

BILL ANALYSIS

S.B. 1183
By: Perry
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties report that there is a waiting list for a defendant who is or may be a person with a mental illness or an intellectual disability to be admitted to a state hospital for competency restoration services. This situation can result in a defendant having to spend the often lengthy waiting period in jail. S.B. 1183 seeks to remedy this situation by providing for a county jail-based competency restoration program and by making certain other changes to competency restoration procedures.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 28 of this bill.

ANALYSIS

S.B. 1183 amends the Code of Criminal Procedure to authorize a county or counties jointly to develop and implement a jail-based competency restoration program through which an applicable county contracts 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 the Health and Human Services Commission (HHSC), which may include an authority that is in good standing with HHSC and subcontracts with a provider of jail-based competency restoration services. The bill sets out requirements for a county jail-based competency restoration program and defines "competency restoration" as the treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person. The bill requires the executive commissioner of HHSC to adopt, not later than November 1, 2017, rules as necessary for a county to develop and implement a county jail-based competency restoration program. The bill requires HHSC, as part of the rulemaking process, to establish specified contract monitoring and oversight requirements that are consistent with local mental health authority or local behavioral health authority performance contract monitoring and oversight requirements, as applicable. The bill authorizes HHSC to inspect on behalf of the state any aspect of a county jail-based competency restoration program. The bill requires a psychiatrist or psychologist for the provider to conduct specified psychiatric or psychological evaluations of a defendant during the period the defendant receives competency restoration services in the jail and to submit to the court a report concerning each evaluation.

S.B. 1183 sets out requirements for the psychiatrist or psychologist for the provider and for the court when, at any time during a defendant's commitment to a program, the psychiatrist or

psychologist for the provider determines that the defendant has attained competency to stand trial or that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future. The bill establishes procedures for a defendant who, as determined by the psychiatrist or psychologist for the provider, has not been restored to competency by the end of the 60th day after the date the defendant was committed to the program, depending on whether the defendant is charged with a felony or a misdemeanor. Statutory provisions relating to a defendant's incompetency to stand trial apply to a defendant receiving competency restoration services under a county jail-based competency restoration program in the same manner as those provisions apply to any other defendant who is subject to competency restoration proceedings, unless otherwise provided by the bill, and the bill's provisions expressly do not affect the responsibility of a county to ensure the safety of a defendant who is committed to such a 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.

S.B. 1183 extends to such a county jail-based competency restoration program the applicability of statutory provisions relating to the maximum period for competency restoration, the mandatory dismissal of misdemeanor charges against a defendant who has been committed for competency restoration and is not tried before the expiration of the maximum period of restoration, certain expert testimony required for commitment, requirements for a committed defendant's individual treatment program, requirements for notice and reports to the court, transportation of a committed defendant to court, certain information supporting commitment that a program provider is required to submit to the court, proceedings on the return of the defendant to court, and court-ordered medications.

S.B. 1183 requires the trial of a criminal action against a defendant who has been returned to court and determined to be restored to competency to be given preference over other matters before the court, whether civil or criminal, with certain exceptions. The bill requires a court that receives an expert report on a defendant's competency or incompetency to stand trial to submit to the Office of Court Administration (OCA) on a monthly basis the number of such reports provided to the court. The bill repeals a requirement for a court to forward such a report to the Texas Correctional Office on Offenders with Medical or Mental Impairments.

S.B. 1183 limits the applicability of statutory procedures for releasing on bail a defendant found incompetent to stand trial to a defendant charged with an offense punishable as a Class A misdemeanor or any higher category of offense and establishes alternative procedures for the release on bail of a defendant found incompetent to stand trial who is charged with an offense punishable as a Class B misdemeanor. The bill restricts a court's authority to commit a defendant who is incompetent to stand trial and charged with an offense punishable as a Class B misdemeanor to any eligible facility for competency restoration to a situation in which a county jail-based competency restoration program is not available, otherwise the bill requires the court to commit the defendant to a county jail-based competency restoration program or release the defendant on bail under the bill's provisions. The bill requires a court, if the court determines that a defendant who is charged with an offense punishable as a Class B misdemeanor, found incompetent to stand trial, and subject to an initial restoration period 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 if an appropriate outpatient competency restoration program is available for the defendant, to release the defendant on bail or continue the defendant's release on bail and order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days, subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment. The bill authorizes such an order to require the defendant to participate in, as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides competency restoration services and in an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication. The bill limits the court's authority to order a defendant to participate in an outpatient competency

restoration program to a situation in which the court receives and approves a comprehensive plan that provides for the treatment of the defendant for purposes of competency restoration and identifies the person who will be responsible for providing that treatment to the defendant and the court finds that the treatment proposed by the plan will be available to and provided to the defendant. The bill extends to a defendant charged with a Class B misdemeanor and issued any of these court orders the applicability of statutory provisions relating to the transfer of the defendant by a sheriff to the applicable program, procedures for a defendant who has been restored to competency after the defendant's competency trial but before the defendant's transport to the applicable program, procedures applicable to a defendant whose charges are dismissed, the deadline for returning a defendant to court after commitment or release on bail, and court-ordered medications.

S.B. 1183 specifies that competency restoration services are included among the purposes of a court's commitment of a defendant to a facility or program for competency restoration. The bill authorizes a defendant to be committed to a county 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. The bill requires the head of an inpatient facility or the provider of a county jail-based competency restoration program to which a defendant is committed for competency restoration to promptly notify the court when the head of the facility or program provider believes that 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.

S.B. 1183 requires a court, on notification from the head of a facility or a program provider that a defendant is clinically ready and can be safely transferred to a competency restoration program for education services but has not attained competency to stand trial, to order the defendant to receive competency restoration education services in a county jail-based competency restoration program or in an outpatient competency restoration program, as appropriate and if available. The bill requires a court that enters such an order for a defendant who was committed for competency restoration to a facility other than a county jail-based competency restoration program to send a copy of that order to the sheriff of the county in which the court is located, the head of the facility to which the defendant was committed for competency restoration, and the local mental health authority or local intellectual and developmental disability authority, as appropriate. The bill requires a facility to which a defendant is committed for competency restoration, as soon as practicable but not later than the 10th day after receiving a copy of such an order, to discharge the defendant into the care of the sheriff of the county in which the court is located and requires the sheriff to transport the defendant to the county jail-based competency restoration program or outpatient competency restoration program, as appropriate. The bill requires a county jail-based competency restoration program or outpatient competency restoration program that receives the defendant to give to the court notice regarding the defendant's entry into the program for purposes of receiving competency restoration education services and any subsequent notice otherwise required.

S.B. 1183 requires a sheriff having custody of a defendant for transportation, according to information available at the time and unless directed otherwise by a physician treating the defendant, to ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant. The bill entitles a sheriff to reimbursement from the state for providing the medication to the extent funds are appropriated for that purpose. The bill expressly does not require a sheriff to comply with the requirement to provide medication if the sheriff determines that funds are not available from the state to reimburse the sheriff.

S.B. 1183 removes the requirement that a provider of the Department of State Health Services (DSHS) jail-based competency restoration pilot program assign staff members to defendants participating in the program at an average ratio not lower than 3.7 to 1. The bill postpones from December 1, 2016, to December 1, 2018, the deadline by which the commissioner of state health services is required to submit a report concerning the pilot program to the presiding officers of

the applicable standing committees of the senate and the house of representatives. The bill makes statutory provisions relating to the DSHS program permanent by repealing the expiration date of the provisions. The bill removes provisions relating to required reports regarding a defendant who is committed to a mental health facility or residential care facility in a county in which a DSHS program is operating.

S.B. 1183 amends the Health and Safety Code to change the maximum period for which temporary inpatient or outpatient mental health services may be authorized in the applicable court order for a proposed patient from 90 days to 45 days except that the bill authorizes the order to specify a maximum period of 90 days if the judge finds that the longer period is necessary. The bill removes the prohibition against an order specifying a shorter period. The bill removes the requirement for the Texas Correctional Office on Offenders with Medical or Mental Impairments to review examinations to determine the competency of defendants in criminal cases to stand trial and examinations to determine the fitness of children to proceed with respect to adjudications of delinquent conduct or conduct indicating a need for supervision and periodically report to the legislature and the court of criminal appeals findings made as a result of that review. The bill repeals a requirement for a district or juvenile court to submit to the office on a monthly basis all reports based on those examinations.

S.B. 1183 repeals the following provisions:

- Article 46B.026(c), Code of Criminal Procedure
- Article 46B.090(o), Code of Criminal Procedure
- Section 614.0032(c), Health and Safety Code.

EFFECTIVE DATE

September 1, 2017.