

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. The heading to Article [46B.0095](#), Code of
22 Criminal Procedure, is amended to read as follows:

23 Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR [~~OUTPATIENT~~
24 ~~TREATMENT~~] PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR

1 OFFENSE.

2 SECTION 3. Articles 46B.0095(a), (b), (c), and (d), Code of
3 Criminal Procedure, are amended to read as follows:

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

16 (b) On expiration of the maximum restoration period under
17 Subsection (a), the mental hospital, [~~or other inpatient or~~
18 ~~residential~~] facility, or [~~outpatient treatment~~] program provider
19 identified in the most recent order of commitment or order of
20 outpatient [~~treatment~~] program participation under this chapter
21 shall assess the defendant to determine if civil proceedings under
22 Subtitle C or D, Title 7, Health and Safety Code, are appropriate.
23 The defendant may be confined for an additional period in a mental
24 hospital or other [~~inpatient or residential~~] facility or jail-based
25 program or ordered to participate for an additional period in an
26 outpatient [~~treatment~~] program, as appropriate, only pursuant to
27 civil proceedings conducted under Subtitle C or D, Title 7, Health

1 and Safety Code, by a court with probate jurisdiction.

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

3 (1) begins on the date the initial order of commitment
4 or initial order for outpatient [~~treatment~~] program participation
5 is entered under this chapter; and

6 (2) in addition to any inpatient or outpatient
7 treatment periods or program participation periods described by
8 Subsection (a), includes any time that, following the entry of an
9 order described by Subdivision (1), the defendant is confined in a
10 correctional facility, as defined by Section 1.07, Penal Code, or
11 is otherwise in the custody of the sheriff during or while awaiting,
12 as applicable:

13 (A) the defendant's transfer to:

14 (i) a mental hospital or other inpatient or
15 residential facility; or

16 (ii) a jail-based restoration of competency
17 program;

18 (B) the defendant's release on bail to
19 participate in an outpatient treatment program; or

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

22 (d) The court shall credit to the cumulative period
23 described by Subsection (a) any time that a defendant, following
24 arrest for the offense for which the defendant was to be tried, is
25 confined in a correctional facility, as defined by Section 1.07,
26 Penal Code, before the initial order of commitment or initial order
27 for outpatient [~~treatment~~] program participation is entered under

1 this chapter.

2 SECTION 4. Article 46B.010, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.

5 If a court orders that a defendant charged with a misdemeanor
6 punishable by confinement be committed to a mental hospital or
7 other inpatient or residential facility or to a jail-based
8 restoration of competency program, participate in an outpatient
9 ~~[treatment]~~ program, or be subjected to any combination of [both]
10 inpatient or [and] outpatient treatment or program participation,
11 and the defendant is not tried before the expiration of the maximum
12 period of restoration described by Article 46B.0095:

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

15 (2) on the motion of the attorney representing the
16 defendant and notice to the attorney representing the state, the
17 court:

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

20 (B) may dismiss the charge on a finding that the
21 defendant was not tried before the expiration of the maximum period
22 of restoration.

23 SECTION 5. Article 46B.026, Code of Criminal Procedure, is
24 amended by adding Subsection (d) to read as follows:

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

1 SECTION 6. Article 46B.071(a), Code of Criminal Procedure,
2 is amended to read as follows:

3 (a) Except as provided by Subsection (b), on a determination
4 that a defendant is incompetent to stand trial and is subject to an
5 initial restoration period, the court shall:

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

8 (A) commit the defendant to a program [~~facility~~]
9 under Article 46B.073; or

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

12 (2) if the defendant is charged with an offense
13 punishable as a Class A misdemeanor or any higher category of
14 offense:

15 (A) commit the defendant to a facility or program
16 under Article 46B.073; or

17 (B) release the defendant on bail under Article
18 46B.072.

19 SECTION 7. Subchapter D, Chapter 46B, Code of Criminal
20 Procedure, is amended by adding Article 46B.0711 to read as
21 follows:

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

23 (a) Subject to conditions reasonably related to ensuring public
24 safety and the effectiveness of the defendant's treatment, if the
25 court determines that a defendant charged with an offense
26 punishable as a Class B misdemeanor and found incompetent to stand
27 trial is not a danger to others and may be safely treated on an

1 outpatient basis with the specific objective of attaining
2 competency to stand trial, the court shall:

3 (1) release the defendant on bail or continue the
4 defendant's release on bail; and

5 (2) order the defendant to participate in an
6 outpatient treatment program for a period not to exceed 90 days.

