

BILL ANALYSIS

S.B. 1475
By: Duncan
Corrections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

By law, all criminal defendants must be competent to stand trial and assist in their defense. Most of the defendants who are found by a court to be incompetent to stand trial are committed to and treated at state mental health hospitals or private mental health facilities, which are regulated by the Texas Department of State Health Services (DSHS), until their competency is restored or for the maximum statutorily prescribed time based on the offense. Interested parties assert that the state mental hospital system has inadequate bed capacity to provide immediate competency restoration treatment to defendants. As a result, there is concern that many defendants must wait weeks, even months, in county jails before receiving the necessary treatment at state mental health hospitals or other facilities.

A court recently ruled that it is a violation of the right to due process to keep an incompetent individual in jail for an unreasonable amount of time before being admitted to a state mental health facility or residential mental health facility to receive treatment and, subsequently, required DSHS to make beds available for defendants needing competency restoration within 21 days from the date it receives a criminal court's commitment order. The interested parties have expressed concern that, while DSHS increased bed capacity to accommodate the restoration of competency patients, there is and will continue to be significant costs to the state to pay for additional beds either at state hospitals or by contracting with private facilities. S.B. 1475 seeks to address these issues by creating a jail-based competency restoration pilot program.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

S.B. 1475 amends the Code of Criminal Procedure to add temporary provisions, set to expire September 1, 2017, to require the Department of State Health Services (DSHS), if the legislature appropriates to DSHS the funding necessary for DSHS to operate a jail-based restoration of competency pilot program, to develop and implement the pilot program in one or two counties in Texas that choose to participate in the pilot program. The bill requires DSHS, in developing the pilot program, to coordinate and allow for input from each participating county. The bill requires

DSHS, if DSHS develops the pilot program, to contract with a provider of jail-based competency restoration services to provide services under the pilot program. The bill requires the executive commissioner of the Health and Human Services Commission, not later than November 1, 2013, and in consultation with a stakeholder workgroup established by DSHS under the bill's provisions for the purpose of such workgroup's participation in developing and establishing rules for the pilot program, to adopt rules as necessary to implement the pilot program and, in adopting those rules, to specify the types of information DSHS must collect during the pilot program's operation for use in evaluating program outcomes. The bill sets out the composition of the stakeholder workgroup and sets the bill's provisions requiring the establishment of the workgroup to expire not later than the 30th day after the date the commissioner's rules are adopted.

S.B. 1475 requires a provider of jail-based competency restoration services, in order to contract with DSHS to provide services under the pilot program, to demonstrate the provider's qualifications in terms of the provider's experience in providing competency restoration services, including jail-based services; certain characteristics of the provider's program services; the provider's credentials as a certified or accredited health care organization or program provider or as a local mental health authority in good standing with DSHS; and the provider's track record of success with jail-based competency restoration outcomes or, if the provider is a local mental health authority, with competency restoration outcomes. The bill requires a contract entered into by a provider and DSHS to require the designated provider to collect and submit to DSHS the information specified by commissioner rules. The bill requires the designated provider to enter into a contract with the participating county or counties and sets out the county's or counties' program-related duties that must be provided for in the contract.

S.B. 1475 requires the psychiatrist for the provider to conduct at least two full psychiatric evaluations of a participating defendant during the period the defendant receives competency restoration services in the jail, including one evaluation not later than the 21st day and another evaluation not later than the 55th day after the date the defendant begins to participate in the pilot program, and to submit to the court a report concerning each of those evaluations.

S.B. 1475 requires the psychiatrist for the provider, if at any time during a defendant's participation in the pilot program the psychiatrist determines that the defendant has attained competency to stand trial, to promptly report that fact to the court and requires the court to consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for purposes of the procedures applicable to a court-ordered reexamination of a defendant on credible evidence of competency restoration. The bill requires the psychiatrist for the provider, if at any time during a defendant's participation in the pilot program the psychiatrist determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future, to promptly report that fact to the court and requires the court then to begin civil commitment proceedings and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant or release the defendant on bail.

S.B. 1475, if the psychiatrist for the provider determines that a defendant who is charged with a felony and ordered to participate in the pilot program has not been restored to competency by the end of the 60th day after the date the defendant began to participate in the program, requires the transfer of the defendant without unnecessary delay for the remainder of the prescribed period for restoring such a defendant to competency to the first available facility that is appropriate for that defendant. The bill authorizes the court, if the psychiatrist for the provider determines that a defendant who is charged with a misdemeanor and ordered to participate in the pilot program has not been restored to competency by the end of the specified 60-day period, to order a single 60-day extension of the competency restoration period and the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility for the remainder of the period under the extension, to begin civil commitment proceedings, to release the defendant on bail, or to dismiss the charges against the defendant.

S.B. 1475 specifies that, unless otherwise provided by the bill's provisions, the statutory provisions governing proceedings for a defendant who is incompetent to stand trial apply to a defendant receiving competency restoration services under the pilot program in the same manner as those provisions apply to any other defendant who is subject to such proceedings. The bill requires the commissioner of DSHS, if DSHS develops and implements the pilot program, to submit a report concerning the pilot program not later than December 1, 2016, to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues and over criminal justice issues. The bill requires the report to include the information collected by DSHS during the pilot program and the commissioner's evaluation of program outcomes as of the date the report is submitted.

S.B. 1475 requires, in a county in which DSHS operates a pilot program, a defendant committed to a mental health facility or residential care facility for competency restoration under a court order either to be provided competency restoration services at the jail under the pilot program if the service provider at the jail determines the defendant will immediately begin to receive services or to be transferred to the appropriate mental health facility or residential care facility as provided by the court order if the service provider at the jail determines a defendant will not immediately begin to receive competency restoration services.

EFFECTIVE DATE

September 1, 2013.