

By: Perry

S.B. No. 1183

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures regarding criminal defendants who are or may
3 be persons with a mental illness or an intellectual disability and
4 to the period for which a person may be committed to receive certain
5 temporary mental health services.

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

7 SECTION 1. Article 32A.01, Code of Criminal Procedure, is
8 amended by amending Subsection (a) and adding Subsection (c) to
9 read as follows:

10 (a) Insofar as is practicable, the trial of a criminal
11 action shall be given preference over trials of civil cases, and the
12 trial of a criminal action against a defendant who is detained in
13 jail pending trial of the action shall be given preference over
14 trials of other criminal actions not described by Subsection (b) or
15 (c).

16 (c) Except as provided by Subsection (b), the trial of a
17 criminal action against a defendant who has been determined to be
18 restored to competency under Article 46B.084 shall be given
19 preference over other matters before the court, whether civil or
20 criminal.

21 SECTION 2. Article 46B.001, Code of Criminal Procedure, is
22 amended by adding Subdivision (9) to read as follows:

23 (9) "Competency restoration" means the treatment or
24 education process for restoring a person's ability to consult with

1 the person's attorney with a reasonable degree of rational
2 understanding, including a rational and factual understanding of
3 the court proceedings and charges against the person.

4 SECTION 3. The heading to Article 46B.0095, Code of
5 Criminal Procedure, is amended to read as follows:

6 Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR [~~OUTPATIENT~~
7 ~~TREATMENT~~] PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR
8 OFFENSE.

9 SECTION 4. Articles 46B.0095(a), (b), (c), and (d), Code of
10 Criminal Procedure, are amended to read as follows:

11 (a) A defendant may not, under Subchapter D or E or any other
12 provision of this chapter, be committed to a mental hospital or
13 other inpatient or residential facility or to a jail-based
14 competency restoration program, ordered to participate in an
15 outpatient competency restoration or treatment program, or
16 subjected to any combination of [both] inpatient treatment, [and]
17 outpatient competency restoration or treatment program
18 participation, or jail-based competency restoration under this
19 chapter for a cumulative period that exceeds the maximum term
20 provided by law for the offense for which the defendant was to be
21 tried, except that if the defendant is charged with a misdemeanor
22 and has been ordered only to participate in an outpatient
23 competency restoration or treatment program under Subchapter D or
24 E, the maximum period of restoration is two years.

25 (b) On expiration of the maximum restoration period under
26 Subsection (a), the mental hospital, [~~or other inpatient or~~
27 ~~residential~~] facility, or [~~outpatient treatment~~] program provider

1 identified in the most recent order of commitment or order of
2 outpatient competency restoration or treatment program
3 participation under this chapter shall assess the defendant to
4 determine if civil proceedings under Subtitle C or D, Title 7,
5 Health and Safety Code, are appropriate. The defendant may be
6 confined for an additional period in a mental hospital or other
7 [~~inpatient or residential~~] facility or may be ordered to
8 participate for an additional period in an outpatient treatment
9 program, as appropriate, only pursuant to civil proceedings
10 conducted under Subtitle C or D, Title 7, Health and Safety Code, by
11 a court with probate jurisdiction.

12 (c) The cumulative period described by Subsection (a):

13 (1) begins on the date the initial order of commitment
14 or initial order for outpatient competency restoration or treatment
15 program participation is entered under this chapter; and

16 (2) in addition to any inpatient or outpatient
17 competency restoration [~~treatment~~] periods or program
18 participation periods described by Subsection (a), includes any
19 time that, following the entry of an order described by Subdivision
20 (1), the defendant is confined in a correctional facility, as
21 defined by Section 1.07, Penal Code, or is otherwise in the custody
22 of the sheriff during or while awaiting, as applicable:

23 (A) the defendant's transfer to:

24 (i) a mental hospital or other inpatient or
25 residential facility; or

26 (ii) a jail-based competency restoration
27 program;

1 (B) the defendant's release on bail to
2 participate in an outpatient competency restoration or treatment
3 program; or

4 (C) a criminal trial following any temporary
5 restoration of the defendant's competency to stand trial.

6 (d) The court shall credit to the cumulative period
7 described by Subsection (a) any time that a defendant, following
8 arrest for the offense for which the defendant was to be tried, is
9 confined in a correctional facility, as defined by Section 1.07,
10 Penal Code, before the initial order of commitment or initial order
11 for outpatient competency restoration or treatment program
12 participation is entered under this chapter.

13 SECTION 5. Article 46B.010, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
16 If a court orders that a defendant charged with a misdemeanor
17 punishable by confinement be committed to a mental hospital or
18 other inpatient or residential facility or to a jail-based
19 competency restoration program, participate in an outpatient
20 competency restoration or treatment program, or be subjected to any
21 combination of [~~both~~] inpatient treatment, [~~and~~] outpatient
22 competency restoration or treatment program participation, or
23 jail-based competency restoration under this chapter, and the
24 defendant is not tried before the expiration of the maximum period
25 of restoration described by Article 46B.0095:

26 (1) on the motion of the attorney representing the
27 state, the court shall dismiss the charge; or

1 (2) on the motion of the attorney representing the
2 defendant and notice to the attorney representing the state, the
3 court:

4 (A) shall set the matter to be heard not later
5 than the 10th day after the date of filing of the motion; and

6 (B) may dismiss the charge on a finding that the
7 defendant was not tried before the expiration of the maximum period
8 of restoration.

