

Chapter 748

S.B. No. 1326

AN ACT

relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 15.17, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) 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, the magistrate shall conduct the proceedings described by Article 16.22 or 17.032, as appropriate.

SECTION 2. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a)(1) Not later than 12 [~~72~~] 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 [~~receiving~~] credible information that may establish reasonable cause to believe that the [~~a~~] defendant [~~committed to the sheriff's custody~~] has a mental illness or is a

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1 person with an intellectual disability [~~mental retardation,~~
2 ~~including observation of the defendant's behavior immediately~~
3 ~~before, during, and after the defendant's arrest and the results of~~
4 ~~any previous assessment of the defendant~~], the sheriff or municipal
5 jailer shall provide written or electronic notice [~~of the~~
6 ~~information~~] to the magistrate. The notice must include any
7 information related to the sheriff's or municipal jailer's
8 determination, such as information regarding the defendant's
9 behavior immediately before, during, and after the defendant's
10 arrest and, if applicable, the results of any previous assessment
11 of the defendant. On a determination that there is reasonable cause
12 to believe that the defendant has a mental illness or is a person
13 with an intellectual disability [~~mental retardation~~], the
14 magistrate, except as provided by Subdivision (2), shall order the
15 local mental health [~~or mental retardation~~] authority, local
16 intellectual and developmental disability authority, or another
17 qualified mental health or intellectual disability [~~mental~~
18 ~~retardation~~] expert to:

19 (A) collect information regarding whether the
20 defendant has a mental illness as defined by Section 571.003,
21 Health and Safety Code, or is a person with an intellectual
22 disability [~~mental retardation~~] as defined by Section 591.003,
23 Health and Safety Code, including, if applicable, information
24 obtained from any previous assessment of the defendant and
25 information regarding any previously recommended treatment; and

26 (B) provide to the magistrate a written
27 assessment of the information collected under Paragraph (A) on the

1 form approved by the Texas Correctional Office on Offenders with
2 Medical or Mental Impairments under Section 614.0032(b), Health and
3 Safety Code.

4 (2) The magistrate is not required to order the
5 collection of information under Subdivision (1) if the defendant in
6 the year preceding the defendant's applicable date of arrest has
7 been determined to have a mental illness or to be a person with an
8 intellectual disability [~~mental retardation~~] by the local mental
9 health [~~or mental retardation~~] authority, local intellectual and
10 developmental disability authority, or another mental health or
11 intellectual disability [~~mental retardation~~] expert described by
12 Subdivision (1). A court that elects to use the results of that
13 previous determination may proceed under Subsection (c).

14 (3) If the defendant fails or refuses to submit to the
15 collection of information regarding the defendant as required under
16 Subdivision (1), the magistrate may order the defendant to submit
17 to an examination in a jail or in another place [~~mental health~~
18 ~~facility~~] determined to be appropriate by the local mental health
19 [~~or mental retardation~~] authority or local intellectual and
20 developmental disability authority for a reasonable period not to
21 exceed 72 hours [~~21 days~~]. If applicable, the [~~The magistrate may~~
22 ~~order a defendant to a facility operated by the Department of State~~
23 ~~Health Services or the Department of Aging and Disability Services~~
24 ~~for examination only on request of the local mental health or mental~~
25 ~~retardation authority and with the consent of the head of the~~
26 ~~facility. If a defendant who has been ordered to a facility~~
27 ~~operated by the Department of State Health Services or the~~

1 ~~Department of Aging and Disability Services for examination remains~~
2 ~~in the facility for a period exceeding 21 days, the head of that~~
3 ~~facility shall cause the defendant to be immediately transported to~~
4 ~~the committing court and placed in the custody of the sheriff of the~~
5 ~~county in which the committing court is located. That] county in~~
6 which the committing court is located shall reimburse the local
7 mental health authority or local intellectual and developmental
8 disability authority [~~facility~~] for the mileage and per diem
9 expenses of the personnel required to transport the defendant,
10 calculated in accordance with the state travel regulations in
11 effect at the time.

12 (b) Except as otherwise permitted by the magistrate for good
13 cause shown, a [A] written assessment of the information collected
14 under Subsection (a)(1)(A) shall be provided to the magistrate:

15 (1) for a defendant held in custody, not later than 96
16 hours after the time an order was issued under Subsection (a); or

17 (2) for a defendant released from custody, not later
18 than the 30th day after the date an [~~of any~~] order was issued under
19 Subsection (a).

20 (b-1) The [~~in a felony case and not later than the 10th day~~
21 ~~after the date of any order issued under that subsection in a~~
22 ~~misdemeanor case, and the~~] magistrate shall provide copies of the
23 written assessment to the defense counsel, the [~~prosecuting~~]
24 attorney representing the state, and the trial court. The written
25 assessment must include a description of the procedures used in the
26 collection of information under Subsection (a)(1)(A) and the
27 applicable expert's observations and findings pertaining to:

1 (1) whether the defendant is a person who has a mental
2 illness or is a person with an intellectual disability [~~mental~~
3 ~~retardation~~];

4 (2) whether there is clinical evidence to support a
5 belief that the defendant may be incompetent to stand trial and
6 should undergo a complete competency examination under Subchapter
7 B, Chapter 46B; and

8 (3) any appropriate or recommended treatment or
9 service.

10 (c) After the trial court receives the applicable expert's
11 written assessment relating to the defendant under Subsection (b-1)
12 [~~(b)~~] or elects to use the results of a previous determination as
13 described by Subsection (a)(2), the trial court may, as applicable:

14 (1) resume criminal proceedings against the
15 defendant, including any appropriate proceedings related to the
16 defendant's release on personal bond under Article 17.032 if the
17 defendant is being held in custody;

18 (2) resume or initiate competency proceedings, if
19 required, as provided by Chapter 46B or other proceedings affecting
20 the defendant's receipt of appropriate court-ordered mental health
21 or intellectual disability [~~mental—retardation~~] services,
22 including proceedings related to the defendant's receipt of
23 outpatient mental health services under Section 574.034, Health and
24 Safety Code; [~~or~~]

25 (3) consider the written assessment during the
26 punishment phase after a conviction of the offense for which the
27 defendant was arrested, as part of a presentence investigation

1 report, or in connection with the impositions of conditions
2 following placement on community supervision, including deferred
3 adjudication community supervision; or

4 (4) refer the defendant to an appropriate specialty
5 court established or operated under Subtitle K, Title 2, Government
6 Code.

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

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

15 (2) ordering an examination regarding the defendant's
16 competency to stand trial.

17 (e) The magistrate shall submit to the Office of Court
18 Administration of the Texas Judicial System on a monthly basis the
19 number of written assessments provided to the court under
20 Subsection (a)(1)(B).

21 SECTION 3. Articles 17.032(a), (b), (c), and (d), Code of
22 Criminal Procedure, are amended to read as follows:

23 (a) In this article, "violent offense" means an offense
24 under the following sections of the Penal Code:

- 25 (1) Section 19.02 (murder);
26 (2) Section 19.03 (capital murder);
27 (3) Section 20.03 (kidnapping);

- 1 (4) Section 20.04 (aggravated kidnapping);
- 2 (5) Section 21.11 (indecent with a child);
- 3 (6) Section 22.01(a)(1) (assault), if the offense
- 4 involved family violence as defined by Section 71.004, Family Code;
- 5 (7) Section 22.011 (sexual assault);
- 6 (8) Section 22.02 (aggravated assault);
- 7 (9) Section 22.021 (aggravated sexual assault);
- 8 (10) Section 22.04 (injury to a child, elderly
- 9 individual, or disabled individual);
- 10 (11) Section 29.03 (aggravated robbery);
- 11 (12) Section 21.02 (continuous sexual abuse of young
- 12 child or children); or
- 13 (13) Section 20A.03 (continuous trafficking of
- 14 persons).

15 (b) Notwithstanding Article 17.03(b), or a bond schedule
16 adopted or a standing order entered by a judge, a [A] magistrate
17 shall release a defendant on personal bond unless good cause is
18 shown otherwise if [~~the~~]:

19 (1) the defendant is not charged with and has not been
20 previously convicted of a violent offense;

21 (2) the defendant is examined by the local mental
22 health [~~or mental retardation~~] authority, local intellectual and
23 developmental disability authority, or another qualified mental
24 health or intellectual disability expert under Article 16.22 [~~of~~
25 ~~this code~~];

26 (3) the applicable expert, in a written assessment
27 submitted to the magistrate under Article 16.22:

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1 (A) concludes that the defendant has a mental
2 illness or is a person with an intellectual disability [~~mental~~
3 ~~retardation~~] and is nonetheless competent to stand trial; and

4 (B) recommends mental health treatment or
5 intellectual disability services for the defendant, as applicable;
6 [~~and~~]

7 (4) the magistrate determines, in consultation with
8 the local mental health [~~or mental retardation~~] authority or local
9 intellectual and developmental disability authority, that
10 appropriate community-based mental health or intellectual
11 disability [~~mental retardation~~] services for the defendant are
12 available in accordance with [~~through the Texas Department of~~
13 ~~Mental Health and Mental Retardation under~~] Section 534.053 or
14 534.103, Health and Safety Code, or through another mental health
15 or intellectual disability [~~mental retardation~~] services provider;
16 and

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

24 (c) The magistrate, unless good cause is shown for not
25 requiring treatment, shall require as a condition of release on
26 personal bond under this article that the defendant submit to
27 outpatient or inpatient mental health [~~or mental retardation~~]

1 treatment or intellectual disability services as recommended by the
2 local mental health [~~or mental retardation~~] authority, local
3 intellectual and developmental disability authority, or another
4 qualified mental health or intellectual disability expert if the
5 defendant's:

6 (1) mental illness or intellectual disability [~~mental~~
7 ~~retardation~~] is chronic in nature; or

8 (2) ability to function independently will continue to
9 deteriorate if the defendant is not treated.

10 (d) In addition to a condition of release imposed under
11 Subsection (c) [~~of this article~~], the magistrate may require the
12 defendant to comply with other conditions that are reasonably
13 necessary to ensure the defendant's appearance in court as required
14 and the safety of [~~protect~~] the community and the victim of the
15 alleged offense.

16 SECTION 4. Article 32A.01, Code of Criminal Procedure, is
17 amended by amending Subsection (a) and adding Subsection (c) to
18 read as follows:

19 (a) Insofar as is practicable, the trial of a criminal
20 action shall be given preference over trials of civil cases, and the
21 trial of a criminal action against a defendant who is detained in
22 jail pending trial of the action shall be given preference over
23 trials of other criminal actions not described by Subsection (b) or
24 (c).

25 (c) Except as provided by Subsection (b), the trial of a
26 criminal action against a defendant who has been determined to be
27 restored to competency under Article 46B.084 shall be given

1 preference over other matters before the court, whether civil or
2 criminal.

3 SECTION 5. Article 46B.001, Code of Criminal Procedure, is
4 amended by adding Subdivision (9) to read as follows:

5 (9) "Competency restoration" means the treatment or
6 education process for restoring a person's ability to consult with
7 the person's attorney with a reasonable degree of rational
8 understanding, including a rational and factual understanding of
9 the court proceedings and charges against the person.

10 SECTION 6. The heading to Article 46B.0095, Code of
11 Criminal Procedure, is amended to read as follows:

12 Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR [~~OUTPATIENT~~
13 ~~TREATMENT~~] PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR
14 OFFENSE.

15 SECTION 7. Articles 46B.0095(a), (b), (c), and (d), Code of
16 Criminal Procedure, are amended to read as follows:

17 (a) A defendant may not, under Subchapter D or E or any other
18 provision of this chapter, be committed to a mental hospital or
19 other inpatient or residential facility or to a jail-based
20 competency restoration program, ordered to participate in an
21 outpatient competency restoration or treatment program, or
22 subjected to any combination of [both] inpatient treatment, [and]
23 outpatient competency restoration or treatment program
24 participation, or jail-based competency restoration under this
25 chapter for a cumulative period that exceeds the maximum term
26 provided by law for the offense for which the defendant was to be
27 tried, except that if the defendant is charged with a misdemeanor

1 and has been ordered only to participate in an outpatient
2 competency restoration or treatment program under Subchapter D or
3 E, the maximum period of restoration is two years.

4 (b) On expiration of the maximum restoration period under
5 Subsection (a), the mental hospital, ~~[or other inpatient or~~
6 ~~residential]~~ facility, or ~~[outpatient treatment]~~ program provider
7 identified in the most recent order of commitment or order of
8 outpatient competency restoration or treatment program
9 participation under this chapter shall assess the defendant to
10 determine if civil proceedings under Subtitle C or D, Title 7,
11 Health and Safety Code, are appropriate. The defendant may be
12 confined for an additional period in a mental hospital or other
13 ~~[inpatient or residential]~~ facility or may be ordered to
14 participate for an additional period in an outpatient treatment
15 program, as appropriate, only pursuant to civil proceedings
16 conducted under Subtitle C or D, Title 7, Health and Safety Code, by
17 a court with probate jurisdiction.

18 (c) The cumulative period described by Subsection (a):

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

22 (2) in addition to any inpatient or outpatient
23 competency restoration ~~[treatment]~~ periods or program
24 participation periods described by Subsection (a), includes any
25 time that, following the entry of an order described by Subdivision
26 (1), the defendant is confined in a correctional facility, as
27 defined by Section 1.07, Penal Code, or is otherwise in the custody

1 of the sheriff during or while awaiting, as applicable:

2 (A) the defendant's transfer to:

3 (i) a mental hospital or other inpatient or
4 residential facility; or

5 (ii) a jail-based competency restoration
6 program;

7 (B) the defendant's release on bail to
8 participate in an outpatient competency restoration or treatment
9 program; or

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

12 (d) The court shall credit to the cumulative period
13 described by Subsection (a) any time that a defendant, following
14 arrest for the offense for which the defendant was to be tried, is
15 confined in a correctional facility, as defined by Section 1.07,
16 Penal Code, before the initial order of commitment or initial order
17 for outpatient competency restoration or treatment program
18 participation is entered under this chapter.

19 SECTION 8. Article 46B.010, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
22 If a court orders that a defendant charged with a misdemeanor
23 punishable by confinement be committed to a mental hospital or
24 other inpatient or residential facility or to a jail-based
25 competency restoration program, that the defendant participate in
26 an outpatient competency restoration or treatment program, or that
27 the defendant be subjected to any combination of [~~both~~] inpatient

1 treatment, [and] outpatient competency restoration or treatment
2 program participation, or jail-based competency restoration under
3 this chapter, and the defendant is not tried before the expiration
4 of the maximum period of restoration described by Article 46B.0095:

5 (1) on the motion of the attorney representing the
6 state, the court shall dismiss the charge; or

7 (2) on the motion of the attorney representing the
8 defendant and notice to the attorney representing the state, the
9 court:

10 (A) shall set the matter to be heard not later
11 than the 10th day after the date of filing of the motion; and

12 (B) may dismiss the charge on a finding that the
13 defendant was not tried before the expiration of the maximum period
14 of restoration.

15 SECTION 9. Article 46B.026, Code of Criminal Procedure, is
16 amended by adding Subsection (d) to read as follows:

17 (d) The court shall submit to the Office of Court
18 Administration of the Texas Judicial System on a monthly basis the
19 number of reports provided to the court under this article.

20 SECTION 10. Article 46B.071(a), Code of Criminal Procedure,
21 is amended to read as follows:

22 (a) Except as provided by Subsection (b), on a determination
23 that a defendant is incompetent to stand trial, the court shall:

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

26 (A) [commit the defendant to a facility under
27 Article 46B.073, or

1 ~~(2)~~ release the defendant on bail under Article
2 46B.0711; or

3 (B) commit the defendant to:

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

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

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

11 (A) release the defendant on bail under Article
12 46B.072; or

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

16 SECTION 11. Subchapter D, Chapter 46B, Code of Criminal
17 Procedure, is amended by adding Article 46B.0711 to read as
18 follows:

19 Art. 46B.0711. RELEASE ON BAIL FOR CLASS B MISDEMEANOR.

20 (a) This article applies only to a defendant who is subject to an
21 initial restoration period based on Article 46B.071.

22 (b) Subject to conditions reasonably related to ensuring
23 public safety and the effectiveness of the defendant's treatment,
24 if the court determines that a defendant charged with an offense
25 punishable as a Class B misdemeanor and found incompetent to stand
26 trial is not a danger to others and may be safely treated on an
27 outpatient basis with the specific objective of attaining

1 competency to stand trial, and an appropriate outpatient competency
2 restoration program is available for the defendant, the court
3 shall:

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

6 (2) order the defendant to participate in an
7 outpatient competency restoration program for a period not to
8 exceed 60 days.

9 (c) Notwithstanding Subsection (b), the court may order a
10 defendant to participate in an outpatient competency restoration
11 program under this article only if:

12 (1) the court receives and approves a comprehensive
13 plan that:

14 (A) provides for the treatment of the defendant
15 for purposes of competency restoration; and

16 (B) identifies the person who will be responsible
17 for providing that treatment to the defendant; and

18 (2) the court finds that the treatment proposed by the
19 plan will be available to and will be provided to the defendant.

20 (d) An order issued under this article may require the
21 defendant to participate in:

22 (1) as appropriate, an outpatient competency
23 restoration program administered by a community center or an
24 outpatient competency restoration program administered by any
25 other entity that provides competency restoration services; and

26 (2) an appropriate prescribed regimen of medical,
27 psychiatric, or psychological care or treatment.

1 SECTION 12. The heading to Article 46B.072, Code of
2 Criminal Procedure, is amended to read as follows:

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

5 SECTION 13. Articles 46B.072(a-1), (b), (c), and (d), Code
6 of Criminal Procedure, are amended to read as follows:

7 (a-1) Subject to conditions reasonably related to ensuring
8 [~~assuring~~] public safety and the effectiveness of the defendant's
9 treatment, if the court determines that a defendant charged with an
10 offense punishable as a felony or a Class A misdemeanor and found
11 incompetent to stand trial is not a danger to others and may be
12 safely treated on an outpatient basis with the specific objective
13 of attaining competency to stand trial, and [~~if~~] an appropriate
14 outpatient competency restoration [~~treatment~~] program is available
15 for the defendant, the court:

16 (1) may release on bail a defendant found incompetent
17 to stand trial with respect to an offense punishable as a felony or
18 may continue the defendant's release on bail; and

19 (2) shall release on bail a defendant found
20 incompetent to stand trial with respect to an offense punishable as
21 a Class A [~~a~~] misdemeanor or shall continue the defendant's release
22 on bail.

