

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1503  
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Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1503 allows criminal courts to more effectively and efficiently handle issues of competency, to facilitate the successful return to society of individuals released from mental health facilities, and to protect the public from violent individuals with mental health problems.

Specifically, S.B. 1503 creates a judicial review for the release of dangerous patients civilly committed and provides courts with additional tools to investigate and handle competency issues. Additionally, the bill requires a mental health evaluation prior to the release of individuals who have voluntarily committed themselves, and establish a pre-release review of patients committed to mental health services, if they are found to be violent and to pose a danger to themselves or to the public.

Under current law, there are virtually no transitional or step-down services and facilities to help reintegrate patients returning from mental hospitals. S.B. 1503 also creates step-down transitional facilities, when funds are available, in order to deliver services that include job training, counseling, medication delivery and compliance checking, substance abuse treatment, and other vital services at an interim level to promote reintegration into society while maintaining treatment compliance and public safety.

As proposed, S.B. 1503 amends current law relating to procedures regarding certain criminal defendants who are or may be persons with mental illness or mental retardation.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (TXMHMR), the following amendments affect the Department of Assistive and Rehabilitative Services, as the successor agency to TXMHMR.]

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Department of Mental Health and Mental Retardation is modified in SECTION 20 (Section 551.042, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 46B.0095, Code of Criminal Procedure, as follows:

Art. 46B.0095. MAXIMUM PERIOD OF FACILITY COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) Prohibits a defendant, under Subchapter D (Procedures After Determination of Incompetency) or E (Civil Commitment; Charges Pending) or any other provision of this chapter, from being committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient treatment program under Subchapter D or E, the maximum period of restoration is two years, rather than two years beginning on the date of the initial order for outpatient treatment program participation was entered.

(b) Authorizes the defendant, on expiration of the maximum restoration period under Subsection (a), to be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil proceedings, rather than civil commitment proceedings, under Subtitle C (Texas Mental Health Code) or D (Persons with Mental Retardation Act), Title 7, Health and Safety Code.

(c) Provides that the cumulative period described by Subsection (a) begins on the date that, following the entry of the initial order of commitment or initial order for outpatient treatment program participation, the defendant is:

(1) transferred to a mental hospital or other inpatient or residential facility; or

(2) released on bail to participate in an outpatient treatment program.

SECTION 2. Amends the heading to Article 46B.013, Code of Criminal Procedure, to read as follows:

Art. 46B.013. USE OF TELEPHONIC CONFERENCING OR ELECTRONIC BROADCAST SYSTEM IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER.

SECTION 3. Amends Articles 46B.013(a) and (b), Code of Criminal Procedure, as follows:

(a) Authorizes a hearing to be conducted using telephonic conferencing or an electronic broadcast system as permitted by this chapter and in accordance with the other provisions of this code if:

(1) written consent to the use of telephonic conferencing or an electronic broadcast system is filed with the court by the defendant or the attorney representing the defendant, and the attorney representing the state;

(2) if applicable, the electronic broadcast system to be used will provide for a simultaneous, compressed full motion video, and interactive communication of image and sound between the judge, the attorney representing the state, the attorney representing the defendant, and the defendant;

(3) the communication to be made through telephonic conferencing or the electronic broadcast system can be recorded in full as required by Subsection (c) (relating to recordings of certain communications); and

(4) on request of the defendant or the attorney representing the defendant, the defendant and the attorney representing the defendant are able to communicate privately without being recorded or heard by the judge or the attorney representing the state.

Makes nonsubstantive changes.

(b) Requires, rather than authorizes, the court, on the motion of the defendant, the attorney representing the defendant, or the attorney representing the state or on the court's own motion, to terminate an appearance made through telephonic conferencing or an electronic broadcast system at any time during the appearance and require an appearance by the defendant in open court.

SECTION 4. Amends Article 46B.022(a), Code of Criminal Procedure, as follows:

(a) Requires a psychiatrist or psychologist, to qualify for appointment under this subchapter as an expert, to:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification or training, rather than certification or experience or training:

(A) as appropriate, certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry, or the American Board of Professional Psychology in forensic psychology; or

(B) training consisting of at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations, rather than experience or training consisting of at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; for an appointment made before January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts; or for an appointment made on or after January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts and eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court.

SECTION 5. Amends Article 46B.025(c), Code of Criminal Procedure, as follows:

(c) Prohibits an expert's report from stating the expert's opinion on the defendant's competency or incompetency based only on a refusal by the defendant to communicate information in good faith. Prohibits the report from stating the expert's opinion on the defendant's sanity at the time of the alleged offense, if in the opinion of the expert the defendant is incompetent to proceed.