9 SECTION 6. Article 46B.026, Code of Criminal Procedure, is
10 amended by adding Subsection (d) to read as follows:

11 (d) The court shall submit to the Office of Court
12 Administration of the Texas Judicial System on a monthly basis the
13 number of reports provided to the court under this article.

14 SECTION 7. Article 46B.071(a), Code of Criminal Procedure,
15 is amended to read as follows:

16 (a) Except as provided by Subsection (b), on a determination
17 that a defendant is incompetent to stand trial, the court shall:

18 (1) if the defendant is charged with an offense
19 punishable as a Class B misdemeanor:

20 (A) ~~[commit the defendant to a facility under~~
21 ~~Article 46B.073; or~~

22 ~~[(2)]~~ release the defendant on bail under Article
23 46B.0711; or

24 (B) commit the defendant to:

25 (i) a jail-based competency restoration
26 program under Article 46B.073(e); or

27 (ii) a mental health facility or

1 residential care facility under Article 46B.073(f); or
2 (2) if the defendant is charged with an offense
3 punishable as a Class A misdemeanor or any higher category of
4 offense:

5 (A) release the defendant on bail under Article
6 46B.072; or

7 (B) commit the defendant to a facility or a
8 jail-based competency restoration program under Article 46B.073(c)
9 or (d).

10 SECTION 8. Subchapter D, Chapter 46B, Code of Criminal
11 Procedure, is amended by adding Article 46B.0711 to read as
12 follows:

13 Art. 46B.0711. RELEASE ON BAIL FOR CLASS B MISDEMEANOR.

14 (a) This article applies only to a defendant who is subject to an
15 initial restoration period based on Article 46B.071.

16 (b) Subject to conditions reasonably related to ensuring
17 public safety and the effectiveness of the defendant's treatment,
18 if the court determines that a defendant charged with an offense
19 punishable as a Class B misdemeanor and found incompetent to stand
20 trial is not a danger to others and may be safely treated on an
21 outpatient basis with the specific objective of attaining
22 competency to stand trial, and an appropriate outpatient competency
23 restoration program is available for the defendant, the court
24 shall:

25 (1) release the defendant on bail or continue the
26 defendant's release on bail; and

27 (2) order the defendant to participate in an

1 outpatient competency restoration program for a period not to
2 exceed 60 days.

3 (c) Notwithstanding Subsection (b), the court may order a
4 defendant to participate in an outpatient competency restoration
5 program under this article only if:

6 (1) the court receives and approves a comprehensive
7 plan that:

8 (A) provides for the treatment of the defendant
9 for purposes of competency restoration; and

10 (B) identifies the person who will be responsible
11 for providing that treatment to the defendant; and

12 (2) the court finds that the treatment proposed by the
13 plan will be available to and will be provided to the defendant.

14 (d) An order issued under this article may require the
15 defendant to participate in:

16 (1) as appropriate, an outpatient competency
17 restoration program administered by a community center or an
18 outpatient competency restoration program administered by any
19 other entity that provides competency restoration services; and

20 (2) an appropriate prescribed regimen of medical,
21 psychiatric, or psychological care or treatment, including care or
22 treatment involving the administration of psychoactive medication,
23 including those required under Article 46B.086.

24 SECTION 9. The heading to Article 46B.072, Code of Criminal
25 Procedure, is amended to read as follows:

26 Art. 46B.072. RELEASE ON BAIL FOR FELONY OR CLASS A
27 MISDEMEANOR.

1 SECTION 10. Articles 46B.072(a-1), (b), (c), and (d), Code
2 of Criminal Procedure, are amended to read as follows:

3 (a-1) Subject to conditions reasonably related to ensuring
4 ~~[assuring]~~ public safety and the effectiveness of the defendant's
5 treatment, if the court determines that a defendant charged with an
6 offense punishable as a felony or a Class A misdemeanor and found
7 incompetent to stand trial is not a danger to others and may be
8 safely treated on an outpatient basis with the specific objective
9 of attaining competency to stand trial, and ~~[if]~~ an appropriate
10 outpatient competency restoration ~~[treatment]~~ program is available
11 for the defendant, the court:

12 (1) may release on bail a defendant found incompetent
13 to stand trial with respect to an offense punishable as a felony or
14 may continue the defendant's release on bail; and

15 (2) shall release on bail a defendant found
16 incompetent to stand trial with respect to an offense punishable as
17 a Class A ~~[a]~~ misdemeanor or shall continue the defendant's release
18 on bail.

19 (b) The court shall order a defendant released on bail under
20 Subsection (a-1) to participate in an outpatient competency
21 restoration ~~[treatment]~~ program for a period not to exceed 120
22 days.