23 (b) The court shall order a defendant released on bail under
24 Subsection (a-1) to participate in an outpatient competency
25 restoration [~~treatment~~] program for a period not to exceed 120
26 days.

27 (c) Notwithstanding Subsection (a-1), the court may order a

1 defendant to participate in an outpatient competency restoration
2 [~~treatment~~] program under this article only if:

3 (1) the court receives and approves a comprehensive
4 plan that:

5 (A) provides for the treatment of the defendant
6 for purposes of competency restoration; and

7 (B) identifies the person who will be responsible
8 for providing that treatment to the defendant; and

9 (2) the court finds that the treatment proposed by the
10 plan will be available to and will be provided to the defendant.

11 (d) An order issued under this article may require the
12 defendant to participate in:

13 (1) as appropriate, an outpatient competency
14 restoration [~~treatment~~] program administered by a community center
15 or an outpatient competency restoration [~~treatment~~] program
16 administered by any other entity that provides outpatient
17 competency restoration services; and

18 (2) an appropriate prescribed regimen of medical,
19 psychiatric, or psychological care or treatment, including care or
20 treatment involving the administration of psychoactive medication,
21 including those required under Article 46B.086.

22 SECTION 14. Article 46B.073, Code of Criminal Procedure, is
23 amended by amending Subsections (b), (c), (d), and (e) and adding
24 Subsection (f) to read as follows:

25 (b) For purposes of further examination and competency
26 restoration services with [~~treatment toward~~] the specific
27 objective of the defendant attaining competency to stand trial, the

1 court shall commit a defendant described by Subsection (a) to a
2 mental health facility, ~~[or]~~ residential care facility, or
3 jail-based competency restoration program for the applicable
4 period as follows:

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

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

9 (c) If the defendant is charged with an offense listed in
10 Article 17.032(a), other than an offense under Section 22.01(a)(1),
11 Penal Code [~~listed in Article 17.032(a)(6)~~], or the indictment
12 alleges an affirmative finding under Article 42A.054(c) or (d), the
13 court shall enter an order committing the defendant for competency
14 restoration services to the maximum security unit of any facility
15 designated by the Department of State Health Services, to an agency
16 of the United States operating a mental hospital, or to a Department
17 of Veterans Affairs hospital.

18 (d) If the defendant is not charged with an offense
19 described by Subsection (c) and the indictment does not allege an
20 affirmative finding under Article 42A.054(c) or (d), the court
21 shall enter an order committing the defendant to a mental health
22 facility or residential care facility determined to be appropriate
23 by the local mental health authority or local intellectual and
24 developmental disability authority or to a jail-based competency
25 restoration program. A defendant may be committed to a jail-based
26 competency restoration program only if the program provider
27 determines the defendant will begin to receive competency

1 restoration services within 72 hours of arriving at the program.

2 (e) Except as provided by Subsection (f), a defendant
3 charged with an offense punishable as a Class B misdemeanor may be
4 committed under this subchapter only to a jail-based competency
5 restoration program.

6 (f) A defendant charged with an offense punishable as a
7 Class B misdemeanor may be committed to a mental health facility or
8 residential care facility described by Subsection (d) only if a
9 jail-based competency restoration program is not available or a
10 licensed or qualified mental health professional determines that a
11 jail-based competency restoration program is not appropriate
12 ~~[Notwithstanding Subsections (b), (c), and (d) and notwithstanding~~
13 ~~the contents of the applicable order of commitment, in a county in~~
14 ~~which the Department of State Health Services operates a jail-based~~
15 ~~restoration of competency pilot program under Article 46B.090, a~~
16 ~~defendant for whom an order is issued under this article committing~~
17 ~~the defendant to a mental health facility or residential care~~
18 ~~facility shall be provided competency restoration services at the~~
19 ~~jail under the pilot program if the service provider at the jail~~
20 ~~determines the defendant will immediately begin to receive~~
21 ~~services. If the service provider at the jail determines the~~
22 ~~defendant will not immediately begin to receive competency~~
23 ~~restoration services, the defendant shall be transferred to the~~
24 ~~appropriate mental health facility or residential care facility as~~
25 ~~provided by the court order. This subsection expires September 1,~~
26 ~~2019].~~

27 SECTION 15. Article 46B.074(a), Code of Criminal Procedure,

1 is amended to read as follows:

2 (a) A defendant may be committed to a jail-based competency
3 restoration program, mental health facility, or residential care
4 facility under this subchapter only on competent medical or
5 psychiatric testimony provided by an expert qualified under Article
6 46B.022.

7 SECTION 16. Article 46B.075, Code of Criminal Procedure, is
8 amended to read as follows:

9 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR
10 [~~OUTPATIENT TREATMENT~~] PROGRAM. An order issued under Article
11 46B.0711, 46B.072, or 46B.073 must place the defendant in the
12 custody of the sheriff or sheriff's deputy for transportation to
13 the facility or [~~outpatient treatment~~] program, as applicable, in
14 which the defendant is to receive [~~treatment for purposes of~~]
15 competency restoration services.

16 SECTION 17. Articles 46B.0755(a), (b), and (d), Code of
17 Criminal Procedure, are amended to read as follows:

18 (a) Notwithstanding any other provision of this subchapter,
19 if the court receives credible evidence indicating that the
20 defendant has been restored to competency at any time after the
21 defendant's incompetency trial under Subchapter C but before the
22 defendant is transported under Article 46B.075 to the [~~a mental~~
23 ~~health facility, residential care~~] facility[7] or [~~outpatient~~
24 ~~treatment~~] program, as applicable, the court may appoint
25 disinterested experts to reexamine the defendant in accordance with
26 Subchapter B. The court is not required to appoint the same expert
27 or experts who performed the initial examination of the defendant

1 under that subchapter.

2 (b) If after a reexamination of the defendant the applicable
3 expert's report states an opinion that the defendant remains
4 incompetent, the court's order under Article 46B.0711, 46B.072, or
5 46B.073 remains in effect, and the defendant shall be transported
6 to the facility or [~~outpatient treatment~~] program as required by
7 Article 46B.075. If after a reexamination of the defendant the
8 applicable expert's report states an opinion that the defendant has
9 been restored to competency, the court shall withdraw its order
10 under Article 46B.0711, 46B.072, or 46B.073 and proceed under
11 Subsection (c) or (d).

12 (d) The court shall hold a hearing to determine whether the
13 defendant has been restored to competency if any party fails to
14 agree or if the court fails to concur that the defendant is
15 competent to stand trial. If a court holds a hearing under this
16 subsection, on the request of the counsel for either party or the
17 motion of the court, a jury shall make the competency
18 determination. For purposes of the hearing, incompetency is
19 presumed, and the defendant's competency must be proved by a
20 preponderance of the evidence. If after the hearing the defendant
21 is again found to be incompetent to stand trial, the court shall
22 issue a new order under Article 46B.0711, 46B.072, or 46B.073, as
23 appropriate based on the defendant's current condition.

24 SECTION 18. Article 46B.076, Code of Criminal Procedure, is
25 amended to read as follows:

26 Art. 46B.076. COURT'S ORDER. (a) If the defendant is
27 found incompetent to stand trial, not later than the date of the

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1 order of commitment or of release on bail, as applicable, the court
2 shall send a copy of the order to the applicable facility [~~to which~~
3 ~~the defendant is committed~~] or [~~the outpatient treatment~~] program
4 [~~to which the defendant is released~~]. The court shall also provide
5 to the facility or [~~outpatient treatment~~] program copies of the
6 following made available to the court during the incompetency
7 trial:

- 8 (1) reports of each expert;
- 9 (2) psychiatric, psychological, or social work
10 reports that relate to the mental condition of the defendant;
- 11 (3) documents provided by the attorney representing
12 the state or the attorney representing the defendant that relate to
13 the defendant's current or past mental condition;
- 14 (4) copies of the indictment or information and any
15 supporting documents used to establish probable cause in the case;
- 16 (5) the defendant's criminal history record; and
- 17 (6) the addresses of the attorney representing the
18 state and the attorney representing the defendant.

19 (b) The court shall order that the transcript of all medical
20 testimony received by the jury or court be promptly prepared by the
21 court reporter and forwarded to the applicable [~~proper~~] facility or
22 [~~outpatient treatment~~] program.

23 SECTION 19. Article 46B.077, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The
26 facility or jail-based competency restoration program to which the
27 defendant is committed or the outpatient competency restoration

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1 ~~[treatment]~~ program to which the defendant is released on bail
2 shall:

- 3 (1) develop an individual program of treatment;
- 4 (2) assess and evaluate whether the defendant is
5 likely to be restored to competency in the foreseeable future; and
- 6 (3) report to the court and to the local mental health
7 authority or to the local intellectual and developmental disability
8 authority on the defendant's progress toward achieving competency.

9 (b) If the defendant is committed to an inpatient mental
10 health facility, ~~[or to a]~~ residential care facility, or jail-based
11 competency restoration program, the facility or program shall
12 report to the court at least once during the commitment period.

13 (c) If the defendant is released to an outpatient competency
14 restoration ~~[a treatment]~~ program ~~[not provided by an inpatient~~
15 ~~mental health facility or a residential care facility]~~, the
16 ~~[treatment]~~ program shall report to the court:

- 17 (1) not later than the 14th day after the date on which
18 the defendant's competency restoration services begin ~~[treatment~~
19 ~~begins]~~; and
- 20 (2) until the defendant is no longer released to the
21 ~~[treatment]~~ program, at least once during each 30-day period
22 following the date of the report required by Subdivision (1).

23 SECTION 20. Article 46B.078, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
26 charges pending against a defendant are dismissed, the court that
27 issued the order under Article 46B.0711, 46B.072, or 46B.073 shall

1 send a copy of the order of dismissal to the sheriff of the county in
2 which the court is located and to the head of the facility, the
3 provider of the jail-based competency restoration program, or the
4 provider of the outpatient competency restoration [~~treatment~~]
5 program, as appropriate. On receipt of the copy of the order, the
6 facility or [~~outpatient treatment~~] program shall discharge the
7 defendant into the care of the sheriff or sheriff's deputy for
8 transportation in the manner described by Article 46B.082.

9 SECTION 21. Article 46B.079, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of
12 the facility, the provider of the jail-based competency restoration
13 program, or the provider of the outpatient competency restoration
14 [~~treatment~~] program, as appropriate, not later than the 15th day
15 before the date on which the initial restoration period is to expire
16 according to the terms of the order or under Article 46B.0095 or
17 other applicable provisions of this chapter, shall notify the
18 applicable court that the period is about to expire.

19 (b) The head of the facility or jail-based competency
20 restoration [~~or outpatient treatment~~] program provider shall
21 promptly notify the court when the head of the facility or
22 [~~outpatient treatment~~] program provider believes that:

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

27 (2) the defendant has attained competency to stand

1 trial; or

2 (3) [~~(2)~~] the defendant is not likely to attain
3 competency in the foreseeable future.

4 (b-1) The outpatient competency restoration program
5 provider shall promptly notify the court when the program provider
6 believes that:

7 (1) the defendant has attained competency to stand
8 trial; or

9 (2) the defendant is not likely to attain competency
10 in the foreseeable future.

11 (c) When the head of the facility or [~~outpatient treatment~~]
12 program provider gives notice to the court under Subsection (a),
13 [~~or~~] (b), or (b-1), the head of the facility or [~~outpatient~~
14 ~~treatment~~] program provider also shall file a final report with the
15 court stating the reason for the proposed discharge or transfer
16 under this chapter and including a list of the types and dosages of
17 medications prescribed for the defendant while the defendant was
18 receiving competency restoration services in the facility or
19 through [~~participating in~~] the [~~outpatient treatment~~] program. The
20 [~~To enable any objection to the findings of the report to be made in~~
21 ~~a timely manner under Article 46B.084(a-1), the~~] court shall
22 provide [~~copies of the report~~] to the attorney representing the
23 defendant and the attorney representing the state copies of a
24 report based on notice under this article, other than notice under
25 Subsection (b)(1), to enable any objection to the findings of the
26 report to be made in a timely manner as required under Article
27 46B.084(a-1).

1 (d) If the head of the facility or [~~outpatient treatment~~]
2 program provider notifies the court that the initial restoration
3 period is about to expire, the notice may contain a request for an
4 extension of the period for an additional period of 60 days and an
5 explanation for the basis of the request. An explanation provided
6 under this subsection must include a description of any evidence
7 indicating a reduction in the severity of the defendant's symptoms
8 or impairment.

9 SECTION 22. Article 46B.080(a), Code of Criminal Procedure,
10 is amended to read as follows:

11 (a) On a request of the head of a facility or a [~~treatment~~]
12 program provider that is made under Article 46B.079(d) and
13 notwithstanding any other provision of this subchapter, the court
14 may enter an order extending the initial restoration period for an
15 additional period of 60 days.

16 SECTION 23. Subchapter D, Chapter 46B, Code of Criminal
17 Procedure, is amended by adding Articles 46B.0805 and 46B.0825 to
18 read as follows:

19 Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES.

20 (a) On notification from the head of a facility or a jail-based
21 competency restoration program provider under Article
22 46B.079(b)(1), the court shall order the defendant to receive
23 competency restoration education services in a jail-based
24 competency restoration program or an outpatient competency
25 restoration program, as appropriate and if available.

26 (b) If a defendant for whom an order is entered under
27 Subsection (a) was committed for competency restoration to a

1 facility other than a jail-based competency restoration program,
2 the court shall send a copy of that order to:

3 (1) the sheriff of the county in which the court is
4 located;

5 (2) the head of the facility to which the defendant was
6 committed for competency restoration; and

7 (3) the local mental health authority or local
8 intellectual and developmental disability authority, as
9 appropriate.

10 (c) As soon as practicable but not later than the 10th day
11 after the date of receipt of a copy of an order under Subsection
12 (b)(2), the applicable facility shall discharge the defendant into
13 the care of the sheriff of the county in which the court is located
14 or into the care of the sheriff's deputy. The sheriff or sheriff's
15 deputy shall transport the defendant to the jail-based competency
16 restoration program or outpatient competency restoration program,
17 as appropriate.

18 (d) A jail-based competency restoration program or
19 outpatient competency restoration program that receives a
20 defendant under this article shall give to the court:

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

24 (2) subsequent notice as otherwise required under
25 Article 46B.079.

26 Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN
27 CUSTODY OF SHERIFF. (a) A sheriff or sheriff's deputy having

1 custody of a defendant for transportation as required by Article
2 46B.0805 or 46B.082 or during proceedings described by Article
3 46B.084 shall, according to information available at the time and
4 unless directed otherwise by a physician treating the defendant,
5 ensure that the defendant is provided with the types and dosages of
6 medication prescribed for the defendant.

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

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

13 SECTION 24. Article 46B.081, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 46B.081. RETURN TO COURT. Subject to Article
16 46B.082(b), a defendant committed or released on bail under this
17 subchapter shall be returned to the applicable court as soon as
18 practicable after notice to the court is provided under Article
19 46B.079(a), (b)(2), (b)(3), or (b-1) [46B.079], but not later than
20 the date of expiration of the period for restoration specified by
21 the court under Article 46B.0711, 46B.072, or 46B.073.

22 SECTION 25. Article 46B.082, Code of Criminal Procedure, is
23 amended to read as follows:

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

25 (a) On notification from the court under Article 46B.078, the
26 sheriff of the county in which the court is located or the sheriff's
27 deputy [designee] shall transport the defendant to the court.

1 (b) If before the 15th day after the date on which the court
2 received notification under Article 46B.079(a), (b)(2), (b)(3), or
3 (b-1) [46B.079] a defendant committed to a facility or jail-based
4 competency restoration program or ordered to participate in an
5 outpatient competency restoration [~~treatment~~] program has not been
6 transported to the court that issued the order under Article
7 46B.0711, 46B.072, or 46B.073, as applicable, the head of the
8 facility or provider of the jail-based competency restoration
9 program to which the defendant is committed or the provider of the
10 outpatient competency restoration [~~treatment~~] program in which the
11 defendant is participating shall cause the defendant to be promptly
12 transported to the court and placed in the custody of the sheriff of
13 the county in which the court is located. The county in which the
14 court is located shall reimburse [~~the Department of State Health~~
15 ~~Services or~~] the Health and Human [~~Department of Aging and~~
16 ~~Disability~~] Services Commission or program provider, as
17 appropriate, for the mileage and per diem expenses of the personnel
18 required to transport the defendant, calculated in accordance with
19 rates provided in the General Appropriations Act for state
20 employees.

21 SECTION 26. Article 46B.083, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED
24 BY FACILITY [~~HEAD~~] OR [~~OUTPATIENT TREATMENT~~] PROGRAM [~~PROVIDER~~].

25 (a) If the head of the facility, the jail-based competency
26 restoration program provider, or the outpatient competency
27 restoration [~~treatment~~] program provider believes that the

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1 defendant is a person with mental illness and meets the criteria for
2 court-ordered mental health services under Subtitle C, Title 7,
3 Health and Safety Code, the head of the facility or the [~~outpatient~~
4 ~~treatment~~] program provider shall have submitted to the court a
5 certificate of medical examination for mental illness.

6 (b) If the head of the facility, the jail-based competency
7 restoration program provider, or the outpatient competency
8 restoration [~~treatment~~] program provider believes that the
9 defendant is a person with an intellectual disability, the head of
10 the facility or the [~~outpatient treatment~~] program provider shall
11 have submitted to the court an affidavit stating the conclusions
12 reached as a result of the examination.

13 SECTION 27. Article 46B.084(a-1)(1), Code of Criminal
14 Procedure, is amended to read as follows:

15 (1) Following the defendant's return to the court, the
16 court shall make a determination with regard to the defendant's
17 competency to stand trial. The court may make the determination
18 based only on the most recent report that is filed under Article
19 46B.079(c) and based on notice under that article, other than
20 notice under Subsection (b)(1) of that article, and on other
21 medical information or personal history information relating to the
22 defendant. A party may object in writing or in open court to the
23 findings of the most recent report not later than the 15th day after
24 the date on which the court received the applicable notice
25 [~~notification~~] under Article 46B.079. The court shall make the
26 determination not later than the 20th day after the date on which
27 the court received the applicable notice [~~notification~~] under

1 Article 46B.079, or not later than the fifth day after the date of
2 the defendant's return to court, whichever occurs first, regardless
3 of whether a party objects to the report as described by this
4 subsection and the issue is set for hearing under Subsection (b).

