

By: Zerwas

H.B. No. 2349

A BILL TO BE ENTITLED

AN ACT

1
2 relating to alternate methods for providing mental health and
3 related services to certain defendants found incompetent to stand
4 trial or acquitted by reason of insanity in a criminal case.

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

6 SECTION 1. Subchapter D, Chapter 46B, Code of Criminal
7 Procedure, is amended by adding Article 46B.0731 to read as
8 follows:

9 Art. 46B.0731. JAIL-BASED COMPETENCY RESTORATION. (a)
10 Notwithstanding Article 46B.073 or any other provision of this
11 chapter and except as provided by Subsection (b), instead of
12 committing the defendant to a mental health facility or a
13 residential care facility under Article 46B.073, a court may issue
14 an order committing the defendant to the jail in that county for
15 purposes of receiving competency restoration treatment under this
16 subchapter if the department has established a jail-based
17 competency restoration program under Section 1001.078, Health and
18 Safety Code, and if the department has made the program available in
19 that county.

20 (b) A court may not issue an order of commitment under this
21 article with respect to a defendant who is subject to Article
22 46B.073(c).

23 (c) A court's order of commitment under this article has the
24 same effect as an order of commitment issued under Article 46B.073

1 and, for purposes of the procedures described by this chapter,
2 shall be treated as if it had been issued under that article. The
3 court may extend an initial order of commitment under this article
4 in the same manner as an initial order of commitment may be extended
5 under Article 46B.080.

6 (d) With respect to each commitment order issued under this
7 article and each extension granted under this article,
8 notwithstanding Article 46B.001 or any other provision of this
9 chapter and solely in the context of a commitment occurring
10 pursuant to an initial order of commitment or an extension of that
11 order:

12 (1) a reference in this chapter to a facility means a
13 reference to a county jail designated as an appropriate venue for
14 competency restoration treatment under a jail-based competency
15 restoration program established under Section 1001.078, Health and
16 Safety Code; and

17 (2) a reference in this chapter to the head of that
18 facility means the department.

19 (e) Notwithstanding Subsection (c), a duty imposed by this
20 subchapter to transport a defendant to or from the county jail,
21 including the duties described by Articles 46B.075 and 46B.0755(b),
22 does not apply to a defendant who has been committed to that jail
23 under this article.

24 (f) For purposes of Article 46B.009(2), the period of
25 confinement for which the defendant may receive a time credit on the
26 defendant's sentence ends on the date of the final judicial
27 determination that the defendant has been restored to competency.

1 (g) A defendant who is committed to a county jail under this
2 article may not be committed to the jail or any other correctional
3 facility using civil commitment proceedings under Subtitle C or D,
4 Title 7, Health and Safety Code.

5 SECTION 2. Article 46B.086(g), Code of Criminal Procedure,
6 is amended to read as follows:

7 (g) For a defendant described by Subsection (a)(2)(A), an
8 order issued under this article[+]

9 [~~(1)~~] authorizes the initiation of any appropriate
10 mental health treatment for the defendant awaiting transfer. The
11 order[, ~~and~~

12 [~~(2)~~] does not in itself constitute authorization to
13 retain the defendant in a correctional facility for competency
14 restoration treatment, but authorization to retain the defendant in
15 such a manner may be available with respect to a defendant ordered
16 to receive competency restoration treatment under Article 46B.0731
17 through a program established by the department under Section
18 1001.078, Health and Safety Code.

19 SECTION 3. Subchapter C, Chapter 574, Health and Safety
20 Code, is amended by adding Section 574.038 to read as follows:

21 Sec. 574.038. CONDITIONAL RELEASE PILOT PROGRAM. (a) In
22 this section:

23 (1) "Program" means the conditional release pilot
24 program established under Section 1001.079.

25 (2) "Provider" means a community-based mental health
26 services provider designated by the department to provide mental
27 health services through the program in the county in which the

1 provider is located.

2 (b) A patient is eligible to participate in the program if
3 the patient:

4 (1) is a person:

5 (A) acquitted by reason of insanity under Chapter
6 46C, Code of Criminal Procedure, and subsequently:

7 (i) committed for inpatient treatment at a
8 mental health facility under Article 46C.256, Code of Criminal
9 Procedure; or

10 (ii) ordered to receive extended inpatient
11 mental health services under Section 574.035; or

12 (B) found incompetent to stand trial and
13 subsequently committed to a mental health facility under Subchapter
14 E, Chapter 46B, Code of Criminal Procedure;

15 (2) for a period of more than one year, has remained in
16 residence in a mental health facility to which the patient is
17 committed;

18 (3) has a documented history of taking medications
19 prescribed under the treatment plan administered to patients at the
20 mental health facility;

21 (4) has not recently been restrained, secluded, or
22 ordered to take emergency medication at the mental health facility
23 to which the patient is committed;

24 (5) was assessed as stable or declining in severity in
25 the two most recent assessments of the patient conducted; and

26 (6) has the capacity to reliably participate in a
27 conditional release program.

1 (c) A director of a mental health facility located in a
2 county selected by the department under Section 1001.079(a), in
3 consultation with the local mental health authority, shall identify
4 patients committed to the facility who are eligible to participate
5 in the program. The facility shall provide to each identified
6 patient care and treatment to prepare the patient to participate in
7 the program. If the facility determines an identified patient is
8 likely to receive adequate treatment under the program and comply
9 with conditions of release imposed by a court, the facility shall
10 prepare and submit to the department a conditional release
11 treatment plan for the patient indicating community-based mental
12 health services to be administered to the patient through the
13 program, including, if applicable to the patient, services
14 appropriate to prevent a patient from engaging in acts of violence.

15 (d) If the department determines, based on the department's
16 psychiatric security review process described by Section
17 1001.079(c), that the patient is not likely to be a danger to the
18 community, the department shall:

19 (1) approve a patient's participation in the program;
20 and

21 (2) subject to available resources of the program and
22 the applicable provider, recommend the patient's participation in
23 the program to a court in the county having jurisdiction over civil
24 commitment proceedings conducted under this subtitle.

25 (e) On a recommendation of the department, a court may order
26 a patient to participate in the program if:

27 (1) a provider certifies to the court that the

1 provider is capable of providing the mental health services
2 indicated for the patient in the patient's conditional release
3 treatment plan; and

4 (2) the patient agrees in a signed writing to
5 participate in the program by:

6 (A) following the course of treatment indicated
7 for the patient in the patient's conditional release treatment
8 plan; and

9 (B) complying with any other condition imposed by
10 the court as a condition of the patient's release.

11 (f) A court order issued under Subsection (e) must impose on
12 the patient minimum treatment and supervision requirements as
13 conditions of release, including a condition that the patient must
14 abstain from consuming alcohol or illicit drugs and a condition
15 that the patient must comply with random alcohol and drug testing
16 administered by the provider.

17 (g) On an order issued by the court pursuant to Subsection
18 (e), a mental health facility shall:

19 (1) release a patient to the care of the provider; and
20 (2) transport the patient to the location designated
21 by the provider.

22 (h) For purposes of the application of this subtitle and any
23 order for court-ordered mental health services, a patient
24 conditionally released under this section remains committed to the
25 mental health facility from which the patient was conditionally
26 released under this section. If a court sets aside the order for
27 court-ordered mental health services under which the patient was

1 initially committed at a hearing held for that purpose, or if the
2 order for court-ordered mental health services expires, as provided
3 by Section 574.110, the patient is released from commitment to the
4 facility and is no longer a patient receiving mental health
5 services through the program.

6 (i) If the provider or the local mental health authority
7 certifies to the court that the patient has violated a condition
8 imposed by the court, the patient's condition has deteriorated, or,
9 in the opinion of a mental health professional, the patient is a
10 danger to self or others, the court, within 24 hours of receiving
11 the certification, shall revoke the order for conditional release.

12 (j) The court shall order the patient transported to and
13 returned to the care of the applicable mental health facility not
14 later than 24 hours after:

15 (1) as described by Subsection (i), the court revokes
16 the order for conditional release on certification from the
17 provider or the local mental health authority that:

18 (A) the patient has violated a condition imposed
19 by the court;

20 (B) the patient's condition has deteriorated; or

21 (C) in the opinion of a mental health
22 professional, the patient is a danger to self or others;

23 (2) the court order for conditional release to
24 participate in the program expires; or

25 (3) the program expires.

26 (k) A patient ordered to receive mental health services
27 through the program is not eligible for a pass or furlough under

1 Section 574.082.

2 (1) This section expires September 1, 2017. An order issued
3 under this section authorizing the conditional release of a patient
4 must expire before that date.

5 SECTION 4. Subchapter D, Chapter 1001, Health and Safety
6 Code, is amended by adding Sections 1001.078 and 1001.079 to read as
7 follows:

8 Sec. 1001.078. JAIL-BASED COMPETENCY RESTORATION PROGRAM;
9 WORK GROUP. (a) The executive commissioner by rule may establish a
10 jail-based competency restoration program to be operated by the
11 department if the work group formed under this subsection
12 recommends the program's establishment. The department shall form
13 a work group to determine whether a jail-based competency
14 restoration program to provide competency restoration treatment in
15 county jails to defendants who are subject to competency
16 restoration under Subchapter D, Chapter 46B, Code of Criminal
17 Procedure, may be operated by the department without any increase
18 in state spending on mental health treatment. The work group shall
19 make a recommendation to the executive commissioner regarding the
20 establishment of a program under this section.

21 (b) A program established under this section must provide
22 for a partnership between a county and the department through which
23 the department provides competency restoration treatment to each
24 defendant who is subject to competency restoration under Subchapter
25 D, Chapter 46B, Code of Criminal Procedure, and is ordered to
26 receive competency restoration treatment under Article 46B.0731 of
27 that code in the county jail for the county in which the applicable

1 criminal case is pending. The department may enter into multiple
2 partnerships under this section.

3 (c) A program established under this section must include a
4 quality review process designed to ensure that competency
5 restoration treatment provided to a defendant through the program
6 in a county jail is equivalent to the treatment that would be
7 provided to the defendant if the defendant were committed to a
8 mental health facility operated by the department.

9 Sec. 1001.079. CONDITIONAL RELEASE PILOT PROGRAM. (a) The
10 executive commissioner by rule shall establish a conditional
11 release pilot program for eligible patients under Section
12 574.038(b), to be operated by the department in one or more counties
13 selected by the department.

14 (b) The department, in consultation with the local mental
15 health authority, shall designate a community-based mental health
16 services provider to provide mental health services in each county
17 in which the pilot program operates.

18 (c) The department shall solicit input from appropriate
19 local mental health authorities, community-based mental health
20 services providers, and mental health facilities in designing a
21 psychiatric security review process to evaluate whether a patient
22 would likely be a danger to the community if released from the
23 mental health facility to which the patient would be committed
24 under an order for conditional release to participate in the pilot
25 program.

26 (d) In adopting rules under this section, the executive
27 commissioner shall ensure that the pilot program provides patients

1 opportunities to be employed in the community, such as through a
2 supported work program, or to participate in community-based
3 vocational training.

4 (e) In adopting rules under this section, the executive
5 commissioner must specify what information the department must
6 collect during the operation of the pilot program for use in
7 evaluating the outcome of the program.

8 (f) The local mental health authority in a county in which
9 the pilot program operates, the community-based mental health
10 services provider designated by the department to provide mental
11 health services through the pilot program in that county, and the
12 mental health facility from which the patient is conditionally
13 released shall schedule regular meetings for the purpose of
14 evaluating the patient's mental health and the patient's adherence
15 to the conditions of the release imposed on the patient by the
16 court.

17 (g) During the operation of the pilot program, the
18 commissioner of state health services shall submit biennial reports
19 concerning the pilot program to the governor, the legislative
20 budget director of the Legislative Budget Board, and the presiding
21 officers of the standing committees of the senate and house of
22 representatives having primary jurisdiction over health and human
23 services issues and over criminal justice issues. The commissioner
24 shall submit the first report not later than December 1, 2014, and
25 the second report not later than December 1, 2016. Each report must
26 contain the information collected by the department during the
27 operation of the pilot program, the commissioner's evaluation of

1 the outcome of the program as of the date of the report, the
2 commissioner's recommendation as to whether to expand the operation
3 of the program, and the commissioner's determination of whether the
4 program has resulted in an increase in state spending on mental
5 health treatment.

6 (h) The conditional release pilot program established under
7 this section concludes and this section expires September 1, 2017.

8 SECTION 5. The change in law made by this Act to Chapter
9 46B, Code of Criminal Procedure, applies only to a proceeding under
10 that chapter that commences on or after the effective date of this
11 Act, regardless of when the defendant may have committed the
12 underlying offense for which the defendant became subject to the
13 proceeding.

14 SECTION 6. (a) The Department of State Health Services
15 shall form the work group as required by Section 1001.078, Health
16 and Safety Code, as added by this Act, as soon as practicable after
17 the effective date of this Act, and the work group shall make a
18 recommendation regarding the establishment of a jail-based
19 competency restoration program to the executive commissioner of the
20 Health and Human Services Commission not later than February 1,
21 2014.

22 (b) The executive commissioner of the Health and Human
23 Services Commission shall establish the pilot program required
24 under Section 1001.079, Health and Safety Code, as added by this
25 Act, not later than February 1, 2014.

26 SECTION 7. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2013.