23 (c) Notwithstanding Subsection (a-1), the court may order a
24 defendant to participate in an outpatient competency restoration
25 ~~[treatment]~~ program under this article only if:

26 (1) the court receives and approves a comprehensive
27 plan that:

1 (A) provides for the treatment of the defendant
2 for purposes of competency restoration; and

3 (B) identifies the person who will be responsible
4 for providing that treatment to the defendant; and

5 (2) the court finds that the treatment proposed by the
6 plan will be available to and will be provided to the defendant.

7 (d) An order issued under this article may require the
8 defendant to participate in:

9 (1) as appropriate, an outpatient competency
10 restoration [~~treatment~~] program administered by a community center
11 or an outpatient competency restoration [~~treatment~~] program
12 administered by any other entity that provides outpatient
13 competency restoration services; and

14 (2) an appropriate prescribed regimen of medical,
15 psychiatric, or psychological care or treatment, including care or
16 treatment involving the administration of psychoactive medication,
17 including those required under Article 46B.086.

18 SECTION 11. Article 46B.073, Code of Criminal Procedure, is
19 amended by amending Subsections (b), (c), (d), and (e) and adding
20 Subsection (f) to read as follows:

21 (b) For purposes of further examination and competency
22 restoration services with [~~treatment toward~~] the specific
23 objective of the defendant attaining competency to stand trial, the
24 court shall commit a defendant described by Subsection (a) to a
25 mental health facility, ~~or~~ residential care facility, or
26 jail-based competency restoration program for the applicable
27 period as follows:

1 (1) a period of not more than 60 days, if the defendant
2 is charged with an offense punishable as a misdemeanor; or

3 (2) a period of not more than 120 days, if the
4 defendant is charged with an offense punishable as a felony.

5 (c) If the defendant is charged with an offense listed in
6 Article 17.032(a), other than an offense under Section 22.01(a)(1),
7 Penal Code [~~listed in Article 17.032(a)(6)~~], or the indictment
8 alleges an affirmative finding under Article 42A.054(c) or (d), the
9 court shall enter an order committing the defendant for competency
10 restoration services to the maximum security unit of any facility
11 designated by the Department of State Health Services, to an agency
12 of the United States operating a mental hospital, or to a Department
13 of Veterans Affairs hospital.

14 (d) If the defendant is not charged with an offense
15 described by Subsection (c) and the indictment does not allege an
16 affirmative finding under Article 42A.054(c) or (d), the court
17 shall enter an order committing the defendant to a mental health
18 facility or residential care facility determined to be appropriate
19 by the local mental health authority or local intellectual and
20 developmental disability authority or to a jail-based competency
21 restoration program. A defendant may be committed to a jail-based
22 competency restoration program only if the program provider
23 determines the defendant will begin to receive competency
24 restoration services within 72 hours of arriving at the program.

25 (e) Except as provided by Subsection (f), a defendant
26 charged with an offense punishable as a Class B misdemeanor may be
27 committed under this subchapter only to a jail-based competency

1 restoration program.

2 (f) A defendant charged with an offense punishable as a
3 Class B misdemeanor may be committed to a mental health facility or
4 residential care facility described by Subsection (d) only if a
5 jail-based competency restoration program is not available
6 ~~[Notwithstanding Subsections (b), (c), and (d) and notwithstanding~~
7 ~~the contents of the applicable order of commitment, in a county in~~
8 ~~which the Department of State Health Services operates a jail-based~~
9 ~~restoration of competency pilot program under Article 46B.090, a~~
10 ~~defendant for whom an order is issued under this article committing~~
11 ~~the defendant to a mental health facility or residential care~~
12 ~~facility shall be provided competency restoration services at the~~
13 ~~jail under the pilot program if the service provider at the jail~~
14 ~~determines the defendant will immediately begin to receive~~
15 ~~services. If the service provider at the jail determines the~~
16 ~~defendant will not immediately begin to receive competency~~
17 ~~restoration services, the defendant shall be transferred to the~~
18 ~~appropriate mental health facility or residential care facility as~~
19 ~~provided by the court order. This subsection expires September 1,~~
20 ~~2019].~~

21 SECTION 12. Article 46B.074(a), Code of Criminal Procedure,
22 is amended to read as follows:

23 (a) A defendant may be committed to a jail-based competency
24 restoration program, mental health facility, or residential care
25 facility under this subchapter only on competent medical or
26 psychiatric testimony provided by an expert qualified under Article
27 46B.022.

1 SECTION 13. Article 46B.075, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR
4 [~~OUTPATIENT TREATMENT~~] PROGRAM. An order issued under Article
5 46B.0711, 46B.072, or 46B.073 must place the defendant in the
6 custody of the sheriff for transportation to the facility or
7 [~~outpatient treatment~~] program, as applicable, in which the
8 defendant is to receive [~~treatment for purposes of~~] competency
9 restoration services.

10 SECTION 14. Articles 46B.0755(a), (b), and (d), Code of
11 Criminal Procedure, are amended to read as follows:

12 (a) Notwithstanding any other provision of this subchapter,
13 if the court receives credible evidence indicating that the
14 defendant has been restored to competency at any time after the
15 defendant's incompetency trial under Subchapter C but before the
16 defendant is transported under Article 46B.075 to the [~~a mental~~
17 ~~health facility, residential care~~] facility[~~7~~] or [~~outpatient~~
18 ~~treatment~~] program, as applicable, the court may appoint
19 disinterested experts to reexamine the defendant in accordance with
20 Subchapter B. The court is not required to appoint the same expert
21 or experts who performed the initial examination of the defendant
22 under that subchapter.

23 (b) If after a reexamination of the defendant the applicable
24 expert's report states an opinion that the defendant remains
25 incompetent, the court's order under Article 46B.0711, 46B.072, or
26 46B.073 remains in effect, and the defendant shall be transported
27 to the facility or [~~outpatient treatment~~] program as required by

1 Article 46B.075. If after a reexamination of the defendant the
2 applicable expert's report states an opinion that the defendant has
3 been restored to competency, the court shall withdraw its order
4 under Article 46B.0711, 46B.072, or 46B.073 and proceed under
5 Subsection (c) or (d).

6 (d) The court shall hold a hearing to determine whether the
7 defendant has been restored to competency if any party fails to
8 agree or if the court fails to concur that the defendant is
9 competent to stand trial. If a court holds a hearing under this
10 subsection, on the request of the counsel for either party or the
11 motion of the court, a jury shall make the competency
12 determination. For purposes of the hearing, incompetency is
13 presumed, and the defendant's competency must be proved by a
14 preponderance of the evidence. If after the hearing the defendant
15 is again found to be incompetent to stand trial, the court shall
16 issue a new order under Article 46B.0711, 46B.072, or 46B.073, as
17 appropriate based on the defendant's current condition.

18 SECTION 15. Article 46B.076, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 46B.076. COURT'S ORDER. (a) If the defendant is
21 found incompetent to stand trial, not later than the date of the
22 order of commitment or of release on bail, as applicable, the court
23 shall send a copy of the order to the applicable facility [~~to which~~
24 ~~the defendant is committed~~] or [~~the outpatient treatment~~] program
25 [~~to which the defendant is released~~]. The court shall also provide
26 to the facility or [~~outpatient treatment~~] program copies of the
27 following made available to the court during the incompetency

1 trial:

2 (1) reports of each expert;

3 (2) psychiatric, psychological, or social work
4 reports that relate to the mental condition of the defendant;

5 (3) documents provided by the attorney representing
6 the state or the attorney representing the defendant that relate to
7 the defendant's current or past mental condition;

8 (4) copies of the indictment or information and any
9 supporting documents used to establish probable cause in the case;

10 (5) the defendant's criminal history record; and

11 (6) the addresses of the attorney representing the
12 state and the attorney representing the defendant.

13 (b) The court shall order that the transcript of all medical
14 testimony received by the jury or court be promptly prepared by the
15 court reporter and forwarded to the applicable ~~[proper]~~ facility or
16 ~~[outpatient treatment]~~ program.

17 SECTION 16. Article 46B.077, Code of Criminal Procedure, is
18 amended to read as follows:

19 Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The
20 facility or jail-based competency restoration program to which the
21 defendant is committed or the outpatient competency restoration
22 ~~[treatment]~~ program to which the defendant is released on bail
23 shall:

24 (1) develop an individual program of treatment;

25 (2) assess and evaluate whether the defendant is
26 likely to be restored to competency in the foreseeable future; and

27 (3) report to the court and to the local mental health

1 authority or to the local intellectual and developmental disability
2 authority on the defendant's progress toward achieving competency.

3 (b) If the defendant is committed to an inpatient mental
4 health facility, ~~[or to a]~~ residential care facility, or jail-based
5 competency restoration program, the facility or program shall
6 report to the court at least once during the commitment period.

7 (c) If the defendant is released to an outpatient competency
8 restoration ~~[a treatment]~~ program ~~[not provided by an inpatient~~
9 ~~mental health facility or a residential care facility]~~, the
10 ~~[treatment]~~ program shall report to the court:

11 (1) not later than the 14th day after the date on which
12 the defendant's competency restoration services begin ~~[treatment~~
13 ~~begins]~~; and

14 (2) until the defendant is no longer released to the
15 ~~[treatment]~~ program, at least once during each 30-day period
16 following the date of the report required by Subdivision (1).

17 SECTION 17. Article [46B.078](#), Code of Criminal Procedure, is
18 amended to read as follows:

19 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
20 charges pending against a defendant are dismissed, the court that
21 issued the order under Article [46B.0711](#), [46B.072](#), or [46B.073](#) shall
22 send a copy of the order of dismissal to the sheriff of the county in
23 which the court is located and to the head of the facility, the
24 provider of the jail-based competency restoration program, or the
25 provider of the outpatient competency restoration ~~[treatment]~~
26 program, as appropriate. On receipt of the copy of the order, the
27 facility or ~~[outpatient treatment]~~ program shall discharge the

1 defendant into the care of the sheriff for transportation in the
2 manner described by Article 46B.082.

3 SECTION 18. Article 46B.079, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of
6 the facility, the provider of the jail-based competency restoration
7 program, or the provider of the outpatient competency restoration
8 ~~[treatment]~~ program, as appropriate, not later than the 15th day
9 before the date on which the initial restoration period is to expire
10 according to the terms of the order or under Article 46B.0095 or
11 other applicable provisions of this chapter, shall notify the
12 applicable court that the period is about to expire.

13 (b) The head of the facility or jail-based competency
14 restoration ~~[or outpatient treatment]~~ program provider shall
15 promptly notify the court when the head of the facility or
16 ~~[outpatient treatment]~~ program provider believes that:

17 (1) the defendant is clinically ready and can be
18 safely transferred to a competency restoration program for
19 education services but has not yet attained competency to stand
20 trial;

21 (2) the defendant has attained competency to stand
22 trial; or

23 (3) (2) ~~[(2)]~~ the defendant is not likely to attain
24 competency in the foreseeable future.

25 (b-1) The outpatient competency restoration program
26 provider shall promptly notify the court when the program provider
27 believes that:

1 (1) the defendant has attained competency to stand
2 trial; or

3 (2) the defendant is not likely to attain competency
4 in the foreseeable future.

5 (c) When the head of the facility or [~~outpatient treatment~~]
6 program provider gives notice to the court under Subsection (a),
7 [~~or~~] (b), or (b-1), the head of the facility or [~~outpatient~~
8 ~~treatment~~] program provider also shall file a final report with the
9 court stating the reason for the proposed discharge or transfer
10 under this chapter and including a list of the types and dosages of
11 medications prescribed for the defendant while the defendant was
12 receiving competency restoration services in the facility or
13 through [~~participating in~~] the [~~outpatient treatment~~] program. The
14 [~~To enable any objection to the findings of the report to be made in~~
15 ~~a timely manner under Article 46B.084(a-1), the~~] court shall
16 provide [~~copies of the report~~] to the attorney representing the
17 defendant and the attorney representing the state copies of a
18 report based on notice under this article, other than notice under
19 Subsection (b)(1), to enable any objection to the findings of the
20 report to be made in a timely manner as required under Article
21 46B.084(a-1).

22 (d) If the head of the facility or [~~outpatient treatment~~]
23 program provider notifies the court that the initial restoration
24 period is about to expire, the notice may contain a request for an
25 extension of the period for an additional period of 60 days and an
26 explanation for the basis of the request. An explanation provided
27 under this subsection must include a description of any evidence

1 indicating a reduction in the severity of the defendant's symptoms
2 or impairment.

3 SECTION 19. Article 46B.080(a), Code of Criminal Procedure,
4 is amended to read as follows:

5 (a) On a request of the head of a facility or a [~~treatment~~]
6 program provider that is made under Article 46B.079(d) and
7 notwithstanding any other provision of this subchapter, the court
8 may enter an order extending the initial restoration period for an
9 additional period of 60 days.

10 SECTION 20. Subchapter D, Chapter 46B, Code of Criminal
11 Procedure, is amended by adding Articles 46B.0805 and 46B.0825 to
12 read as follows:

13 Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES.

14 (a) On notification from the head of a facility or a program
15 provider under Article 46B.079(b)(1), the court shall order the
16 defendant to receive competency restoration education services in a
17 jail-based competency restoration program or an outpatient
18 competency restoration program, as appropriate and if available.

19 (b) If a defendant for whom an order is entered under
20 Subsection (a) was committed for competency restoration to a
21 facility other than a jail-based competency restoration program,
22 the court shall send a copy of that order to:

23 (1) the sheriff of the county in which the court is
24 located;

25 (2) the head of the facility to which the defendant was
26 committed for competency restoration; and

27 (3) the local mental health authority or local

1 intellectual and developmental disability authority, as
2 appropriate.

3 (c) As soon as practicable but not later than the 10th day
4 after the date of receipt of a copy of an order under Subsection
5 (b)(2), the applicable facility shall discharge the defendant into
6 the care of the sheriff of the county in which the court is located.
7 The sheriff shall transport the defendant to the jail-based
8 competency restoration program or outpatient competency
9 restoration program, as appropriate.

10 (d) A jail-based competency restoration program or
11 outpatient competency restoration program that receives a
12 defendant under this article shall give to the court:

13 (1) notice regarding the defendant's entry into the
14 program for purposes of receiving competency restoration education
15 services; and

16 (2) subsequent notice as otherwise required under
17 Article 46B.079.

18 Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN
19 CUSTODY OF SHERIFF. (a) A sheriff having custody of a defendant
20 for transportation as required by Article 46B.075, 46B.0805, or
21 46B.082 shall, according to information available at the time and
22 unless directed otherwise by a physician treating the defendant,
23 ensure that the defendant is provided with the types and dosages of
24 medication prescribed for the defendant.

25 (b) To the extent funds are appropriated for that purpose, a
26 sheriff is entitled to reimbursement from the state for providing
27 the medication required by Subsection (a).

1 (c) If the sheriff determines that funds are not available
2 from the state to reimburse the sheriff as provided by Subsection
3 (b), the sheriff is not required to comply with Subsection (a).