7 (b) If the defendant successfully completes the outpatient
8 treatment program described by Subsection (a), the court shall:

9 (1) on the motion of the attorney representing the
10 state, dismiss the charge; or

11 (2) proceed as otherwise required by this subchapter.

12 (c) If the defendant does not successfully complete the
13 outpatient treatment program described by Subsection (a), the court
14 may:

15 (1) for the remainder of the 90-day period described
16 by Subsection (a)(2), commit the defendant to a jail-based
17 restoration of competency program under Article 46B.073 if the
18 maximum period of restoration described by Article 46B.0095 has not
19 expired; or

20 (2) on the motion of the attorney representing the
21 state, dismiss the charge.

22 SECTION 8. The heading to Article 46B.072, Code of Criminal
23 Procedure, is amended to read as follows:

24 Art. 46B.072. RELEASE ON BAIL FOR CLASS A MISDEMEANOR OR
25 FELONY.

26 SECTION 9. Article 46B.072, Code of Criminal Procedure, is
27 amended by amending Subsection (a-1) and adding Subsections (e) and

1 (f) to read as follows:

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

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

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

17 (e) If the defendant successfully completes the outpatient
18 treatment program described by Subsection (a-1), the court shall:

19 (1) on the motion of the attorney representing the
20 state, dismiss the charge; or

21 (2) proceed as otherwise required by this subchapter.

22 (f) If the defendant does not successfully complete the
23 outpatient treatment program described by Subsection (a-1), the
24 court may:

25 (1) for the remainder of the 120-day period described
26 by Subsection (b), commit the defendant to a facility or to a
27 jail-based restoration of competency program under Article 46B.073

1 if the maximum period of restoration described by Article 46B.0095
2 has not expired; or
3 (2) on the motion of the attorney representing the
4 state, dismiss the charge.

5 SECTION 10. Article 46B.073, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY.

8 (a) This article applies only to a defendant [~~not released on~~
9 ~~bail~~] who is subject to an initial restoration period based on
10 Article 46B.071 and who:

11 (1) was not released on bail; or
12 (2) if released on bail, is made subject to this
13 article by action of the court under Article 46B.0711(c) or
14 46B.072(f).

15 (b) For further examination, psychiatric stabilization, and
16 treatment toward the specific objective of the defendant attaining
17 competency to stand trial, the court shall commit a defendant
18 described by Subsection (a) to a mental health facility, [~~or~~]
19 residential care facility, or jail-based restoration of competency
20 program for the applicable period as follows:

21 (1) a period of not more than 60 days, if the defendant
22 is described by Subsection (a)(1) and charged with an offense
23 punishable as a misdemeanor; [~~or~~]

24 (2) a period of not more than 120 days, if the
25 defendant is described by Subsection (a)(1) and charged with an
26 offense punishable as a felony; or

27 (3) the remainder of the restoration period specified

1 by the court under Article 46B.0711 or 46B.072, as applicable.

2 (b-1) A defendant charged with an offense punishable as a
3 Class B misdemeanor may be committed under this subchapter only to a
4 jail-based restoration of competency program.

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

15 (d) If the defendant is not charged with an offense
16 described by Subsection (c) and the indictment does not allege an
17 affirmative finding under Article 42A.054(c) or (d), the court
18 shall enter an order committing the defendant for psychiatric
19 stabilization to a jail-based restoration of competency program or
20 to a mental health facility or residential care facility determined
21 to be appropriate by the local mental health authority or local
22 intellectual and developmental disability authority.

23 (e) On notification from the head of a facility or a program
24 provider under Article 46B.079(b)(1), the court shall order the
25 defendant to receive competency restoration education services in a
26 jail-based restoration of competency program or in an outpatient
27 competency restoration education program, as appropriate.

1 (f) If a defendant for whom an order is entered under
2 Subsection (e) was committed for psychiatric stabilization to a
3 facility other than a jail-based restoration of competency program,
4 the court shall send a copy of that order to:

5 (1) the sheriff of the county in which the court is
6 located; and

7 (2) the head of the facility to which the defendant was
8 committed for psychiatric stabilization [~~Notwithstanding~~
9 ~~Subsections (b), (c), and (d) and notwithstanding the contents of~~
10 ~~the applicable order of commitment, in a county in which the~~
11 ~~Department of State Health Services operates a jail-based~~
12 ~~restoration of competency pilot program under Article 46B.090, a~~
13 ~~defendant for whom an order is issued under this article committing~~
14 ~~the defendant to a mental health facility or residential care~~
15 ~~facility shall be provided competency restoration services at the~~
16 ~~jail under the pilot program if the service provider at the jail~~
17 ~~determines the defendant will immediately begin to receive~~
18 ~~services. If the service provider at the jail determines the~~
19 ~~defendant will not immediately begin to receive competency~~
20 ~~restoration services, the defendant shall be transferred to the~~
21 ~~appropriate mental health facility or residential care facility as~~
22 ~~provided by the court order. This subsection expires September 1,~~
23 ~~2019].~~

24 SECTION 11. Article 46B.074(a), Code of Criminal Procedure,
25 is amended to read as follows:

26 (a) A defendant may be committed to a jail-based restoration
27 of competency program, mental health facility, or residential care

1 facility under this subchapter only on competent medical or
2 psychiatric testimony provided by an expert qualified under Article
3 46B.022.

4 SECTION 12. Article 46B.075, Code of Criminal Procedure, is
5 amended to read as follows:

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

13 SECTION 13. Articles 46B.0755(a), (b), and (d), Code of
14 Criminal Procedure, are amended to read as follows:

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

26 (b) If after a reexamination of the defendant the applicable
27 expert's report states an opinion that the defendant remains

1 incompetent, the court's order under Article 46B.0711, 46B.072, or
2 46B.073 remains in effect, and the defendant shall be transported
3 to the facility or [~~outpatient treatment~~] program as required by
4 Article 46B.075. If after a reexamination of the defendant the
5 applicable expert's report states an opinion that the defendant has
6 been restored to competency, the court shall withdraw its order
7 under Article 46B.0711, 46B.072, or 46B.073 and proceed under
8 Subsection (c) or (d).

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

21 SECTION 14. Article 46B.076, Code of Criminal Procedure, is
22 amended to read as follows:

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

1 ~~[to which the defendant is released]~~. The court shall also provide
2 to the facility or ~~[outpatient treatment]~~ program copies of the
3 following made available to the court during the incompetency
4 trial:

5 (1) reports of each expert;

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

8 (3) documents provided by the attorney representing
9 the state or the attorney representing the defendant that relate to
10 the defendant's current or past mental condition;

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

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

14 (6) the addresses of the attorney representing the
15 state and the attorney representing the defendant.

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

20 SECTION 15. Article [46B.077](#), Code of Criminal Procedure, is
21 amended to read as follows:

22 Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The
23 facility or jail-based program to which the defendant is committed
24 or the outpatient treatment program to which the defendant is
25 released on bail shall:

26 (1) develop an individual program of treatment;

27 (2) assess and evaluate whether the defendant is

1 likely to be restored to competency in the foreseeable future; and

2 (3) report to the court and to the local mental health
3 authority or to the local intellectual and developmental disability
4 authority on the defendant's progress toward achieving competency.

5 (b) If the defendant is committed to an inpatient mental
6 health facility, ~~[or to a]~~ residential care facility, or jail-based
7 restoration of competency program, the facility or program shall
8 report to the court at least once during the commitment period. If
9 the defendant is released to a treatment program not provided by an
10 inpatient mental health facility, ~~[or a]~~ residential care facility,
11 or jail-based restoration of competency program, the treatment
12 program shall report to the court:

13 (1) not later than the 14th day after the date on which
14 the defendant's treatment begins; and

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

18 SECTION 16. Article 46B.078, Code of Criminal Procedure, is
19 amended to read as follows:

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

1 ~~treatment~~] program shall discharge the defendant into the care of
2 the sheriff for transportation in the manner described by Article
3 46B.082.

4 SECTION 17. Article 46B.079, Code of Criminal Procedure, is
5 amended to read as follows:

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

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

18 (1) the defendant has attained psychiatric
19 stabilization but has not attained competency to stand trial;

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

22 (3) (2) [~~(b)~~] the defendant is not likely to attain
23 competency in the foreseeable future.

24 (c) When the head of the facility or [~~outpatient treatment~~]
25 program provider gives notice to the court under Subsection (a),
26 (b)(2), or (b)(3) [~~(b)~~], the head of the facility or [~~outpatient~~
27 ~~treatment~~] program provider also shall file a final report with the

1 court stating the reason for the proposed discharge under this
2 chapter and including a list of the types and dosages of medications
3 prescribed for the defendant while the defendant was in the
4 facility or participating in the [~~outpatient treatment~~] program.
5 To enable any objection to the findings of the report to be made in a
6 timely manner under Article 46B.084(a-1), the court shall provide
7 copies of the report to the attorney representing the defendant and
8 the attorney representing the state.

9 (d) If the head of the facility or [~~outpatient treatment~~]
10 program provider notifies the court that the initial restoration
11 period is about to expire, the notice may contain a request for an
12 extension of the period for an additional period of 60 days and an
13 explanation for the basis of the request. An explanation provided
14 under this subsection must include a description of any evidence
15 indicating a reduction in the severity of the defendant's symptoms
16 or impairment.

17 SECTION 18. Article 46B.080(a), Code of Criminal Procedure,
18 is amended to read as follows:

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

24 SECTION 19. Article 46B.081, Code of Criminal Procedure, is
25 amended to read as follows:

26 Art. 46B.081. RETURN TO COURT. Subject to Article
27 46B.082(b), a defendant committed or released on bail under this

1 subchapter shall be returned to the applicable court as soon as
2 practicable after notice to the court is provided under Article
3 46B.079(a), (b)(2), or (b)(3) [~~46B.079~~], but not later than the
4 date of expiration of the period for restoration specified by the
5 court under Article 46B.0711, 46B.072, or 46B.073.

6 SECTION 20. The heading to Article 46B.082, Code of
7 Criminal Procedure, is amended to read as follows:

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

9 SECTION 21. Article 46B.082(b), Code of Criminal Procedure,
10 is amended to read as follows:

11 (b) If before the 15th day after the date on which the court
12 received notification under Article 46B.079(a), (b)(2), or (b)(3),
13 [~~46B.079~~] a defendant committed to a facility or jail-based program
14 or ordered to participate in an outpatient [~~treatment~~] program has
15 not been transported to the court that issued the order under
16 Article 46B.0711, 46B.072, or 46B.073, as applicable, the head of
17 the facility or provider of the jail-based program to which the
18 defendant is committed or the provider of the outpatient
19 [~~treatment~~] program in which the defendant is participating shall
20 cause the defendant to be promptly transported to the court and
21 placed in the custody of the sheriff of the county in which the
22 court is located. The county in which the court is located shall
23 reimburse the Department of State Health Services or the Health and
24 Human [~~Department of Aging and Disability~~] Services Commission, as
25 appropriate, for the mileage and per diem expenses of the personnel
26 required to transport the defendant, calculated in accordance with
27 rates provided in the General Appropriations Act for state

1 employees.

2 SECTION 22. Subchapter D, Chapter 46B, Code of Criminal
3 Procedure, is amended by adding Article 46B.0825 to read as
4 follows:

5 Art. 46B.0825. DISCHARGE AND TRANSPORTATION OF DEFENDANT
6 AFTER PSYCHIATRIC STABILIZATION. (a) As soon as practicable after
7 receiving a copy of an order under Article 46B.073(f)(2), the
8 applicable facility shall discharge the defendant into the care of
9 the sheriff of the county in which the court is located, and the
10 sheriff or the sheriff's designee shall transport the defendant to
11 the jail-based restoration of competency program or outpatient
12 competency restoration education program, as appropriate.

13 (b) A jail-based restoration of competency program or
14 outpatient competency restoration education program that receives
15 a defendant under this article shall give to the court:

16 (1) notice regarding the defendant's entry into the
17 program for purposes of receiving competency restoration education
18 services; and

19 (2) subsequent notice as otherwise required under
20 Article 46B.079.

