

By: Zerwas

H.B. No. 2349

Substitute the following for H.B. No. 2349:

By: Parker

C.S.H.B. No. 2349

A BILL TO BE ENTITLED

AN ACT

relating to a jail-based restoration of competency pilot program.

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

SECTION 1. Article 46B.073, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Subsections (b), (c), and (d) and notwithstanding the contents of the applicable order of commitment, in a county in which the department operates a jail-based restoration of competency pilot program under Article 46B.090, a defendant for whom an order is issued under this article committing the defendant to a mental health facility or residential care facility shall 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. If the service provider at the jail determines the defendant will not immediately begin to receive competency restoration services, the defendant shall be transferred to the appropriate mental health facility or residential care facility as provided by the court order. This subsection expires September 1, 2017.

SECTION 2. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by adding Article 46B.090 to read as follows:

Art. 46B.090. JAIL-BASED RESTORATION OF COMPETENCY PILOT PROGRAM. (a) If the legislature appropriates to the department the

1 funding necessary for the department to operate a jail-based
2 restoration of competency pilot program as described by this
3 article, the department shall develop and implement the pilot
4 program in one or two counties in this state that choose to
5 participate in the pilot program. In developing the pilot program,
6 the department shall coordinate and allow for input from each
7 participating county.

8 (b) The department shall contract with a provider of
9 jail-based competency restoration services to provide services
10 under the pilot program if the department develops a pilot program
11 under this article.

12 (c) Not later than November 1, 2013, the commissioner of the
13 department, in consultation with a stakeholder workgroup
14 established by the department as provided by Subsection (d), shall
15 adopt rules as necessary to implement the pilot program. In
16 adopting rules under this article, the commissioner shall specify
17 the types of information the department must collect during the
18 operation of the pilot program for use in evaluating the outcome of
19 the pilot program.

20 (d) The commissioner of the department shall establish a
21 stakeholder workgroup to participate in developing and
22 establishing rules for the pilot program. The stakeholder
23 workgroup must be composed of:

- 24 (1) one member who is a sheriff;
25 (2) one member who represents a local mental health
26 authority;
27 (3) one member who is a county commissioner, county

1 judge, or elected county officer;

2 (4) one member who is a district attorney or county
3 attorney with criminal jurisdiction;

4 (5) one member who is a defense attorney;

5 (6) one member who is a judge of a district criminal
6 court or county criminal court;

7 (7) two members who are mental health advocates; and

8 (8) any other member the department considers
9 appropriate to appoint to the stakeholder workgroup.

10 (e) This subsection and Subsection (d) expire not later than
11 the 30th day after the date rules are adopted under Subsection (c).

12 (f) To contract with the department under Subsection (b), a
13 provider of jail-based competency restoration services must
14 demonstrate to the department that:

15 (1) the provider:

16 (A) has previously provided jail-based
17 competency restoration services for one or more years; or

18 (B) is a local mental health authority that has
19 previously provided competency restoration services;

20 (2) the provider's jail-based competency restoration
21 program:

22 (A) uses a multidisciplinary treatment team to
23 provide clinical treatment that is:

24 (i) directed toward the specific objective
25 of restoring the defendant's competency to stand trial; and

26 (ii) similar to the clinical treatment
27 provided as part of a competency restoration program at an

1 inpatient mental health facility;

2 (B) employs or contracts for the services of at
3 least one psychiatrist;

4 (C) assigns staff members to defendants
5 participating in the program at an average ratio not lower than 3.7
6 to 1; and

7 (D) provides weekly treatment hours commensurate
8 to the treatment hours provided as part of a competency restoration
9 program at an inpatient mental health facility;

10 (3) the provider is certified by a nationwide
11 nonprofit organization that accredits health care organizations
12 and programs, such as the Joint Commission on Health Care Staffing
13 Services; and

14 (4) the provider has a demonstrated history of
15 successful jail-based restoration of competency outcomes.

16 (g) A contract under Subsection (b) must require the
17 designated provider to collect and submit to the department the
18 information specified by rules adopted under Subsection (c).