4 SECTION 21. Article 46B.081, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 46B.081. RETURN TO COURT. Subject to Article
7 46B.082(b), a defendant committed or released on bail under this
8 subchapter shall be returned to the applicable court as soon as
9 practicable after notice to the court is provided under Article
10 46B.079(a), (b)(2), (b)(3), or (b-1) [46B.079], but not later than
11 the date of expiration of the period for restoration specified by
12 the court under Article 46B.0711, 46B.072, or 46B.073.

13 SECTION 22. The heading to Article 46B.082, Code of
14 Criminal Procedure, is amended to read as follows:

15 Art. 46B.082. TRANSPORTATION OF DEFENDANT TO COURT.

16 SECTION 23. Article 46B.082(b), Code of Criminal Procedure,
17 is amended to read as follows:

18 (b) If before the 15th day after the date on which the court
19 received notification under Article 46B.079(a), (b)(2), (b)(3), or
20 (b-1) [46B.079] a defendant committed to a facility or jail-based
21 competency restoration program or ordered to participate in an
22 outpatient competency restoration [~~treatment~~] program has not been
23 transported to the court that issued the order under Article
24 46B.0711, 46B.072, or 46B.073, as applicable, the head of the
25 facility or provider of the jail-based competency restoration
26 program to which the defendant is committed or the provider of the
27 outpatient competency restoration [~~treatment~~] program in which the

1 defendant is participating shall cause the defendant to be promptly
2 transported to the court and placed in the custody of the sheriff of
3 the county in which the court is located. The county in which the
4 court is located shall reimburse [~~the Department of State Health~~
5 ~~Services or~~] the Health and Human [~~Department of Aging and~~
6 ~~Disability~~] Services Commission or program provider, as
7 appropriate, for the mileage and per diem expenses of the personnel
8 required to transport the defendant, calculated in accordance with
9 rates provided in the General Appropriations Act for state
10 employees.

11 SECTION 24. Article 46B.083, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED
14 BY FACILITY [~~HEAD~~] OR [~~OUTPATIENT TREATMENT~~] PROGRAM [~~PROVIDER~~].

15 (a) If the head of the facility, the jail-based competency
16 restoration program provider, or the outpatient competency
17 restoration [~~treatment~~] program provider believes that the
18 defendant is a person with mental illness and meets the criteria for
19 court-ordered mental health services under Subtitle C, Title 7,
20 Health and Safety Code, the head of the facility or the [~~outpatient~~
21 ~~treatment~~] program provider shall have submitted to the court a
22 certificate of medical examination for mental illness.

23 (b) If the head of the facility, the jail-based competency
24 restoration program provider, or the outpatient competency
25 restoration [~~treatment~~] program provider believes that the
26 defendant is a person with an intellectual disability, the head of
27 the facility or the [~~outpatient treatment~~] program provider shall

1 have submitted to the court an affidavit stating the conclusions
2 reached as a result of the examination.

3 SECTION 25. Article 46B.084(a-1)(1), Code of Criminal
4 Procedure, is amended to read as follows:

5 (1) Following the defendant's return to the court, the
6 court shall make a determination with regard to the defendant's
7 competency to stand trial. The court may make the determination
8 based only on the most recent report that is filed under Article
9 46B.079(c) and based on notice under that article, other than
10 notice under Subsection (b)(1) of that article, and on other
11 medical information or personal history information relating to the
12 defendant. A party may object in writing or in open court to the
13 findings of the most recent report not later than the 15th day after
14 the date on which the court received the applicable notice
15 ~~[notification]~~ under Article 46B.079. The court shall make the
16 determination not later than the 20th day after the date on which
17 the court received the applicable notice ~~[notification]~~ under
18 Article 46B.079, or not later than the fifth day after the date of
19 the defendant's return to court, whichever occurs first, regardless
20 of whether a party objects to the report as described by this
21 subsection and the issue is set for hearing under Subsection (b).

22 SECTION 26. Articles 46B.086(a), (b), (c), and (d), Code of
23 Criminal Procedure, are amended to read as follows:

24 (a) This article applies only to a defendant:

25 (1) who is determined under this chapter to be
26 incompetent to stand trial;

27 (2) who either:

1 (A) remains confined in a correctional facility,
2 as defined by Section 1.07, Penal Code, for a period exceeding 72
3 hours while awaiting transfer to an inpatient mental health
4 facility, a residential care facility, a jail-based competency
5 restoration program, or an outpatient competency restoration
6 ~~[treatment]~~ program;

7 (B) is committed to an inpatient mental health
8 facility, ~~[or]~~ a residential care facility, or a jail-based
9 competency restoration program for the purpose of competency
10 restoration;

11 (C) is confined in a correctional facility while
12 awaiting further criminal proceedings following competency
13 restoration ~~[treatment]~~;

14 (D) is subject to Article 46B.0711, if the court
15 has made the determinations required by Subsection (b) of that
16 article; or

17 (E) [~~(D)~~] is subject to Article 46B.072, if the
18 court has made the determinations required by Subsection (a-1) of
19 that article;

20 (3) for whom a correctional facility or jail-based
21 competency restoration program that employs or contracts with a
22 licensed psychiatrist, an inpatient mental health facility, a
23 residential care facility, or an outpatient competency restoration
24 ~~[treatment]~~ program provider has prepared a continuity of care plan
25 that requires the defendant to take psychoactive medications; and

26 (4) who, after a hearing held under Section 574.106 or
27 592.156, Health and Safety Code, if applicable, has been found to

1 not meet the criteria prescribed by Sections 574.106(a) and (a-1)
2 or 592.156(a) and (b), Health and Safety Code, for court-ordered
3 administration of psychoactive medications.