21 SECTION 23. Article 46B.083, Code of Criminal Procedure, is
22 amended to read as follows:

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

25 (a) If the head of the facility, the jail-based restoration of
26 competency program provider, or the outpatient [~~treatment~~] program
27 provider believes that the defendant is a person with mental

1 illness and meets the criteria for court-ordered mental health
2 services under Subtitle C, Title 7, Health and Safety Code, the head
3 of the facility or the [~~outpatient treatment~~] program provider
4 shall have submitted to the court a certificate of medical
5 examination for mental illness.

6 (b) If the head of the facility, the jail-based restoration
7 of competency program provider, or the outpatient [~~treatment~~]
8 program provider believes that the defendant is a person with an
9 intellectual disability, the head of the facility or the
10 [~~outpatient treatment~~] program provider shall have submitted to the
11 court an affidavit stating the conclusions reached as a result of
12 the examination.

13 SECTION 24. Articles 46B.086(a), (b), (c), and (d), Code of
14 Criminal Procedure, are amended to read as follows:

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

16 (1) who is determined under this chapter to be
17 incompetent to stand trial;

18 (2) who either:

19 (A) remains confined in a correctional facility,
20 as defined by Section 1.07, Penal Code, for a period exceeding 72
21 hours while awaiting transfer to an inpatient mental health
22 facility, a residential care facility, a jail-based restoration of
23 competency program, or an outpatient [~~treatment~~] program;

24 (B) is committed to an inpatient mental health
25 facility, ~~or~~ a residential care facility, or a jail-based
26 restoration of competency program for the purpose of competency
27 restoration;

1 (C) is confined in a correctional facility while
2 awaiting further criminal proceedings following competency
3 restoration treatment;

4 (D) is subject to Article 46B.0711, if the court
5 has made the determinations required by Subsection (a) of that
6 article; or

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

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

16 (4) who, after a hearing held under Section 574.106 or
17 592.156, Health and Safety Code, if applicable, has been found to
18 not meet the criteria prescribed by Sections 574.106(a) and (a-1)
19 or 592.156(a) and (b), Health and Safety Code, for court-ordered
20 administration of psychoactive medications.

21 (b) If a defendant described by Subsection (a) refuses to
22 take psychoactive medications as required by the defendant's
23 continuity of care plan, the director of the [~~correctional~~]
24 facility or [~~outpatient treatment~~] program provider, as
25 applicable, shall notify the court in which the criminal
26 proceedings are pending of that fact not later than the end of the
27 next business day following the refusal. The court shall promptly

1 notify the attorney representing the state and the attorney
2 representing the defendant of the defendant's refusal. The
3 attorney representing the state may file a written motion to compel
4 medication. The motion to compel medication must be filed not later
5 than the 15th day after the date a judge issues an order stating
6 that the defendant does not meet the criteria for court-ordered
7 administration of psychoactive medications under Section 574.106
8 or 592.156, Health and Safety Code, except that, for a defendant in
9 an outpatient ~~[treatment]~~ program, the motion may be filed at any
10 time.

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

18 (d) The court may issue an order under this article only if
19 the order is supported by the testimony of two physicians, one of
20 whom is the physician at or with the applicable ~~[correctional]~~
21 facility or ~~[outpatient treatment]~~ program who is prescribing the
22 medication as a component of the defendant's continuity of care
23 plan and another who is not otherwise involved in proceedings
24 against the defendant. The court may require either or both
25 physicians to examine the defendant and report on the examination
26 to the court.

27 SECTION 25. The heading to Article 46B.090, Code of

1 Criminal Procedure, is amended to read as follows:

2 Art. 46B.090. JAIL-BASED RESTORATION OF COMPETENCY [~~PILOT~~]
3 PROGRAM IMPLEMENTED BY COMMISSION.

4 SECTION 26. Articles 46B.090(a), (a-1), (b), (c), (f), (g),
5 (i), (j), (k), (l), and (m), Code of Criminal Procedure, are amended
6 to read as follows:

7 (a) In this article:

8 (1) "Commission" [~~,"department"~~] means the Health and
9 Human Services Commission [~~Department of State Health Services~~].

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

12 (a-1) The commission may [~~If the legislature appropriates~~
13 ~~to the department the funding necessary for the department to~~
14 ~~operate a jail-based restoration of competency pilot program as~~
15 ~~described by this article, the department shall~~] develop and
16 implement a jail-based restoration of competency [~~the pilot~~]
17 program in any county [~~one or two counties~~] in this state that
18 chooses [~~choose~~] to participate in the [~~pilot~~] program. In
19 developing the [~~pilot~~] program, the commission [~~department~~] shall
20 coordinate and allow for input from a each participating county.