SECTION 6. Amends Article 46B.051, Code of Criminal Procedure, by adding Subsection (d) to require that the trial be conducted not later than the 15th day after the date that the last report of an expert, from among all of the experts involved in examining the defendant, is submitted to the court.

SECTION 7. Amends Article 46B.079(a), Code of Criminal Procedure, to require the head of the facility or the provider of the outpatient treatment program, as appropriate, not later than the 15th day before the date on which the initial restoration period, rather than a restoration period, is to expire, to notify the applicable court that the period is about to expire. Makes a nonsubstantive change.

SECTION 8. Amends Article 46B.080(b), Code of Criminal Procedure, to authorize the court to enter an order under Subsection (a) (relating to extending an initial restoration period) only if the court determines that, on the basis of information provided by the head of the facility or the treatment program provider the defendant has not attained competency, and an extension of the initial restoration period may, rather than will likely, enable the facility or program to restore the defendant to competency within the period of the extension.

SECTION 9. Redesignates Article 46B.080(c), Code of Criminal Procedure, as Article 46B.0805, Code of Criminal Procedure, and amends it as follows:

Art. 46B.0805. **SECOND EXTENSION PERMITTED IN CERTAIN CIRCUMSTANCES.** Redesignates existing Article 46B.080(c) as Article 46B.0805. Authorizes the court to grant a second extension with respect to, rather than only one extension under this article for, a period of restoration ordered under this subchapter only if the court determines that:

(1) the defendant has not attained competency; and

(2) a second extension may enable the facility or program to restore the defendant to competency within the period of the extension.

SECTION 10. Amends Article 46B.083, Code of Criminal Procedure, by adding Subsection (c) to authorize the court, for each extension period ordered under this subchapter, to request the submission of an additional certificate or affidavit by the head of the facility or outpatient treatment program provider, as applicable.

SECTION 11. Amends Article 46B.084(b-1), Code of Criminal Procedure, to authorize the hearing, if the hearing is before the court, to be conducted by means of telephonic conferencing or an electronic broadcast system as provided by Article 46B.013.

SECTION 12. Amends Article 46B.085, Code of Criminal Procedure, as follows:

Art. 46B.085. SUBSEQUENT RESTORATION PERIODS AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) Authorizes the court to order only one initial period of restoration and two extensions, rather than one extension, under this subchapter in connection with the same offense.

(b) Requires that any subsequent court orders for treatment, after an initial restoration period and one or two extensions, rather than an extension, are ordered as described by Subsection (a), be issued under Subchapter E or F (Civil Commitment; Charges Dismissed).

SECTION 13. Amends Article 46B.107(d), Code of Criminal Procedure, to authorize the court to conduct the hearing at the facility, or by means of telephonic conferencing or an electronic broadcast system as provided by Article 46B.013.

SECTION 14. Amends Article 46B.113(c), Code of Criminal Procedure, to authorize the court, if the competency determination will be made by the court rather than a jury, to conduct the hearing at the facility, or by means of telephonic conferencing or an electronic broadcast system as provided by Article 46B.013.

SECTION 15. Amends Article 46B.114, Code of Criminal Procedure, to require that an order setting a hearing to determine whether the defendant has been restored to competency, if the hearing is not conducted at the facility to which the defendant has been committed under this chapter or conducted by means of telephonic conferencing or an electronic broadcast system as described by Article 46B.013, rather than by this subchapter, to direct that, as soon as practicable but not earlier than 72 hours before the date the hearing is scheduled, the defendant be placed in the custody of the sheriff of the county in which the committing court is located or the sheriff's designee for transportation to the court.

SECTION 16. Amends Article 46B.115(c), Code of Criminal Procedure, to authorize the court, if the competency determination will be made by the court, to conduct the hearing at the facility to which the defendant has been committed under this chapter or to conduct the hearing by means of telephonic conferencing or an electronic broadcast system as provided by Article 46B.013.

SECTION 17. Amends Article 46C.102(a), Code of Criminal Procedure, as follows:

(a) Requires a psychiatrist or psychologist, to qualify for appointment under this subchapter as an expert, to:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification or training, rather than certification or experience or training:

(A) as appropriate, certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry, or the American Board of Professional Psychology in forensic psychology; or

(B) training consisting of at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations, rather than experience or training consisting of at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations, at least five years of experience in performing criminal forensic evaluations for courts, and eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court.