4 (b) If a defendant described by Subsection (a) refuses to
5 take psychoactive medications as required by the defendant's
6 continuity of care plan, the director of the [~~correctional~~]
7 facility or the [~~outpatient treatment~~] program provider, as
8 applicable, shall notify the court in which the criminal
9 proceedings are pending of that fact not later than the end of the
10 next business day following the refusal. The court shall promptly
11 notify the attorney representing the state and the attorney
12 representing the defendant of the defendant's refusal. The
13 attorney representing the state may file a written motion to compel
14 medication. The motion to compel medication must be filed not later
15 than the 15th day after the date a judge issues an order stating
16 that the defendant does not meet the criteria for court-ordered
17 administration of psychoactive medications under Section 574.106
18 or 592.156, Health and Safety Code, except that, for a defendant in
19 an outpatient competency restoration [~~treatment~~] program, the
20 motion may be filed at any time.

21 (c) The court, after notice and after a hearing held not
22 later than the 10th day after the motion to compel medication is
23 filed, may authorize the director of the [~~correctional~~] facility or
24 the program provider, as applicable, to have the medication
25 administered to the defendant, by reasonable force if necessary. A
26 hearing under this subsection may be conducted using an electronic
27 broadcast system as provided by Article 46B.013.

1 (d) The court may issue an order under this article only if
2 the order is supported by the testimony of two physicians, one of
3 whom is the physician at or with the applicable [~~correctional~~]
4 facility or [~~outpatient treatment~~] program who is prescribing the
5 medication as a component of the defendant's continuity of care
6 plan and another who is not otherwise involved in proceedings
7 against the defendant. The court may require either or both
8 physicians to examine the defendant and report on the examination
9 to the court.

10 SECTION 27. Articles 46B.090(f) and (n), Code of Criminal
11 Procedure, are amended to read as follows:

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; and

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
8 commensurate to the treatment hours provided as part of a
9 competency restoration program at an inpatient mental health
10 facility;

11 (3) the provider is certified by a nationwide
12 nonprofit organization that accredits health care organizations
13 and programs, such as the Joint Commission on Health Care Staffing
14 Services, or the provider is a local mental health authority in good
15 standing with the department; and

16 (4) the provider has a demonstrated history of
17 successful jail-based competency restoration outcomes or, if the
18 provider is a local mental health authority, a demonstrated history
19 of successful competency restoration outcomes.

20 (n) If the department develops and implements a jail-based
21 restoration of competency pilot program under this article, not
22 later than December 1, 2018 [~~2016~~], the commissioner of the
23 department shall submit a report concerning the pilot program to
24 the presiding officers of the standing committees of the senate and
25 house of representatives having primary jurisdiction over health
26 and human services issues and over criminal justice issues. The
27 report must include the information collected by the department

1 during the pilot program and the commissioner's evaluation of the
2 outcome of the program as of the date the report is submitted.

3 SECTION 28. Subchapter D, Chapter 46B, Code of Criminal
4 Procedure, is amended by adding Article 46B.091 to read as follows:

5 Art. 46B.091. JAIL-BASED COMPETENCY RESTORATION PROGRAM
6 IMPLEMENTED BY COUNTY. (a) In this article:

7 (1) "Commission" means the Health and Human Services
8 Commission.

9 (2) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 (b) A county or counties jointly may develop and implement a
12 jail-based competency restoration program.

13 (c) A county that implements a program under this article
14 shall contract with a provider of jail-based competency restoration
15 services that is a local mental health authority or local
16 behavioral health authority that is in good standing with the
17 commission, which may include an authority that is in good standing
18 with the commission and subcontracts with a provider of jail-based
19 competency restoration services.

