

BILL ANALYSIS

Senate Research Center
82R21619 KEL-F

H.B. 748
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Criminal Justice
5/18/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current statute requires a court to commit a defendant determined incompetent to stand trial to a mental health facility or a residential care facility for further examination and treatment toward the specific objective of attaining competency to stand trial. The commitment is for a period not to exceed 120 days and can be extended one time for an additional 60-day period. Currently, such a committed defendant does not receive any time credits against any subsequent sentence and judgment that may result from the ultimate adjudication of the charge for the time committed for competency restoration, regardless of the outcome of the competency restoration program. H.B. 748 seeks to provide such defendants an opportunity to earn time credit for time spent in a competency restoration program.

H.B. 748 amends current law relating to a criminal defendant's incompetency to stand trial, to certain related time credits, and to the maximum period allowed for restoration of the defendant to competency.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2(a), Article 42.03, Code of Criminal Procedure, as follows:

- (a) Requires the judge of the court in which a defendant is convicted, in all criminal cases, to give the defendant credit on the defendant's sentence for the time that the defendant has spent:
- (1) in jail for the case, including confinement served as described by Article 46B.009 and excluding confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court;
 - (2) in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009 (Substance Abuse Felony Punishment Facilities), Government Code, or another court-ordered residential program or facility as a condition of deferred adjudication community supervision granted in the case if the defendant successfully completes the treatment program at that facility; or
 - (3) confined in a mental health facility or residential care facility as described by Article 46B.009.

Makes nonsubstantive changes.

SECTION 2. Amends Article 46B.009, Code of Criminal Procedure, as follows:

Art. 46B.009. TIME CREDITS. Requires a court sentencing a person convicted of a criminal offense to credit to the term of the person's sentence each of the following periods for which the person may be confined in a mental health facility, residential care facility, or jail:

- (1) any period of confinement that occurs pending a determination, rather than pending a trial, under Subchapter C (Incompetency Trial) as to the defendant's competency to stand trial; and
- (2) any period of confinement that occurs between the date of any initial determination of the defendant's incompetency under that subchapter and the date the person is transported to jail following a final judicial determination that the person has been restored to competency.

Makes nonsubstantive changes.

SECTION 3. Amends Article 46B.0095, Code of Criminal Procedure, as follows:

Art. 46B.0095. New heading: MAXIMUM PERIOD OF COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) Prohibits a defendant from, under this chapter, being committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment 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 treatment program under Subchapter D (Procedures After Determination of Incompetency) or E (Civil Commitment: Charges Pending), the maximum period of restoration is two years, rather two years beginning on the date of the initial order for outpatient treatment program participation was entered.

(b) Requires the 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 treatment program participation under this chapter, on expiration of the maximum restoration period under Subsection (a), to assess the defendant to determine if civil proceedings under Subtitle C (Texas Mental Health Code) or D (Persons With Mental Retardation Act), Title 7 (Mental Health and Mental Retardation), Health and Safety Code, are appropriate. Authorizes the defendant to be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil commitment proceedings. Makes a nonsubstantive change.

(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 treatment program participation is entered under this chapter; and
- (2) includes any time that, following the entry of an order described by Subdivision (1), the defendant is confined in a correctional facility, as defined by Section 1.07 (Definitions), Penal Code, while awaiting:
 - (A) transfer to a mental hospital or other inpatient or residential facility;
 - (B) release on bail to participate in an outpatient treatment program; or

(C) a criminal trial following any temporary restoration of the defendant's competency to stand trial.

(d) Authorizes the court to credit to the cumulative period described by Subsection (a):

(1) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for outpatient treatment program participation is entered under this chapter; and

(2) any good conduct time the defendant has been granted under Article 42.032 (Good Conduct) in relation to the defendant's confinement as described by Subdivision (1).

SECTION 4. 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, participate in an outpatient treatment program, or be subjected to both inpatient and outpatient treatment, and the defendant is not tried before the expiration of the maximum period of restoration described by Article 46B.0095:

(1) on the motion of the attorney representing the state, the court is required to dismiss the charge; or

(2) on the motion of the attorney representing the defendant, the court is required to set the matter to be heard not later than the 10th day after the date of filing of the motion, and dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration.

Deletes existing text requiring the court on the motion of the attorney representing the state, if a court orders the commitment of or participation in an outpatient treatment program by a defendant who is charged with a misdemeanor punishable by confinement and the defendant is not tried before the date of expiration of the maximum period of restoration under this chapter as described by Article 46B.0095, to dismiss the charges.

SECTION 5. Amends Section 574.110(b), Health and Safety Code, as follows:

(b) Provides that an order issued under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

(1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

Deletes existing text providing that an order issued under Section 574.106 for a patient awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. Deletes existing text requiring that an order continued under this subsection be reviewed by the issuing court every six months.

SECTION 6. (a) Provides that, except as provided by Subsection (b) of this section, the change in law made by this Act applies only to a defendant with respect to which any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

(b) Provides that the change in law made by this Act in amending Section 574.110(b), Health and Safety Code, applies only to an order issued under Section 574.106 of that code on or after the effective date of this Act.

SECTION 7. Effective date: September 1, 2011.