment or intellectual disability treatment for the defendant, as applicable. Makes conforming and nonsubstantive changes;

(4) the magistrate determines, in consultation with the local mental health 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 trials 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 Article 46B.001, Code of Criminal Procedure, by adding Subdivision (9) to define "competency restoration."

SECTION 6. 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 7. Amends Articles 46B.0095(a), (b), (c), and (d), Code of Criminal Procedure, as follows:

(a) Prohibits a defendant from, under Subchapter D (Procedures After Determination of Incompetency) or E (Civil Commitment: Charges Pending) or any other provision of this chapter, being committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, ordered to participate in an outpatient competency restoration or treatment program, or subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter (Incompetency to Stand Trial) 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 competency restoration or treatment 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 competency restoration or treatment 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 other inpatient or residential facility, or may be ordered to participate for an additional period in an outpatient treatment program, as appropriate, only under certain circumstances.

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

(1) begins on the date the initial order of commitment or initial order for outpatient competency restoration or treatment program participation is entered under this chapter; and

(2) in addition to any inpatient or outpatient competency restoration, rather than outpatient treatment, periods or program participation periods described by Subsection (a), includes any of certain times, including while awaiting, as applicable:

(A) the defendant's transfer to a mental hospital or other inpatient or residential facility or a jail-based competency restoration program;

(B) makes a conforming change; or

(C) makes no changes to this paragraph.

(d) Makes a conforming change.

SECTION 8. 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 competency restoration program, participate in an outpatient competency restoration or treatment program, or be subjected to any combination of inpatient or outpatient competency restoration treatment or program participation, or jail-based competency restoration under this chapter 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 9. 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 10. Amends Article 46B.071(a), Code of Criminal Procedure, as follows:

(a) Requires the court, except as provided by Subsection (b) and on a determination that a defendant is incompetent to stand trial, to:

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

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

(B) commit the defendant to:

(i) a jail-based competency restoration program under Article 46B.073(e); or

(ii) a mental health facility or residential care facility under Article 46B.073(f); or

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

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

(B) commit the defendant to a facility or a jail-based competency restoration program under Article 46B.073 (c) or (d).

SECTION 11. 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) Provides that this article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(b) 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, and an appropriate outpatient competency restoration program is available for the defendant, 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 competency restoration program for a period not to exceed 60 days.

(c) Authorizes the court, notwithstanding Subsection (b), to order a defendant to participate in an outpatient competency restoration program under this article only if certain criteria are met.

(d) Authorizes an order issued under this article to require the defendant to participate in certain activities.

SECTION 12. Amends the heading to Article 46B.072, Code of Criminal Procedure, to read as follows:

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

SECTION 13. Amends Article 46B.072(a-1), (b), (c), and (d), Code of Criminal Procedure, 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 charged with an offense punishable as a felony or Class A misdemeanor and 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.

(b) Requires the court to order a defendant released on bail under Subsection (a-1) to participate in an outpatient competency restoration program, rather than outpatient treatment program, for a period not to exceed 120 days.

(c) and (d) Makes conforming changes.

SECTION 14. Amends Article 46B.073, Code of Criminal Procedure, by amending Subsections (b), (c), (d), and (e) and adding Subsection (f), as follows:

(b) Requires the court, for purposes of further examination and competency restoration services with, rather than 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 competency restoration program for the applicable period as follows:

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

(2) a period of not more than 120 days, if the defendant is charged with an offense punishable as a felony.

(c) Requires the court, if the defendant is charged with certain offenses, other than an offense under Section 22.01(a)(1) (relating to assault by intentional, knowing, or recklessly causing bodily injury to another), to enter an order committing the defendant for competency restoration services to the maximum security unit of any facility designated by DSHS, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(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 to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority or to a jail-based competency restoration program. Authorizes a defendant to be committed to a jail-based competency restoration program only if the program provider determines the defendant will begin to receive competency restoration services within 72 hours of arriving at the program.

(e) Authorizes a defendant charged with an offense punishable as a Class B misdemeanor, except as provided by Subsection (f), to be committed under this subchapter (Procedures After Determination of Incompetency) only to a jail-based competency restoration program.

(f) Authorizes a defendant charged with an offense punishable as a Class B misdemeanor to be committed to a mental health facility or residential care facility described by Subsection (d) only if a jail-based competency restoration program is not available. 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 15. Amends Article 46B.074(a), Code of Criminal Procedure, to authorize a defendant to be committed to a jail-based competency restoration 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 16. 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 competency restoration services. Makes a nonsubstantive change.

SECTION 17. 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, as

applicable, to appoint disinterested experts to reexamine the defendant in accordance with Subchapter B (Examination).

(b) Provides that if after a 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 18. 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 19. Amends Article 46B.077, Code of Criminal Procedure, as follows:

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) Requires the facility or jail-based competency restoration program to which the defendant is committed or the outpatient competency restoration program, rather than 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 competency restoration program, to report to the court at least once during the commitment period.

(c) Requires the treatment program, if the defendant is released to an outpatient competency restoration program, rather than treatment program not providing an inpatient mental health facility or a residential care facility, to report certain information to the court. Makes a nonsubstantive change.

SECTION 20. 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 competency restoration program, or the provider of the outpatient competency restoration 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 conforming changes.

SECTION 21. 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 competency restoration program, or the provider of

the outpatient competency restoration 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 or jail-based competency restoration program provider to promptly notify the court when the head of the facility or program provider, believes that:

(1) the defendant is clinically ready and can be safely transferred to a competency restoration program for education services but has not yet attained competency to stand trial;

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

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

Makes conforming changes.

(b-1) Requires the outpatient competency restoration program provider to promptly notify the court when the program provider believes that the defendant has attained competency to stand trial or is not likely to attain competency in the foreseeable future.

(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), or (b-1), to also file a final report with the court stating the reason for the proposed discharge or transfer under this chapter and including a list containing certain information. Requires the court to provide to the attorney representing the defendant and the attorney representing the state copies of a certain report. Makes conforming changes.

(d) Makes a conforming change.

SECTION 22. Amends Article 46B.080(a), Code of Criminal Procedure, to change a reference to treatment program provider to program provider.

SECTION 23. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Articles 46B.0805 and 46B.0825, as follows:

Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES. (a) 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 competency restoration program or an outpatient competency restoration program, as appropriate and if available.

(b) Requires the court, if a defendant for whom an order is entered under Subsection (a) was committed for competency restoration to a facility other than a jail-based competency restoration program, to send a copy of that order to certain entities.

(c) Requires the applicable facility, as soon as practicable but not later than the 10th day after the date of receipt of a copy of an order, to discharge the defendant into the care of the sheriff of the county in which the court is located. Requires the sheriff to transport the defendant to the jail-based competency restoration program or outpatient competency restoration program, as appropriate.

(d) Requires a jail-based competency restoration program or outpatient competency restoration program that receives a defendant under this article to give the court certain notices.

Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN CUSTODY OF SHERIFF. (a) Requires a sheriff having custody of a defendant for transportation as required by Article 46B.075, 46B.0805, or 46B.082 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.

(b) Provides that, to the extent funds are appropriated for that purpose, a sheriff is entitled to reimbursement from the state for providing the medication required by Subsection (a).

(c) Provides that, if the sheriff determines that funds are not available from the state to reimburse the sheriff as provided by Subsection (b), the sheriff is not required to comply with Subsection (a).

SECTION 24. 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), (b)(3), or (b-1) 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 25. Amends the heading to Article 46B.082, Code of Criminal Procedure, to read as follows:

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

SECTION 26. 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), (b)(3), or (b-1) a defendant committed to a facility or jail-based competency restoration program or ordered to participate in an outpatient competency restoration 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 that the county in which the court is located reimburse DSHS or the Health and Human Services Commission, rather than DADS, as appropriate, for certain expenses. Makes conforming changes.

SECTION 27. 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 competency restoration program provider, or the outpatient competency restoration 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 competency restoration program provider, or the outpatient

competency restoration 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 28. Amends Article 46B.084(a-1)(1), Code of Criminal Procedure, as follows:

(1) Requires the court, following the defendant's return to the court, to make a determination with regard to the defendant's competency to stand trial. Authorizes the court to make the determination based only on the most recent report that is filed under Article 46B.079(c) and based on notice under that article, other than notice under Subsection (b)(1) of that article, and on other medical information or personal history information relating to the defendant. Authorizes a party to object in writing or in open court to the findings of the most recent report not later than the 15th day after the date on which the court received the applicable notice under Article 46B.079. Requires the court to make the determination not later than the 20th day after the date on which the court received the applicable notice under Article 46B.079, or not later than the fifth day after the date of the defendant's return to court, whichever occurs first, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

SECTION 29. 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 competency restoration program, or an outpatient competency restoration program;

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

(C) makes a conforming change;

(D) is subject to Article 46B.0711, if the court has made the determinations required by Subsection (b) 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 or jail-based competency restoration program that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient competency restoration 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 the 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 that the motion to compel medication be filed not later than a certain day, except that, for a defendant in an outpatient competency restoration program the motion may be filed at any time. Makes a conforming change.

(c) and (d) Makes conforming changes.