5 SECTION 28. Articles 46B.086(a), (b), (c), and (d), Code of
6 Criminal Procedure, are amended to read as follows:

7 (a) This article applies only to a defendant:

8 (1) who is determined under this chapter to be
9 incompetent to stand trial;

10 (2) who either:

11 (A) remains confined in a correctional facility,
12 as defined by Section 1.07, Penal Code, for a period exceeding 72
13 hours while awaiting transfer to an inpatient mental health
14 facility, a residential care facility, or an outpatient competency
15 restoration [~~treatment~~] program;

16 (B) is committed to an inpatient mental health
17 facility, [~~or~~] a residential care facility, or a jail-based
18 competency restoration program for the purpose of competency
19 restoration;

20 (C) is confined in a correctional facility while
21 awaiting further criminal proceedings following competency
22 restoration [~~treatment~~]; or

23 (D) is subject to Article 46B.072, if the court
24 has made the determinations required by Subsection (a-1) of that
25 article;

26 (3) for whom a correctional facility or jail-based
27 competency restoration program that employs or contracts with a

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1 licensed psychiatrist, an inpatient mental health facility, a
2 residential care facility, or an outpatient competency restoration
3 [~~treatment~~] program provider has prepared a continuity of care plan
4 that requires the defendant to take psychoactive medications; and

5 (4) who, after a hearing held under Section 574.106 or
6 592.156, Health and Safety Code, if applicable, has been found to
7 not meet the criteria prescribed by Sections 574.106(a) and (a-1)
8 or 592.156(a) and (b), Health and Safety Code, for court-ordered
9 administration of psychoactive medications.

10 (b) If a defendant described by Subsection (a) refuses to
11 take psychoactive medications as required by the defendant's
12 continuity of care plan, the director of the [~~correctional~~]
13 facility or the [~~outpatient treatment~~] program provider, as
14 applicable, shall notify the court in which the criminal
15 proceedings are pending of that fact not later than the end of the
16 next business day following the refusal. The court shall promptly
17 notify the attorney representing the state and the attorney
18 representing the defendant of the defendant's refusal. The
19 attorney representing the state may file a written motion to compel
20 medication. The motion to compel medication must be filed not later
21 than the 15th day after the date a judge issues an order stating
22 that the defendant does not meet the criteria for court-ordered
23 administration of psychoactive medications under Section 574.106
24 or 592.156, Health and Safety Code, except that, for a defendant in
25 an outpatient competency restoration [~~treatment~~] program, the
26 motion may be filed at any time.

27 (c) The court, after notice and after a hearing held not

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1 later than the 10th day after the motion to compel medication is
2 filed, may authorize the director of the [~~correctional~~] facility or
3 the program provider, as applicable, to have the medication
4 administered to the defendant, by reasonable force if necessary. A
5 hearing under this subsection may be conducted using an electronic
6 broadcast system as provided by Article 46B.013.

7 (d) The court may issue an order under this article only if
8 the order is supported by the testimony of two physicians, one of
9 whom is the physician at or with the applicable [~~correctional~~]
10 facility or [~~outpatient treatment~~] program who is prescribing the
11 medication as a component of the defendant's continuity of care
12 plan and another who is not otherwise involved in proceedings
13 against the defendant. The court may require either or both
14 physicians to examine the defendant and report on the examination
15 to the court.

16 SECTION 29. Articles 46B.090(f), (l), and (n), Code of
17 Criminal Procedure, are amended to read as follows:

18 (f) To contract with the department under Subsection (b), a
19 provider of jail-based competency restoration services must
20 demonstrate to the department that:

21 (1) the provider:

22 (A) has previously provided jail-based
23 competency restoration services for one or more years; or

24 (B) is a local mental health authority that has
25 previously provided competency restoration services;

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

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1 (A) uses a multidisciplinary treatment team to
2 provide clinical treatment that is:

3 (i) directed toward the specific objective
4 of restoring the defendant's competency to stand trial; and

5 (ii) similar to the clinical treatment
6 provided as part of a competency restoration program at an
7 inpatient mental health facility;

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

10 (C) [~~assigns staff members to defendants~~
11 ~~participating in the program at an average ratio not lower than 3.7~~
12 ~~to 1, and~~

13 [~~D~~] provides weekly treatment hours
14 commensurate to the treatment hours provided as part of a
15 competency restoration program at an inpatient mental health
16 facility;

17 (3) the provider is certified by a nationwide
18 nonprofit organization that accredits health care organizations
19 and programs, such as the Joint Commission on Health Care Staffing
20 Services, or the provider is a local mental health authority in good
21 standing with the department; and

22 (4) the provider has a demonstrated history of
23 successful jail-based competency restoration outcomes or, if the
24 provider is a local mental health authority, a demonstrated history
25 of successful competency restoration outcomes.

26 (1) If the psychiatrist for the provider determines that a
27 defendant ordered to participate in the pilot program has not been

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1 restored to competency by the end of the 60th day after the date the
2 defendant began to receive services [~~participate~~] in the pilot
3 program:

4 (1) for a defendant charged with a felony, the
5 defendant shall be transferred, without unnecessary delay and for
6 the remainder of the period prescribed by Article 46B.073(b), to
7 the first available facility that is appropriate for that defendant
8 as provided by Article 46B.073(c) or (d); and

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

11 (A) order a single extension under Article
12 46B.080 and the transfer of the defendant without unnecessary delay
13 to the appropriate mental health facility or residential care
14 facility as provided by Article 46B.073(d) for the remainder of the
15 period under the extension;

16 (B) proceed under Subchapter E or F;

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

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

21 (n) If the department develops and implements a jail-based
22 restoration of competency pilot program under this article, not
23 later than December 1, 2018 [~~2016~~], the commissioner of the
24 department shall submit a report concerning the pilot program to
25 the presiding officers of the standing committees of the senate and
26 house of representatives having primary jurisdiction over health
27 and human services issues and over criminal justice issues. The

1 report must include the information collected by the department
2 during the pilot program and the commissioner's evaluation of the
3 outcome of the program as of the date the report is submitted.

4 SECTION 30. Subchapter D, Chapter 46B, Code of Criminal
5 Procedure, is amended by adding Article 46B.091 to read as follows:

6 Art. 46B.091. JAIL-BASED COMPETENCY RESTORATION PROGRAM
7 IMPLEMENTED BY COUNTY. (a) In this article:

8 (1) "Commission" means the Health and Human Services
9 Commission.

10 (2) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 (b) A county or counties jointly may develop and implement a
13 jail-based competency restoration program.

14 (c) A county that implements a program under this article
15 shall contract with a provider of jail-based competency restoration
16 services that is a local mental health authority or local
17 behavioral health authority that is in good standing with the
18 commission, which may include an authority that is in good standing
19 with the commission and subcontracts with a provider of jail-based
20 competency restoration services.

21 (d) A jail-based competency restoration program must:

22 (1) provide jail-based competency restoration
23 services through the use of a multidisciplinary treatment team that
24 are:

25 (A) directed toward the specific objective of
26 restoring the defendant's competency to stand trial; and

27 (B) similar to other competency restoration

1 programs;

2 (2) employ or contract for the services of at least one
3 psychiatrist;

4 (3) provide jail-based competency restoration
5 services through licensed or qualified mental health
6 professionals;

7 (4) provide weekly competency restoration hours
8 commensurate to the hours provided as part of a competency
9 restoration program at an inpatient mental health facility;

10 (5) operate in the jail in a designated space that is
11 separate from the space used for the general population of the jail;

12 (6) ensure coordination of general health care;

13 (7) provide mental health treatment and substance use
14 disorder treatment to defendants, as necessary, for competency
15 restoration; and

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

20 (e) The executive commissioner shall adopt rules as
21 necessary for a county to develop and implement a program under this
22 article. The commission shall, as part of the rulemaking process,
23 establish contract monitoring and oversight requirements for a
24 local mental health authority or local behavioral health authority
25 that contracts with a county to provide jail-based competency
26 restoration services under this article. The contract monitoring
27 and oversight requirements must be consistent with local mental

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1 health authority or local behavioral health authority performance
2 contract monitoring and oversight requirements, as applicable.

3 (f) The commission may inspect on behalf of the state any
4 aspect of a program implemented under this article.

5 (g) A psychiatrist or psychologist for the provider shall
6 conduct at least two full psychiatric or psychological evaluations
7 of the defendant during the period the defendant receives
8 competency restoration services in the jail. The psychiatrist or
9 psychologist must conduct one evaluation not later than the 21st
10 day and one evaluation not later than the 55th day after the date
11 the defendant is committed to the program. The psychiatrist or
12 psychologist shall submit to the court a report concerning each
13 evaluation required under this subsection.

14 (h) If at any time during a defendant's commitment to a
15 program implemented under this article the psychiatrist or
16 psychologist for the provider determines that the defendant has
17 attained competency to stand trial:

18 (1) the psychiatrist or psychologist for the provider
19 shall promptly issue and send to the court a report demonstrating
20 that fact; and

21 (2) the court shall consider that report as the report
22 of an expert stating an opinion that the defendant has been restored
23 to competency for purposes of Article 46B.0755(a) or (b).

24 (i) If at any time during a defendant's commitment to a
25 program implemented under this article the psychiatrist or
26 psychologist for the provider determines that the defendant's
27 competency to stand trial is unlikely to be restored in the

1 foreseeable future:

2 (1) the psychiatrist or psychologist for the provider
3 shall promptly issue and send to the court a report demonstrating
4 that fact; and

5 (2) the court shall:

6 (A) proceed under Subchapter E or F and order the
7 transfer of the defendant, without unnecessary delay, to the first
8 available facility that is appropriate for that defendant, as
9 provided under Subchapter E or F, as applicable; or

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

12 (j) If the psychiatrist or psychologist for the provider
13 determines that a defendant committed to a program implemented
14 under this article has not been restored to competency by the end of
15 the 60th day after the date the defendant began to receive services
16 in the program:

17 (1) for a defendant charged with a felony, the
18 defendant shall be transferred, without unnecessary delay and for
19 the remainder of the period prescribed by Article 46B.073(b), to
20 the first available facility that is appropriate for that defendant
21 as provided by Article 46B.073(c) or (d); and

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

24 (A) order a single extension under Article
25 46B.080 and, notwithstanding Articles 46B.073(e) and (f), the
26 transfer of the defendant without unnecessary delay to the
27 appropriate mental health facility or residential care facility as

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1 provided by Article 46B.073(d) for the remainder of the period
2 under the extension;

3 (B) proceed under Subchapter E or F;

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

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

8 (k) Unless otherwise provided by this article, the
9 provisions of this chapter, including the maximum periods
10 prescribed by Article 46B.0095, apply to a defendant receiving
11 competency restoration services, including competency restoration
12 education services, under a program implemented under this article
13 in the same manner as those provisions apply to any other defendant
14 who is subject to proceedings under this chapter.

15 (l) This article does not affect the responsibility of a
16 county to ensure the safety of a defendant who is committed to the
17 program and to provide the same adequate care to the defendant as is
18 provided to other inmates of the jail in which the defendant is
19 located.

20 SECTION 31. Subchapter C, Chapter 72, Government Code, is
21 amended by adding Section 72.032 to read as follows:

22 Sec. 72.032. BEST PRACTICES EDUCATION. The director shall
23 make available to courts information concerning best practices for
24 addressing the needs of persons with mental illness in the court
25 system, including the use of the preferred terms and phrases
26 provided by Section 392.002.

27 SECTION 32. Chapter 121, Government Code, is amended by

1 adding Section 121.003 to read as follows:

2 Sec. 121.003. SPECIALTY COURTS REPORT. (a) In this
3 section, "office" means the Office of Court Administration of the
4 Texas Judicial System.

5 (b) For the period beginning September 1, 2017, and ending
6 September 1, 2018, the office shall collect information from
7 specialty courts in this state regarding outcomes of participants
8 in those specialty courts who are persons with mental illness,
9 including recidivism rates of those participants, and other
10 relevant information as determined by the office.

11 (c) Not later than December 1, 2018, the office shall submit
12 to the legislature a report containing and evaluating the
13 information collected under Subsection (b).

14 (d) This section expires September 1, 2019.

15 SECTION 33. Section 574.034(g), Health and Safety Code, is
16 amended to read as follows:

17 (g) An order for temporary inpatient or outpatient mental
18 health services shall state that treatment is authorized for not
19 longer than 45 [90] days, except that the order may specify a period
20 not to exceed 90 days if the judge finds that the longer period is
21 necessary. [The order may not specify a shorter period.]

22 SECTION 34. Section 614.0032(b), Health and Safety Code, is
23 amended to read as follows:

24 (b) The office shall[+]

25 [~~(1) with the special assistance of committee members~~
26 ~~appointed under Section 614.002(b)(1):~~

27 [~~(A) review examinations to determine the~~

1 ~~competency of defendants in criminal cases to stand trial and~~
2 ~~examinations to determine the fitness of children to proceed with~~
3 ~~respect to adjudications of delinquent conduct or conduct~~
4 ~~indicating a need for supervision; and~~

5 ~~[(B) periodically report to the legislature and~~
6 ~~the court of criminal appeals findings made as a result of the~~
7 ~~review described by Paragraph (A); and~~

8 [(2)] approve and make generally available in
9 electronic format a standard form for use by experts in reporting
10 competency examination results under Chapter 46B, Code of Criminal
11 Procedure.

12 SECTION 35. The following provisions are repealed:

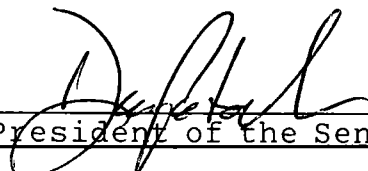
- 13 (1) Article 46B.026(c), Code of Criminal Procedure;
- 14 (2) Article 46B.090(o), Code of Criminal Procedure;
- 15 and
- 16 (3) Section 614.0032(c), Health and Safety Code.

17 SECTION 36. Not later than November 1, 2017, the executive
18 commissioner of the Health and Human Services Commission shall
19 adopt the rules described by Article 46B.091(e), Code of Criminal
20 Procedure, as added by this Act.

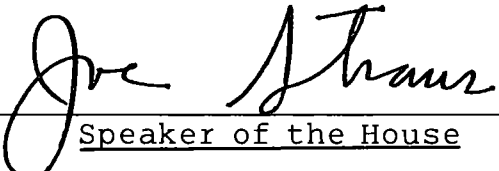
21 SECTION 37. The changes in law made by this Act apply only
22 to a defendant charged with an offense committed on or after the
23 effective date of this Act. A defendant charged with an offense
24 committed before the effective date of this Act is governed by the
25 law in effect on the date the offense was committed, and the former
26 law is continued in effect for that purpose. For purposes of this
27 section, an offense was committed before the effective date of this

1 Act if any element of the offense occurred before that date.

2 SECTION 38. This Act takes effect September 1, 2017. _____

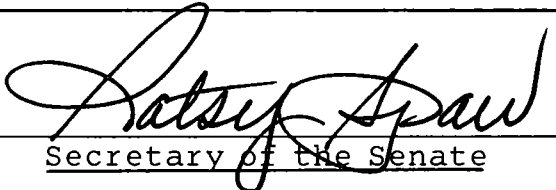


President of the Senate



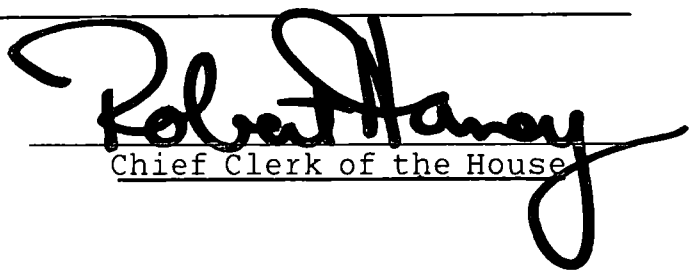
Speaker of the House

I hereby certify that S.B. No. 1326 passed the Senate on April 24, 2017, by the following vote: Yeas 29, Nays 1; and that the Senate concurred in House amendments on May 27, 2017, by the following vote: Yeas 30, Nays 1. _____



Secretary of the Senate

I hereby certify that S.B. No. 1326 passed the House, with amendments, on May 22, 2017, by the following vote: Yeas 144, Nays 1, two present not voting. _____



Chief Clerk of the House


Approved:

6-9-2017
Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:30 PM O'CLOCK

JUN 12 2017


Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 22, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB1326** by Zaffirini (Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness), **As Passed 2nd House**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend sections of the Code of Criminal Procedure and Health and Safety Code to address the screening and assessment of defendants for mental health and competency. The bill would require a magistrate to undertake certain proceedings for early identification and evaluation if the magistrate receives written or electronic notice that a defendant may have a mental illness or intellectual disability. The bill would establish procedures for the early identification of defendants suspected of having mental illness or intellectual disability.

The bill would require a sheriff or other person having custody of the person for a Class B or higher offense to transmit a written or electronic notice of information in their possession that indicates a person in custody has a mental illness or an intellectual disability to a magistrate within 12 hours of its receipt.

The bill would require that a written mental health assessment ordered by a judge be provided to the magistrate within 96 hours if the defendant is held in custody or within 30 days if the defendant has been released from custody after the assessment was ordered by the magistrate. If a defendant failed or refused to submit to the assessment as ordered, the defendant could be ordered to submit to an examination in a jail or another appropriate place for a reasonable period not to exceed 72 hours. The written assessment would be required to be provided to the magistrate on a form promulgated and approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The bill would authorize the magistrate to require the submission of a defendant to a mental health examination or other assessment as a condition of release from custody. The bill would authorize the assessment to be used to refer the defendant to an appropriate specialty court. The magistrate would be required to report the number of mental health assessments to the Office of Court Administration. The bill clarifies that a magistrate must release from custody, notwithstanding a locally-adopted bond schedule or other standing order, individuals not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability when appropriate treatment is available in the community, and the release of the defendant would ensure the defendant's appearance in court and the safety of the community and the victim of the alleged offense.

The bill would authorize the court to commit an incompetent defendant charged with a Class B misdemeanor to a jail-based competency restoration program or to a mental health facility or residential care facility. If the court determines that an incompetent defendant charged with a Class B misdemeanor is not a danger to others and may be safely treated on an outpatient basis, the bill would require the court to order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days. If a defendant charged with a Class B misdemeanor completed an outpatient treatment program, the court would be required to dismiss the case if the prosecutor made that motion or to proceed with the case. If the defendant did not complete the program, the defendant could be committed to a jail-based competency program or the court would dismiss the case on the motion of the prosecutor.

The bill would require the sheriff or sheriff's deputy person having custody of the defendant for certain types of transportation to ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant until otherwise directed by a physician treating the defendant, and if state funding is available for the purpose of reimbursing the expenses of the sheriff.