21 (b) The commission [~~department~~] shall contract with a
22 provider of jail-based competency restoration services to provide
23 services under a [~~the pilot~~] program implemented [~~if the department~~
24 ~~develops a pilot program~~] under this article. The commission may
25 contract with a different provider for each program.

26 (c) The executive [~~Not later than November 1, 2013, the~~]
27 commissioner [~~of the department~~] shall adopt rules as necessary to

1 implement a [the pilot] program~~[. In adopting rules]~~ under this
2 article, including rules that ~~[the commissioner shall]~~ specify the
3 types of information the commission ~~[department]~~ must collect
4 ~~[during the operation of the pilot program]~~ for use in evaluating a
5 ~~[the outcome of the pilot]~~ program.

6 (f) To contract with the commission ~~[department]~~ under
7 Subsection (b), a provider of jail-based competency restoration
8 services must demonstrate to the commission ~~[department]~~ that:

9 (1) the provider:

10 (A) has previously provided jail-based
11 competency restoration services for one or more years and is
12 certified by a nationwide nonprofit organization that accredits
13 behavioral health care organizations and programs; ~~or~~

14 (B) is a local mental health authority in good
15 standing with the commission ~~[that has previously provided~~
16 ~~competency restoration services]; or~~

17 (C) operates under a contract with a local mental
18 health authority in good standing with the commission; and

19 (2) the provider's jail-based restoration of
20 competency ~~[restoration]~~ program:

21 (A) provides clinical treatment and competency
22 restoration through the use of ~~[uses]~~ a multidisciplinary treatment
23 team ~~[to 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 or psychologist;

4 (C) provides jail-based competency restoration
5 services through trained and experienced staff [~~assigns staff~~
6 ~~members to defendants participating in the program at an average~~
7 ~~ratio not lower than 3.7 to 1]; [and]~~

8 (D) ensures the safety of participants [~~provides~~
9 ~~weekly treatment hours commensurate to the treatment hours provided~~
10 ~~as part of a competency restoration program at an inpatient mental~~
11 ~~health facility];~~

12 (E) operates in the jail in a designated space
13 that is separate from the space used for the general population of
14 the jail;

15 (F) provides general health care, mental health
16 treatment, and substance use disorder treatment to participants, as
17 necessary, for restoration of competency; and

18 (G) supplies clinically appropriate psychoactive
19 medications for purposes of administering court-ordered medication
20 to participants as applicable and in accordance with Article
21 46B.086 of this code and Section 574.106, Health and Safety Code

22 [~~(3) the provider is certified by a nationwide~~
23 ~~nonprofit organization that accredits health care organizations~~
24 ~~and programs, such as the Joint Commission on Health Care Staffing~~
25 ~~Services, or the provider is a local mental health authority in good~~
26 ~~standing with the department; and~~

27 [~~(4) the provider has a demonstrated history of~~

1 ~~successful jail-based competency restoration outcomes or, if the~~
2 ~~provider is a local mental health authority, a demonstrated history~~
3 ~~of successful competency restoration outcomes].~~

4 (g) A contract under Subsection (b) must require a ~~[the]~~
5 designated provider to collect and submit to the commission
6 ~~[department]~~ the information specified by rules adopted under
7 Subsection (c).

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

17 (j) If at any time during a defendant's participation in a
18 ~~[the jail-based restoration of competency pilot]~~ program
19 implemented under this article the psychiatrist or psychologist for
20 the provider determines that the defendant has attained competency
21 to stand trial:

22 (1) the psychiatrist or psychologist for the provider
23 shall promptly issue and send to the court a report demonstrating
24 that fact; and

25 (2) the court shall consider that report as the report
26 of an expert stating an opinion that the defendant has been restored
27 to competency for purposes of Article [46B.0755](#)(a) or (b).