20 (d) A jail-based competency restoration program must:

21 (1) provide jail-based competency restoration
22 services through the use of a multidisciplinary treatment team that
23 is:

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

26 (B) similar to other competency restoration
27 programs;

- 1 (2) employ or contract for the services of at least one
2 psychiatrist;
- 3 (3) provide jail-based competency restoration
4 services through licensed or qualified mental health
5 professionals;
- 6 (4) provide weekly competency restoration hours
7 commensurate to the hours provided as part of a competency
8 restoration program at an inpatient mental health facility;
- 9 (5) operate in the jail in a designated space that is
10 separate from the space used for the general population of the jail;
- 11 (6) ensure coordination of general health care;
- 12 (7) provide mental health treatment and substance use
13 disorder treatment to defendants, as necessary, for competency
14 restoration; and
- 15 (8) supply clinically appropriate psychoactive
16 medications for purposes of administering court-ordered medication
17 to defendants as applicable and in accordance with Article [46B.086](#)
18 of this code or Section [574.106](#), Health and Safety Code.
- 19 (e) The executive commissioner shall adopt rules as
20 necessary for a county to develop and implement a program under this
21 article. The commission shall, as part of the rulemaking process,
22 establish contract monitoring and oversight requirements for a
23 local mental health authority or local behavioral health authority
24 that contracts with a county to provide jail-based competency
25 restoration services under this article. The contract monitoring
26 and oversight requirements must be consistent with local mental
27 health authority or local behavioral health authority performance

1 contract monitoring and oversight requirements, as applicable.

2 (f) The commission may inspect on behalf of the state any
3 aspect of a program implemented under this article.

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

13 (h) If at any time during a defendant's commitment to a
14 program implemented under this article the psychiatrist or
15 psychologist for the provider determines that the defendant has
16 attained competency to stand trial:

17 (1) the psychiatrist or psychologist for the provider
18 shall promptly issue and send to the court a report demonstrating
19 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 (i) If at any time during a defendant's commitment to a
24 program implemented under this article the psychiatrist or
25 psychologist 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 or psychologist for the provider
2 shall promptly issue and send to the court a report demonstrating
3 that fact; and

4 (2) the court shall:

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

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

11 (j) If the psychiatrist or psychologist for the provider
12 determines that a defendant committed to a program implemented
13 under this article has not been restored to competency by the end of
14 the 60th day after the date the defendant was committed to the
15 program:

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

21 (2) for a defendant charged with a misdemeanor, the
22 court may:

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

1 under the extension;

2 (B) proceed under Subchapter E or F;

3 (C) release the defendant on bail as permitted
4 under Chapter 17; or

5 (D) dismiss the charges in accordance with
6 Article 46B.010.

7 (k) Unless otherwise provided by this article, the
8 provisions of this chapter, including the maximum periods
9 prescribed by Article 46B.0095, apply to a defendant receiving
10 competency restoration services, including competency restoration
11 education services, under a program implemented under this article
12 in the same manner as those provisions apply to any other defendant
13 who is subject to proceedings under this chapter.

14 (l) This article does not affect the responsibility of a
15 county to ensure the safety of a defendant who is committed to the
16 program and to provide the same adequate care to the defendant as is
17 provided to other inmates of the jail in which the defendant is
18 located.

19 SECTION 29. Section 574.034(g), Health and Safety Code, is
20 amended to read as follows:

21 (g) An order for temporary inpatient or outpatient mental
22 health services shall state that treatment is authorized for not
23 longer than 45 [90] days, except that the order may specify a period
24 not to exceed 90 days if the judge finds that the longer period is
25 necessary. [The order may not specify a shorter period.]

26 SECTION 30. Section 614.0032(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) The office shall~~+~~

2 [~~(1) with the special assistance of committee members~~
3 ~~appointed under Section 614.002(b)(1):~~

4 [~~(A) review examinations to determine the~~
5 ~~competency of defendants in criminal cases to stand trial and~~
6 ~~examinations to determine the fitness of children to proceed with~~
7 ~~respect to adjudications of delinquent conduct or conduct~~
8 ~~indicating a need for supervision; and~~

9 [~~(B) periodically report to the legislature and~~
10 ~~the court of criminal appeals findings made as a result of the~~
11 ~~review described by Paragraph (A); and~~

12 [~~(2)~~] approve and make generally available in
13 electronic format a standard form for use by experts in reporting
14 competency examination results under Chapter 46B, Code of Criminal
15 Procedure.

16 SECTION 31. The following provisions are repealed:

17 (1) Article 46B.026(c), Code of Criminal Procedure;

18 (2) Article 46B.090(o), Code of Criminal Procedure;

19 and

20 (3) Section 614.0032(c), Health and Safety Code.

21 SECTION 32. Not later than November 1, 2017, the executive
22 commissioner of the Health and Human Services Commission shall
23 adopt the rules described by Article 46B.091(e), Code of Criminal
24 Procedure, as added by this Act.

25 SECTION 33. (a) Except as provided by Subsection (b) of
26 this section, the changes in law made by this Act apply only to a
27 defendant charged with an offense committed on or after the

1 effective date of this Act. A defendant charged with an offense
2 committed before the effective date of this Act is governed by the
3 law in effect on the date the offense was committed, and the former
4 law is continued in effect for that purpose. For purposes of this
5 subsection, an offense was committed before the effective date of
6 this Act if any element of the offense occurred before that date.

7 (b) The change in law made by this Act to Section
8 [574.034\(g\)](#), Health and Safety Code, applies only to an order for
9 court-ordered temporary mental health services that is issued on or
10 after the effective date of this Act. An order issued before the
11 effective date of this Act is governed by the law in effect on the
12 date the order was issued, and the former law is continued in effect
13 for that purpose.

14 SECTION 34. This Act takes effect September 1, 2017.