The bill would require the Executive Commissioner of HHSC to adopt necessary rules for a county to develop and implement a jail-based competency restoration program, including contract monitoring and oversight authority for a local mental health authority or behavioral health authority that contracts with a county to provide competency restoration services. The bill would authorize HHSC to inspect any aspect of a county jail-based competency restoration program. The bill would also require HHSC to submit a report regarding information collected during the program and an evaluation of outcomes no later than December 1, 2018, if the agency develop and implements a jail-based restoration of competency pilot program. The bill would take effect on September 1, 2017

Based on the LBB's analysis of the Health and Human Services Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. The Office of Court Administration and the Department of Criminal Justice indicate that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

According to the Office of Court Administration, the fiscal impact to local courts is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 696 Department of Criminal Justice, 537 State Health Services, Department of

LBB Staff: UP, KCA, EP, MDI, KJo, MW, GDz

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 18, 2017

TO: Honorable Four Price, Chair, House Committee on Public Health

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1326 by Zaffirini (Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of the Code of Criminal Procedure and Health and Safety Code to address the screening and assessment of defendants for mental health and competency. The bill would require a magistrate to undertake certain proceedings for early identification and evaluation if the magistrate receives written or electronic notice that a defendant may have a mental illness or intellectual disability. The bill would establish procedures for the early identification of defendants suspected of having mental illness or intellectual disability.

The bill would require a sheriff or other person having custody of the person for a Class B or higher offense to transmit a written or electronic notice of information in their possession that indicates a person in custody has a mental illness or an intellectual disability to a magistrate within 12 hours of its receipt.

The bill would require that a written mental health assessment ordered by a judge be provided to the magistrate within 96 hours if the defendant is held in custody or within 30 days if the defendant has been released from custody after the assessment was ordered by the magistrate. If a defendant failed or refused to submit to the assessment as ordered, the defendant could be ordered to submit to an examination in a jail or another appropriate place for a reasonable period not to exceed 72 hours. The written assessment would be required to be provided to the magistrate on a form promulgated and approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The bill would authorize the magistrate to require the submission of a defendant to a mental health examination or other assessment as a condition of release from custody. The bill would authorize the assessment to be used to refer the defendant to an appropriate specialty court. The magistrate would be required to report the number of mental health assessments to the Office of Court Administration. The bill clarifies that a magistrate must release from custody, notwithstanding a locally-adopted bond schedule or other standing order, individuals not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability when appropriate treatment is available in the community, and the release of the defendant would ensure the defendant's appearance in court and the safety of the community and the victim of the alleged defense.

The bill would authorize the court to commit an incompetent defendant charged with a Class B misdemeanor to a jail-based competency restoration program or to a mental health facility or residential care facility. If the court determines that an incompetent defendant charged with a Class B misdemeanor is not a danger to others and may be safely treated on an outpatient basis, the bill would require the court to order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days. If a defendant charged with a Class B misdemeanor completed an outpatient treatment program, the court would be required to dismiss the case if the prosecutor made that motion or to proceed with the case. If the defendant did not complete the program, the defendant could be committed to a jail-based competency program or the court would dismiss the case on the motion of the prosecutor.

The bill would require the sheriff or sheriff's deputy person having custody of the defendant for certain types of transportation to ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant until otherwise directed by a physician treating the defendant, and if state funding is available for the purpose of reimbursing the expenses of the sheriff.

The bill would require the Executive Commissioner of HHSC to adopt necessary rules for a county to develop and implement a jail-based competency restoration program, including contract monitoring and oversight authority for a local mental health authority or behavioral health authority that contracts with a county to provide competency restoration services. The bill would authorize HHSC to inspect any aspect of a county jail-based competency restoration program. The bill would also require HHSC to submit a report regarding information collected during the pilot program and an evaluation of outcomes no later than December 1, 2018, if the agency develop and implements a jail-based restoration of competency pilot program. The bill would take effect on September 1, 2017.

Based on the LBB's analysis of the Health and Human Services Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. The Office of Court Administration and the Department of Criminal Justice indicate that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

According to the Office of Court Administration, the fiscal impact to local courts is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 696 Department of Criminal Justice, 537 State Health Services, Department of

LBB Staff: UP, KCA, EP, MDI, KJo, MW, GDz

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 15, 2017

TO: Honorable Four Price, Chair, House Committee on Public Health

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1326 by Zaffirini (Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.), **As Engrossed**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend sections of the Code of Criminal Procedure and Health and Safety Code to address the screening and assessment of defendants for mental health and competency. The bill would require a magistrate to undertake certain proceedings for early identification and evaluation if the magistrate receives written or electronic notice that a defendant may have a mental illness or intellectual disability. The bill would establish procedures for the early identification of defendants suspected of having mental illness or intellectual disability.

The bill would require a sheriff or other person having custody of the person for a Class B or higher offense to transmit a written or electronic notice of information in their possession that indicates a person in custody has a mental illness or an intellectual disability to a magistrate within 12 hours of its receipt.

The bill would require that a written mental health assessment ordered by a judge be provided to the magistrate within 96 hours if the defendant is held in custody or within 30 days if the defendant has been released from custody after the assessment was ordered by the magistrate. If a defendant failed or refused to submit to the assessment as ordered, the defendant could be ordered to submit to an examination in a jail or another appropriate place for a reasonable period not to exceed 72 hours. The written assessment would be required to be provided to the magistrate on a form promulgated and approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The bill would authorize the magistrate to require the submission of a defendant to a mental health examination or other assessment as a condition of release from custody. The bill would authorize the assessment to be used to refer the defendant to an appropriate specialty court. The magistrate would be required to report the number of mental health assessments to the Office of Court Administration. The bill clarifies that a magistrate must release from custody, notwithstanding a locally-adopted bond schedule or other standing order, individuals not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability when appropriate treatment is available in the community, and the release of the defendant would ensure the defendant's appearance in court and the safety of the community and the victim of the alleged offense.

The bill would authorize the court to commit an incompetent defendant charged with a Class B

misdemeanor to a jail-based competency restoration program or to a mental health facility or residential care facility. If the court determines that an incompetent defendant charged with a Class B misdemeanor is not a danger to others and may be safely treated on an outpatient basis, the bill would require the court to order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days. If a defendant charged with a Class B misdemeanor completed an outpatient treatment program, the court would be required to dismiss the case if the prosecutor made that motion or to proceed with the case. If the defendant did not complete the program, the defendant could be committed to a jail-based competency program or the court would dismiss the case on the motion of the prosecutor.

The bill would require the sheriff or other person having custody of the defendant for certain types of transportation to ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant until otherwise directed by a physician treating the defendant, and if state funding is available for the purpose of reimbursing the expenses of the sheriff.

The bill would require the Executive Commissioner of HHSC to adopt necessary rules for a county to develop and implement a jail-based competency restoration program, including contract monitoring and oversight authority for a local mental health authority or behavioral health authority that contracts with a county to provide competency restoration services. The bill would authorize HHSC to inspect any aspect of a county jail-based competency restoration program. The bill would also require HHSC to submit a report regarding information collected during the pilot program and an evaluation of outcomes no later than December 1, 2018, if the agency develop and implements a jail-based restoration of competency pilot program.

The bill would take effect on September 1, 2017, only if a specific appropriation for the implementation of the provisions of the bill is provided in the General Appropriations Act of the 85th Legislature.

Based on the LBB's analysis of the Health and Human Services Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. The Office of Court Administration and the Department of Criminal Justice indicate that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

According to the Office of Court Administration, the fiscal impact to local courts is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 696 Department of Criminal Justice, 537 State Health Services, Department of

LBB Staff: UP, KCA, EP, MDI, KJo, MW, GDz

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 17, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1326 by Zaffirini (relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1326, Committee Report 1st House, Substituted: a negative impact of (\$41,283,448) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$20,403,723)
2019	(\$20,879,725)
2020	(\$20,879,725)
2021	(\$20,879,725)
2022	(\$20,789,725)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	(\$20,403,723)	2.0
2019	(\$20,879,725)	2.0
2020	(\$20,879,725)	2.0
2021	(\$20,879,725)	2.0
2022	(\$20,789,725)	2.0

Fiscal Analysis

The bill would amend sections of the Code of Criminal Procedure and Health and Safety Code to address the screening and assessment of defendants for mental health and competency. The bill

would require a magistrate to undertake certain proceedings for early identification and evaluation if the magistrate receives written or electronic notice that a defendant may have a mental illness or intellectual disability. The bill would establish procedures for the early identification of defendants suspected of having mental illness or mental retardation.

The bill would require a sheriff or other person having custody of the person for a Class B or higher offense to transmit a written or electronic notice of information in their possession that indicates a person in custody has a mental illness or an intellectual disability to a magistrate within 12 hours of its receipt.

The bill would require that a written mental health assessment ordered by a judge be provided to the magistrate within 96 hours if the defendant is held in custody or within 30 days if the defendant has been released from custody after the assessment was ordered by the magistrate. If a defendant failed or refused to submit to the assessment as ordered, the defendant could be ordered to submit to an examination in a jail or another appropriate place for a reasonable period not to exceed 72 hours. The written assessment would be required to be provided to the magistrate on a form promulgated and approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The bill would authorize the magistrate to require the submission of a defendant to a mental health examination or other assessment as a condition of release from custody. The bill would authorize the assessment to be used to refer the defendant to an appropriate specialty court. The magistrate would be required to report the number of mental health assessments to the Office of Court Administration.

The bill clarifies that a magistrate must release from custody, notwithstanding a locally-adopted bond schedule or other standing order, individuals not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability when appropriate treatment is available in the community, and the release of the defendant would ensure the defendant's appearance in court and the safety of the community and the victim of the alleged defense.

The bill would authorize the court to commit an incompetent defendant charged with a Class B misdemeanor to a jail-based competency restoration program or to a mental health facility or residential care facility. If the court determines that an incompetent defendant charged with a Class B misdemeanor is not a danger to others and may be safely treated on an outpatient basis, the bill would require the court to order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days. If a defendant charged with a Class B misdemeanor completed an outpatient treatment program, the court would be required to dismiss the case if the prosecutor made that motion or to proceed with the case. If the defendant did not complete the program, the defendant could be committed to a jail-based competency program or the court would dismiss the case on the motion of the prosecutor.

The bill would permit the head of a mental health facility, jail-based competency restoration program, or outpatient program to notify the court when the head of the facility or program believes that the defendant is clinically ready to be transferred to a competency restoration program for education services. Upon this notification, the defendant would be transferred to a jail-based competency restoration program or outpatient competency restoration education program for the remainder of the competency restoration period. The bill would require the sheriff or other person having custody of the defendant to ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant until otherwise directed by a physician treating the defendant, and if state funding is available for the purpose of reimbursing the expenses of the sheriff. The bill would require a court to give preference to any criminal action

against a defendant restored to competency through an outpatient, inpatient, or jail-based treatment program.

The bill would authorize the Health and Human Services Commission (HHSC) to develop and implement a jail-based restoration of competency program in any county upon agreement with a county seeking to participate in the program. The bill would outline the standards for such programs, and would require the HHSC to promulgate any rules necessary to implement the program. The bill would also require HHSC to adopt rules as necessary for a county to independently develop and implement a jail-based competency restoration program.

The bill would take effect on September 1, 2017, only if a specific appropriation for the implementation of the provisions of the bill is provided in the General Appropriations Act of the 85th Legislature.

Methodology

Under the provisions of the bill, HHSC would be authorized to coordinate with counties to establish a jail-based competency restoration programs. This analysis assumes that HHSC would establish a program consisting of 10 beds in each of the 10 counties with the highest level of need at a rate of \$478 per day and that a 25 percent increase in demand for outpatient competency restoration services would occur at the Local Mental Health Authorities. The cost associated with establishing a jail-based competency restoration program and serving additional individuals in outpatient competency restoration services is estimated to be \$20,403,723 in fiscal year 2018 and \$20,879,725 in each subsequent fiscal year. This cost includes assumptions that the provisions would require two additional full-time equivalent (FTE) positions, a Nurse V and a Program Specialist VI. The estimated costs of the two additional FTEs, including salary, technology costs, and other operating expenses would be \$146,913 with associated benefits of \$53,800 (or \$200,713) each fiscal year.

This analysis assumes that the provisions of the bill would allow the state hospitals to provide more timely services to individuals currently on the forensic waiting list, but that the demand for services would continue to exceed total capacity. To the extent that jail-based competency restoration programs established under the provisions of the bill would decrease the demand for services at the state hospitals below total capacity, there could be a savings of approximately \$477 per bed per day at the state hospitals based on FY 16 actual daily costs per bed.

This analysis assumes that the provisions of the bill would allow the state hospitals to provide more timely services to individuals currently on the forensic waiting list, but that the demand for services would continue to exceed total capacity. To the extent that jail-based competency restoration programs established under the provisions of the bill would decrease the demand for services at the state hospitals below total capacity, there could be a savings of approximately \$477 per bed per day at the state hospitals based on FY 16 actual daily costs per bed.

According to the Office of Court Administration, duties and responsibilities associated with implementing the remaining provisions of the bill could be accomplished by utilizing existing resources.

Technology

The technology cost would be \$24,298 in fiscal year 2018 and \$20,216 each subsequent fiscal year.

Local Government Impact

According to the Office of Court Administration, the fiscal impact to local courts is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 696 Department of Criminal Justice, 537 State Health Services, Department of

LBB Staff: UP, KJo, EP, MDI, MW, GDz

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 11, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1326 by Zaffirini (Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1326, As Introduced: a negative impact of (\$41,283,448) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$20,403,723)
2019	(\$20,879,725)
2020	(\$20,879,725)
2021	(\$20,879,725)
2022	(\$20,789,725)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	(\$20,403,723)	2.0
2019	(\$20,879,725)	2.0
2020	(\$20,879,725)	2.0
2021	(\$20,879,725)	2.0
2022	(\$20,789,725)	2.0

Fiscal Analysis

The bill would amend sections of the Code of Criminal Procedure and Health and Safety Code to address the screening and assessment of defendants for mental health and competency. The bill would require a magistrate to undertake certain proceedings for early identification and evaluation if the magistrate receives written or electronic notice that a defendant may have a

mental illness or intellectual disability. The bill would establish procedures for the early identification of defendants suspected of having mental illness or mental retardation.

The bill would require a sheriff or other person having custody of the person for a Class B or higher offense to transmit a written or electronic notice of information in their possession that indicates a person in custody has a mental illness or an intellectual disability to a magistrate within four hours of its receipt.

The bill would require that a written mental health assessment ordered by a judge be provided to the magistrate within 72 hours if the defendant is held in custody or within 30 days if the defendant has been released from custody after the assessment was ordered by the magistrate. If a defendant failed or refused to submit to the assessment as ordered, the defendant could be ordered to submit to an examination in a jail or another appropriate place for a reasonable period not to exceed 48 hours. The written assessment would be required to be provided to the magistrate on a form promulgated and approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The bill would authorize the magistrate to require the submission of a defendant to a mental health examination or other assessment as a condition of release from custody. The bill would authorize the assessment to be used to refer the defendant to an appropriate specialty court. The magistrate would be required to report the number of mental health assessments to the Office of Court Administration.

The bill clarifies that a magistrate must release from custody, notwithstanding a locally-adopted bond schedule or other standing order, individuals not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability when appropriate treatment is not available in the jail, but in the community, and the release of the defendant would ensure the defendant's appearance in court and the safety of the community and the victim.

The bill also prohibits the court from committing an incompetent defendant charged with a Class B misdemeanor to a state mental health facility. Instead, an incompetent defendant charged with a Class B misdemeanor would be released on bail and ordered into an outpatient competency treatment program for up to 90 days. If a defendant charged with a Class B misdemeanor completed an outpatient treatment program, the court would be required to dismiss the case if the prosecutor made that motion or to proceed with the case. If the defendant did not complete the program, the defendant could be committed to a jail-based competency program or the court would dismiss the case on the motion of the prosecutor.

The bill would permit the head of a mental health facility, jail-based competency restoration program, or outpatient program to notify the court when the head of the facility or program believes that the defendant has attained psychiatric stabilization. Upon this notification, the defendant would be returned to a jail-based competency restoration program or outpatient competency restoration education program for the remainder of the competency restoration period. The bill would require the sheriff or other person having custody of the defendant to ensure that the defendant is provided with the types and dosages of medication prescribed by the defendant until otherwise directed by a physician treating the defendant. The bill would require a court to give preference to any criminal action against a defendant restored to competency through an outpatient, inpatient, or jail-based treatment program.

The bill would authorize the Health and Human Services Commission (HHSC) to develop and implement a jail-based restoration of competency program in any county to provide competency restoration services in jails to individuals that would otherwise be committed to a mental health

facility. The bill would outline the standards for such programs, and would require the HHSC to promulgate any rules necessary to implement the program.

The bill would update language throughout the article to refer to intellectual disability instead of mental retardation.

The bill would take effect on September 1, 2017.

Methodology

Under the provisions of the bill, HHSC would be authorized to coordinate with counties to establish a jail-based competency restoration programs. This analysis assumes that HHSC would establish a program consisting of 10 beds in each of the 10 counties with the highest level of need at a rate of \$478 per day and that a 25 percent increase in demand for outpatient competency restoration services would occur at the Local Mental Health Authorities. The cost associated with establishing a jail-based competency restoration program and serving additional individuals in outpatient competency restoration services is estimated to be \$20,403,723 in fiscal year 2018 and \$20,879,725 in each subsequent fiscal year. This cost includes assumptions that the provisions would require two additional full-time equivalent (FTE) positions, a Nurse V and a Program Specialist VI. The estimated costs of the two additional FTEs, including salary, technology costs, and other operating expenses would be \$146,913 with associated benefits of \$53,800 (or \$200,713) each fiscal year.

This analysis assumes that the provisions of the bill would allow the state hospitals to provide more timely services to individuals currently on the forensic waiting list, but that the demand for services would continue to exceed total capacity. To the extent that jail-based competency restoration programs established under the provisions of the bill would decrease the demand for services at the state hospitals below total capacity, there could be a savings of approximately \$477 per bed per day at the state hospitals based on FY 16 actual daily costs per bed.

According to the Department of Criminal Justice and Office of Court Administration, duties and responsibilities associated with implementing the remaining provisions of the bill could be accomplished by utilizing existing resources.

Technology

The technology cost would be \$24,298 in fiscal year 2018 and \$20,216 each subsequent fiscal year.

Local Government Impact

According to the Office of Court Administration, the fiscal impact to local courts is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 537 State Health Services, Department of, 696 Department of Criminal Justice

LBB Staff: UP, KJo, MW, GDz, MDI