19 (h) The designated provider shall enter into a contract with
20 the participating county or counties. The contract must require
21 the participating county or counties to:

22 (1) ensure the safety of defendants who participate in
23 the jail-based restoration of competency pilot program;

24 (2) designate a separate space in the jail for the
25 provider to conduct the pilot program;

26 (3) provide the same basic care to the participants as
27 is provided to other inmates of a jail; and

1 (4) supply clinically appropriate psychoactive
2 medications to the mental health service provider for purposes of
3 administering court-ordered medication to the participants in
4 accordance with Article 46B.086 of this code and Section 574.106,
5 Health and Safety Code.

6 (i) The psychiatrist for the provider shall conduct at least
7 two full psychiatric evaluations of the defendant during the period
8 the defendant receives competency restoration services in the jail.
9 The psychiatrist must conduct one evaluation not later than the
10 21st day and one evaluation not later than the 55th day after the
11 date the defendant begins to participate in the pilot program. The
12 psychiatrist shall submit to the court a report concerning each
13 evaluation required under this subsection.

14 (j) If at any time during a defendant's participation in the
15 jail-based restoration of competency pilot program the
16 psychiatrist for the provider determines that the defendant has
17 attained competency to stand trial:

18 (1) the psychiatrist for the provider shall promptly
19 issue and send to the court a report demonstrating that fact; and

20 (2) the court shall consider that report as the report
21 of an expert stating an opinion that the defendant has been restored
22 to competency for purposes of Article 46B.0755(a) or (b).

23 (k) If at any time during a defendant's participation in the
24 jail-based restoration of competency pilot program the
25 psychiatrist for the provider determines that the defendant's
26 competency to stand trial is unlikely to be restored in the
27 foreseeable future:

1 (1) the psychiatrist for the provider shall promptly
2 issue and send to the court a report demonstrating that fact; and

3 (2) the court shall:

4 (A) proceed under Subchapter E or F and order the
5 transfer of the defendant, without unnecessary delay, to the first
6 available facility that is appropriate for that defendant, as
7 provided under Subchapter E or F, as applicable; or

8 (B) release the defendant on bail as permitted
9 under Chapter 17.

10 (1) If the psychiatrist for the provider determines that a
11 defendant ordered to participate in the pilot program has not been
12 restored to competency by the end of the 60th day after the date the
13 defendant began to participate in the pilot program:

14 (1) for a defendant charged with a felony, the
15 defendant shall be transferred, without unnecessary delay and for
16 the remainder of the period prescribed by Article 46B.073(b), to
17 the first available facility that is appropriate for that defendant
18 as provided by Article 46B.073(c) or (d); and

19 (2) for a defendant charged with a misdemeanor, the
20 court may:

21 (A) order a single extension under Article
22 46B.080 and the transfer of the defendant without unnecessary delay
23 to the appropriate mental health facility or residential care
24 facility as provided by Article 46B.073(d) for the remainder of the
25 period under the extension;

26 (B) proceed under Subchapter E or F;

27 (C) release the defendant on bail as permitted

1 under Chapter 17; or

2 (D) dismiss the charges in accordance with
3 Article 46B.010.

4 (m) Unless otherwise provided by this article, the
5 provisions of this chapter, including the maximum periods
6 prescribed by Article 46B.0095, apply to a defendant receiving
7 competency restoration services under the pilot program in the same
8 manner as those provisions apply to any other defendant who is
9 subject to proceedings under this chapter.

10 (n) If the department develops and implements a jail-based
11 restoration of competency pilot program under this article, not
12 later than December 1, 2016, the commissioner of the department
13 shall submit a report concerning the pilot program to the presiding
14 officers of the standing committees of the senate and house of
15 representatives having primary jurisdiction over health and human
16 services issues and over criminal justice issues. The report must
17 include the information collected by the department during the
18 pilot program and the commissioner's evaluation of the outcome of
19 the program as of the date the report is submitted.

20 (o) This article expires September 1, 2017.

21 SECTION 3. The change in law made by this Act applies only
22 to a defendant against whom proceedings have not been initiated
23 under Chapter 46B, Code of Criminal Procedure, as amended by this
24 Act, before the effective date of this Act. The determination of
25 incompetency for a defendant against whom proceedings have been
26 initiated under Chapter 46B, Code of Criminal Procedure, before the
27 effective date of this Act is covered by the law in effect when the

1 proceedings were initiated, and the former law is continued in
2 effect for that purpose.

3 SECTION 4. This Act takes effect September 1, 2013.