SECTION 18. Amends Article 46C.252(a), Code of Criminal Procedure, to require that the report ordered under Article 46C.251 (Commitment for Evaluation and Treatment; Report) be filed with the court as soon as practicable before the hearing on disposition but not later than the seventh day, rather than the fourth day, before that hearing.

SECTION 19. Amends Article 46C.261(a), Code of Criminal Procedure, to require a criminal court that orders an acquitted person committed to inpatient treatment or orders outpatient or community-based treatment and supervision annually to determine whether to renew the order and has continuing jurisdiction over all renewals for the purposes of this chapter.

SECTION 20. Amends Section 551.042, Health and Safety Code, as follows:

Sec. 551.042. New heading: OUTPATIENT CLINICS AND TRANSITIONAL FACILITIES. (a) Requires the Texas Department of Mental Health and Mental Retardation (TXMHMR), if funds are available, to establish in locations TXMHMR considers necessary outpatient clinics and transitional facilities to treat persons with mental illness.

(b) Authorizes TXMHMR, as necessary to establish and operate the clinics and transitional facilities, to acquire facilities, hire personnel, adopt rules, and contract with persons, corporations, and local, state, and federal agencies.

SECTION 21. Amends Sections 572.004(c) and (d), Health and Safety Code, as follows:

(c) Requires the notified physician to evaluate the patient to determine whether there is reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention. Requires the notified physician to discharge the patient on completion of the evaluation, rather than before the end of the four-hour period, unless the physician finds, rather than has, reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) Requires a physician who finds, rather than has, reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention to examine the patient as soon as possible within 24 hours after the time the request for discharge is filed.

SECTION 22. Amends Section 574.086, Health and Safety Code, by adding Subsections (d) and (e), as follows:

(d) Provides that, notwithstanding Subsection (a) (relating to discharging a patient before the court order expires), a discharge under this section is subject to judicial review and disapproval under Section 574.090 if:

(1) one of the criteria that formed the basis for the decision to commit the patient was a finding that the patient was likely to cause serious harm to others;

(2) regardless of the criteria that formed the basis for the decision to commit, a treating physician now believes that the patient poses a substantial risk of causing harm to others; or

(3) the patient has a violent criminal history.

(e) Provides that for purposes of this subsection, a patient has a violent criminal history if the patient:

(1) has a prior conviction or has received community supervision for an offense listed in Article 17.032(a) (relating to the definition of "violent offense"), Code of Criminal Procedure;

(2) is currently charged with an offense listed in Article 17.032(a), Code of Criminal Procedure;

(3) has been charged with an offense listed in Article 17.032(a), Code of Criminal Procedure, in the five years preceding the date of the patient's current commitment; or

(4) has ever been found not guilty by reason of insanity of an offense listed in Article 17.032(a), Code of Criminal Procedure.

SECTION 23. Amends Subchapter F, Chapter 574, Health and Safety Code, by adding Section 574.090, as follows:

Sec. 574.090. JUDICIAL REVIEW OF DISCHARGE. (a) Requires a facility administrator who determines that a patient described by Section 574.086(d) does not meet the criteria for court-ordered inpatient mental health services to prepare a discharge certificate as required by Section 574.087 (Certificate of Discharge) and file it with the court that entered the order committing the patient to court-ordered inpatient mental health services.

(b) Requires the court, on the filing of a discharge certificate under Subsection (a), to notify the attorney representing the state and the patient's last attorney of record and provide each attorney a copy of the discharge certificate.

(c) Requires the court, on the request of the attorney representing the state, to conduct a hearing to determine whether the patient no longer meets the criteria for court-ordered inpatient mental health services and should be discharged. Authorizes the court to hold the hearing on its own motion.

(d) Authorizes the court to order further psychiatric or psychological testing the court considers necessary for determining whether the patient no longer meets the criteria for court-ordered inpatient mental health services and should be discharged.

(e) Requires the court, at the hearing conducted under this section, to determine whether the person meets any criteria for court-ordered inpatient mental health services listed in Section 574.035(a). Requires the court, if the court finds by clear and convincing evidence that the patient meets one of the criteria for court-ordered inpatient mental health services, to disapprove the patient's release and enter a new order committing the patient for court-ordered extended inpatient mental health services. Requires the court, if the court does not find by clear and convincing evidence that the patient meets one of the criteria for court-ordered inpatient mental health services, to approve the patient's discharge.

SECTION 24. Provides that the changes in law made by this Act in amending Chapters 46B and 46C, Code of Criminal Procedure, apply only to a defendant with respect to whom any

proceeding under Chapter 46B or 46C, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

SECTION 25. Effective date: September 1, 2011.