

By: Moody

H.B. No. 1401

A BILL TO BE ENTITLED

AN ACT

relating to procedures regarding defendants who may lack the capacity to understand or participate in criminal proceedings or who have participated in certain competency restoration programs.

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

SECTION 1. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0214 to read as follows:

Art. 45.0214. DEFENDANT WITH MENTAL ILLNESS, INTELLECTUAL OR DEVELOPMENTAL DISABILITY, OR LACK OF CAPACITY. (a) In this article:

(1) "Caregiver" means a person, including a guardian, who is authorized by law, contract, or familial relationship to provide care to another person.

(2) "Defendant" includes a child as defined by Article 45.058(h).

(b) On motion by the state, the defendant, or a person who stands in a parental relation to the defendant or who acts as the defendant's caregiver, or on the court's own motion, a justice or judge shall determine whether probable cause exists to believe that a defendant, including a defendant with a mental illness or an intellectual or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the defendant's own defense; or

(2) is unfit to proceed.

1        (c) If the court determines that probable cause exists for a  
2 finding under Subsection (b), after providing notice to the state,  
3 the court may dismiss the complaint.

4        (d) A dismissal of a complaint under Subsection (c) may be  
5 appealed as provided by Article 44.01.

6        SECTION 2. Article 46B.009, Code of Criminal Procedure, is  
7 amended to read as follows:

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

13            (1) any period of confinement that occurs pending a  
14 determination under Subchapter C as to the defendant's competency  
15 to stand trial; and

16            (2) any period of confinement that occurs between the  
17 date of any initial determination of the defendant's incompetency  
18 under that subchapter and the date the person is transported to jail  
19 following a final judicial determination that the person has been  
20 restored to competency.

21        (b) A court sentencing a person convicted of a criminal  
22 offense shall credit to the term of the person's sentence any period  
23 during which the person participated in an outpatient competency  
24 restoration program.

25        SECTION 3. This Act takes effect September 1, 2023.