1 (k) If at any time during a defendant's participation in a
2 [~~the jail-based restoration of competency pilot~~] program
3 implemented under this article the psychiatrist or psychologist for
4 the provider determines that the defendant's competency to stand
5 trial is unlikely to be restored in the foreseeable future:

6 (1) the psychiatrist or psychologist for the provider
7 shall promptly issue and send to the court a report demonstrating
8 that fact; and

9 (2) the court shall:

10 (A) proceed under Subchapter E or F and order the
11 transfer of the defendant, without unnecessary delay, to the first
12 available facility that is appropriate for that defendant, as
13 provided under Subchapter E or F, as applicable; or

14 (B) release the defendant on bail as permitted
15 under Chapter 17.

16 (1) If the psychiatrist or psychologist for the provider
17 determines that a defendant ordered to participate in a [~~the pilot~~]
18 program implemented under this article has not been restored to
19 competency by the end of the 60th day after the date the defendant
20 began to participate in the [~~pilot~~] program:

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

26 (2) for a defendant charged with a misdemeanor, the
27 court may:

1 (A) order a single extension under Article
2 46B.080 and, notwithstanding Article 46B.073(b-1), the transfer of
3 the defendant without unnecessary delay to the appropriate mental
4 health facility or residential care facility as provided by Article
5 46B.073(d) for the remainder of the period under the extension;

6 (B) proceed under Subchapter E or F;

7 (C) release the defendant on bail as permitted
8 under Chapter 17; or

9 (D) dismiss the charges in accordance with
10 Article 46B.010.

11 (m) Unless otherwise provided by this article, the
12 provisions of this chapter, including the maximum periods
13 prescribed by Article 46B.0095, apply to a defendant receiving
14 competency restoration services, including competency restoration
15 education services, under a [the pilot] program implemented under
16 this article in the same manner as those provisions apply to any
17 other defendant who is subject to proceedings under this chapter.

18 SECTION 27. Subchapter D, Chapter 46B, Code of Criminal
19 Procedure, is amended by adding Article 46B.091 to read as follows:

20 Art. 46B.091. JAIL-BASED RESTORATION OF COMPETENCY PROGRAM
21 IMPLEMENTED BY COUNTY. (a) In this article, "commission" means
22 the Health and Human Services Commission.

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

25 (c) A county that implements a program under this article
26 shall employ or contract with a provider of jail-based competency
27 restoration services that:

1 (1) is certified by a nationwide nonprofit
2 organization that accredits behavioral health care organizations
3 and programs;

4 (2) is a local mental health authority in good
5 standing with the commission; or

6 (3) provides competency restoration services under a
7 contract with a local mental health authority in good standing with
8 the commission.

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

10 (1) provide jail-based competency restoration
11 services through trained and experienced staff;

12 (2) provide clinical treatment and competency
13 restoration through the use of a multidisciplinary treatment team;

14 (3) ensure the safety of participants;

15 (4) operate in the jail in a designated space that is
16 separate from the space used for the general population of the jail;

17 (5) provide general health care, mental health
18 treatment, and substance use disorder treatment to participants, as
19 necessary for restoration of competency; and

20 (6) supply clinically appropriate psychoactive
21 medications for purposes of administering court-ordered medication
22 to participants as applicable and in accordance with Article
23 46B.086 of this code and Section 574.106, Health and Safety Code.

24 (e) The commission may inspect on behalf of the state any
25 aspect of a jail-based restoration of competency program.

26 (f) If at any time during a defendant's participation in the
27 jail-based restoration of competency program a psychiatrist or

1 psychologist for the provider determines that the defendant has
2 attained competency to stand trial:

3 (1) the psychiatrist or psychologist for the provider
4 shall promptly issue and send to the court a report demonstrating
5 that fact; and

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

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

16 SECTION 28. Section 574.034(g), Health and Safety Code, is
17 amended to read as follows:

18 (g) An order for temporary inpatient or outpatient mental
19 health services shall state that treatment is authorized for not
20 longer than 45 [90] days unless the judge finds that a longer period
21 is necessary. [~~The order may not specify a shorter period.~~]

22 SECTION 29. Articles 46B.090(h), (n), and (o), Code of
23 Criminal Procedure, are repealed.

24 SECTION 30. (a) Except as provided by Subsection (b) of
25 this section, the changes in law made by this Act apply only to a
26 defendant charged with an offense committed on or after the
27 effective date of this Act. A defendant charged with an offense

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

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

13 SECTION 31. This Act takes effect September 1, 2017.