SECTION 30. Amends the heading to Article 46B.090, Code of Criminal Procedure, as follows:

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

SECTION 31. Amends Article 46B.090, Code of Criminal Procedure, by amending Subsections (a), (a-1), (b), (c), (f), (g), (i), (j), (k), (l), and (m) and adding Subsection (p), as follows:

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

(a-1) Changes reference to DSHS to HHSC. Authorizes HHSC, with the agreement of a county seeking to participate in the program, to develop and implement a jail-based competency restoration program in that county. Requires HHSC, in developing the program, to coordinate and allow for input from the 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, if HHSC implements a program under this article, to contract with a provider of jail-based competency restoration services to provide services under the program, rather than the pilot program 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, and 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) makes a nonsubstantive change; 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; or

(B) is a local mental health authority or local behavioral health authority that is in good standing with HHSC, which may include an authority that is in good standing with HHSC and subcontracts with a provider of jail-based competency restoration services, rather than that has previously provided competency restoration services; and

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

(A) provides jail-based competency restoration services through the use of a multidisciplinary treatment team that meets certain criteria; makes nonsubstantive changes;

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

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

(D) makes conforming changes;

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

(F) ensures coordination of general health care;

(G) provides mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and

(H) supplies clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article 46B.086 of this code or Section 574.106, Health and Safety Code.

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 a 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 is committed, rather than 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 a defendant's commitment to a program implemented under this article, rather than participation in the jail-based restoration of competency pilot, the 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 purposes of Article 46B.0755(a) or (b).

(k) Makes conforming changes.

(l) Provides that if the psychiatrist or psychologist for the provider determines that a defendant committed, rather than ordered, to 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 was committed to, rather than 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 is authorized to:

(A) order a single extension under Article 46B.080 and, notwithstanding Articles 46B.073(e) and (f), 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.

(p) Provides that this article does not affect the responsibility of a county to ensure the safety of a defendant who is committed to the program and to provide the same adequate care to the defendant as is provided to other inmates of the jail in which the defendant is located.

SECTION 32. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.091, as follows:

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

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

(c) Requires a county that implements a program under this article to contract with a provider of jail-based competency restoration services that is a local mental health authority or local behavioral health authority that is in good standing with HHSC, which may include an authority that is in good standing with HHSC and subcontracts with a provider of a jail-based competency restoration services.

(d) Requires a jail-based competency restoration program to provide jail-based competency restoration services through a certain multidisciplinary treatment team, employ or contract for the services of at least one psychiatrist, provide jail-based competency restoration services through licensed or qualified mental health professionals, provide weekly competency restoration hours commensurate to the hours provided as part of a competency restoration program at an inpatient mental health facility, operate in the jail in a designated space that is separate from the space used for the general population of the jail, ensure coordination of general health care, provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration, and supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article 46B.086 of this code or Section 574.106, Health and Safety Code.

(e) Requires the executive commissioner to adopt rules as necessary for a county to develop and implement a program under this article. Requires HHSC to, as part

of the rulemaking process, establish contract monitoring and oversight requirements for a local mental health authority or local behavioral health authority that contacts with a county to provide jail-based competency restoration services under this article. Requires that the contract monitoring and oversight requirements be consistent with local mental health authority or local behavioral health authority performance contract monitoring and oversight requirements, as applicable.

(f) Authorizes HHSC to inspect on behalf of the state any aspect of program implemented under this article.

(g) 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 is committed to the program. Requires the psychiatrist or psychologist to submit to the court a report concerning each evaluation required under this subsection.

(h) Provides that, if at any time during a defendant's commitment to a program implemented under this article, the 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 purposes of Article 46B.0755(a) or (b).

(i) Provides that, if at any time during a defendant's commitment to a program implemented under this article, the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(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:

(A) 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

(B) release the defendant on bail as permitted under Chapter 17 (Bail).

(j) Provides that, if the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article has not been restored to competency by the end of the 60th day after the date the defendant was committed to the 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:

(A) order a single extension under Article 46B.080 and, notwithstanding Articles 46B.073(e) and (f), 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) proceed under Subchapter E or F;

(C) release the defendant on bail as permitted under Chapter 17; or

(D) dismiss the charges in accordance with Article 46B.010.

(k) 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, 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.

(l) Provides that this article does not affect the responsibility of a county to ensure the safety of a defendant who is committed to the program and to provide the same adequate care to the defendant as is provided to other inmates of the jail in which the defendant is located.

SECTION 33. Amends Section 614.0032(b), Health and Safety Code, as follows:

(b) Requires TCOOMMI to approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure. Deletes existing text relating to certain requirements of TCOOMMI and committee members.

SECTION 34. (1) Repealer: Article 46B.026(c) (relating to requiring the court to forward the report to the Texas Correctional Office on Offenders with Medical or Mental Impairments), Code of Criminal Procedure;

(2) 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.

(3) Repealer: Section 614.0032(c) (relating to requiring a district or juvenile court to submit reports based on certain examinations)

SECTION 35. Requires the executive commissioner of HHSC, not later than November 1, 2017, to adopt rules described by Article 46B.090(c), Code of Criminal Procedure, as amended by this Act, and Article 46B.091(e), Code of Criminal Procedure, as added by this Act.

SECTION 36. Makes application of this Act prospective.

SECTION 37. Provides that this Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

SECTION 38. Effective date: September 1, 2017.