

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 19, 2011

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

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: SB931 by Williams (Relating to the determination of incompetency in criminal cases.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would provide for decreased timelines for inpatient competency restoration attempts, from 120 days to 60 days with a maximum of two 30-day extensions. It also clarifies the cumulative term limits for restoration attempts and how long a defendant can be kept in a correctional facility, an inpatient facility or an outpatient competency restoration program. In the bill, time served in jail waiting for a hospital bed or waiting in jail for a trial will begin to count towards maximum time served.

The bill would modify qualifications of who may be an expert to provide competency evaluations and what must be included in the competency evaluation and specifies that a person may also be found incompetent due to a medical condition that significantly limits a defendant's cognitive functioning. The bill provides that a patient may be released on bail and treated on an outpatient basis if there is an appropriate outpatient program and the patient is not a danger to self or others.

The bill requires that if a patient is found incompetent to stand trial and not likely to regain competency, the courts shall proceed with civil commitments or take unspecified "other action authorized by law."

According to the Department of State Health Services (DSHS), it is unknown how many individuals may meet this new maximum day length of stay next fiscal year when the bill would take effect. Additionally DSHS believes that there should be no significant fiscal impact associated with this and the other related provisions in the bill based on the assumption that an outpatient commitment is dependent upon available services in the community; the Health and Safety Code Chapter 574.034 states that "a judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if the judge finds that appropriate mental health services are available to the patient." Given this provision DSHS assumes no additional fiscal impact associated with outpatient commitments.

The bill also requires the Health and Human Services Commission (HHSC) to pursue a waiver to the state Medicaid plan from the federal Centers for Medicare and Medicaid Services to provide Medicaid outpatient programs applicable to certain patients. This section could have a significant fiscal impact if this waiver program was fully implemented; this cost, however, is not included in the fiscal note at this time.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 520 Board of Examiners of Psychologists, 529 Health and Human Services Commission, 537 State Health Services,

Department of, 539 Aging and Disability Services, Department of
LBB Staff: JOB, KKR, ESi, MB, JF, NB, EH