

BILL ANALYSIS

C.S.H.B. 748
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 748 amends the Code of Criminal Procedure to require a court sentencing a person convicted of a criminal offense to credit to the person's sentence term any period of confinement served in a mental health facility, residential care facility, or jail that occurs pending a determination as to the defendant's competency to stand trial, rather than pending a trial to determine whether the defendant is incompetent to stand trial, and, in addition to crediting that period to the sentence, to credit any period of confinement in one of those facilities or jail that occurs between the date of any initial determination of the defendant's incompetency to stand trial and the date the person is transported to jail following a final judicial determination that the person has been restored to competency. The bill includes confinement in a mental health facility, residential care facility, or jail pending such a determination or between those dates among the periods for which the judge of a convicting court in all criminal cases is required to credit to a defendant's sentence.

C.S.H.B. 748 specifies, for purposes of the maximum cumulative period allowed for a defendant's commitment to a mental hospital or other inpatient or residential facility or outpatient treatment program participation for restoration to competency, that the period begins on the date the initial order of commitment or initial order for outpatient treatment program participation is entered and includes any time that, following the entry of the initial order, the defendant is confined in a correctional facility while awaiting transfer to a mental hospital or other inpatient or residential facility, release on bail to participate in an outpatient treatment program, or a criminal trial following any temporary restoration of the defendant's competency to stand trial. The bill authorizes the court to credit to that cumulative period any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility before the initial order of commitment or initial order for outpatient treatment program participation is entered and any good conduct time the defendant has been granted in relation to the defendant's confinement in the correctional facility. The bill requires

the mental hospital or other inpatient or residential facility or outpatient treatment program provider identified in the most recent order of commitment or order of outpatient treatment program participation to assess the defendant on expiration of the maximum restoration period to determine if civil proceedings under the Texas Mental Health Code or the Persons with Mental Retardation Act are appropriate.

C.S.H.B. 748 requires a court that orders a defendant charged with a misdemeanor punishable by confinement to participate in an outpatient treatment program and, if the defendant is not tried before the expiration of the maximum period of restoration, as an alternative to dismissing the charge and on the motion of the attorney representing the defendant, to set the matter to be heard not later than the 10th day after the date of filing of the motion. The bill requires the court to dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration. The bill includes a court order for the commitment of a defendant to a mental hospital or other inpatient or residential facility in that requirement for mandatory dismissal of misdemeanor charges. The bill makes conforming changes.

C.S.H.B. 748 amends the Health and Safety Code to specify that the provision of law establishing the expiration date of an order authorizing the administration of psychoactive medication to a patient awaiting trial in a criminal proceeding applies with respect to a patient who is returned to a correctional facility to await such trial and adds as an alternative expiration date for the order the 180th day after the date the defendant was returned to the correctional facility. The bill, in that provision of law, clarifies that the order continues to be in effect until the earlier of the provided expiration dates, as applicable, and removes the requirement that an order continued under the provision be reviewed by the issuing court every six months.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 748 differs from the original by requiring a court sentencing a person convicted of a criminal offense to credit to the sentence term both any period of confinement in a mental health facility, residential care facility, or jail that occurs pending a determination as to the defendant's competency to stand trial and any period of confinement in one of those facilities or jail that occurs between the date of any initial determination of the defendant's incompetency to stand trial and the date the person is transported to jail following a judicial determination of restoration to competency, whereas the original requires the court to credit the period of confinement pending a determination of competency or the period of confinement occurring between those dates.

C.S.H.B. 748 contains provisions not included in the original specifying the applicability of statutory provisions relating to the expiration of orders authorizing the administration of psychoactive medication to a patient awaiting trial in a criminal proceeding and establishing an alternative expiration date for such an order. The substitute contains a provision not included in the original removing a requirement that such an order that is continued be reviewed by the issuing court every six months. The substitute differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions.