

1-1 By: Perry S.B. No. 1183
1-2 (In the Senate - Filed March 1, 2017; March 9, 2017, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 20, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 20, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1183 By: Perry

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to procedures regarding criminal defendants who are or may
1-22 be persons with a mental illness or an intellectual disability and
1-23 to the period for which a person may be committed to receive certain
1-24 temporary mental health services.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Article 32A.01, Code of Criminal Procedure, is
1-27 amended by amending Subsection (a) and adding Subsection (c) to
1-28 read as follows:

1-29 (a) Insofar as is practicable, the trial of a criminal
1-30 action shall be given preference over trials of civil cases, and the
1-31 trial of a criminal action against a defendant who is detained in
1-32 jail pending trial of the action shall be given preference over
1-33 trials of other criminal actions not described by Subsection (b) or
1-34 (c).

1-35 (c) Except as provided by Subsection (b), the trial of a
1-36 criminal action against a defendant who has been determined to be
1-37 restored to competency under Article 46B.084 shall be given
1-38 preference over other matters before the court, whether civil or
1-39 criminal.

1-40 SECTION 2. Article 46B.001, Code of Criminal Procedure, is
1-41 amended by adding Subdivision (9) to read as follows:

1-42 (9) "Competency restoration" means the treatment or
1-43 education process for restoring a person's ability to consult with
1-44 the person's attorney with a reasonable degree of rational
1-45 understanding, including a rational and factual understanding of
1-46 the court proceedings and charges against the person.

1-47 SECTION 3. The heading to Article 46B.0095, Code of
1-48 Criminal Procedure, is amended to read as follows:

1-49 Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR [OUTPATIENT
1-50 TREATMENT] PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR
1-51 OFFENSE.

1-52 SECTION 4. Articles 46B.0095(a), (b), (c), and (d), Code of
1-53 Criminal Procedure, are amended to read as follows:

1-54 (a) A defendant may not, under Subchapter D or E or any other
1-55 provision of this chapter, be committed to a mental hospital or
1-56 other inpatient or residential facility or to a jail-based
1-57 competency restoration program, ordered to participate in an
1-58 outpatient competency restoration or treatment program, or
1-59 subjected to any combination of [both] inpatient treatment, [and]
1-60 outpatient competency restoration or treatment program

2-1 participation, or jail-based competency restoration under this
2-2 chapter for a cumulative period that exceeds the maximum term
2-3 provided by law for the offense for which the defendant was to be
2-4 tried, except that if the defendant is charged with a misdemeanor
2-5 and has been ordered only to participate in an outpatient
2-6 competency restoration or treatment program under Subchapter D or
2-7 E, the maximum period of restoration is two years.

2-8 (b) On expiration of the maximum restoration period under
2-9 Subsection (a), the mental hospital, ~~[or other inpatient or~~
2-10 ~~residential]~~ facility, or ~~[outpatient treatment]~~ program provider
2-11 identified in the most recent order of commitment or order of
2-12 outpatient competency restoration or treatment program
2-13 participation under this chapter shall assess the defendant to
2-14 determine if civil proceedings under Subtitle C or D, Title 7,
2-15 Health and Safety Code, are appropriate. The defendant may be
2-16 confined for an additional period in a mental hospital or other
2-17 [inpatient or residential] facility or may be ordered to
2-18 participate for an additional period in an outpatient treatment
2-19 program, as appropriate, only pursuant to civil proceedings
2-20 conducted under Subtitle C or D, Title 7, Health and Safety Code, by
2-21 a court with probate jurisdiction.

2-22 (c) The cumulative period described by Subsection (a):

2-23 (1) begins on the date the initial order of commitment
2-24 or initial order for outpatient competency restoration or treatment
2-25 program participation is entered under this chapter; and

2-26 (2) in addition to any inpatient or outpatient
2-27 competency restoration [treatment] periods or program
2-28 participation periods described by Subsection (a), includes any
2-29 time that, following the entry of an order described by Subdivision
2-30 (1), the defendant is confined in a correctional facility, as
2-31 defined by Section 1.07, Penal Code, or is otherwise in the custody
2-32 of the sheriff during or while awaiting, as applicable:

2-33 (A) the defendant's transfer to:
2-34 (i) a mental hospital or other inpatient or
2-35 residential facility; or
2-36 (ii) a jail-based competency restoration
2-37 program;

2-38 (B) the defendant's release on bail to
2-39 participate in an outpatient competency restoration or treatment
2-40 program; or

2-41 (C) a criminal trial following any temporary
2-42 restoration of the defendant's competency to stand trial.

2-43 (d) The court shall credit to the cumulative period
2-44 described by Subsection (a) any time that a defendant, following
2-45 arrest for the offense for which the defendant was to be tried, is
2-46 confined in a correctional facility, as defined by Section 1.07,
2-47 Penal Code, before the initial order of commitment or initial order
2-48 for outpatient competency restoration or treatment program
2-49 participation is entered under this chapter.

2-50 SECTION 5. Article 46B.010, Code of Criminal Procedure, is
2-51 amended to read as follows:

2-52 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
2-53 If a court orders that a defendant charged with a misdemeanor
2-54 punishable by confinement be committed to a mental hospital or
2-55 other inpatient or residential facility or to a jail-based
2-56 competency restoration program, participate in an outpatient
2-57 competency restoration or treatment program, or be subjected to any
2-58 combination of [both] inpatient treatment, [and] outpatient
2-59 competency restoration or treatment program participation, or
2-60 jail-based competency restoration under this chapter, and the
2-61 defendant is not tried before the expiration of the maximum period
2-62 of restoration described by Article 46B.0095:

2-63 (1) on the motion of the attorney representing the
2-64 state, the court shall dismiss the charge; or

2-65 (2) on the motion of the attorney representing the
2-66 defendant and notice to the attorney representing the state, the
2-67 court:

2-68 (A) shall set the matter to be heard not later
2-69 than the 10th day after the date of filing of the motion; and

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

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

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

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

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

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

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

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

(B) commit the defendant to:

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

(ii) a mental health facility or residential care facility under Article 46B.073(f); or

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

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

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

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

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

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

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

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

(2) order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days.

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

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

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

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

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

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

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

(2) an appropriate prescribed regimen of medical,

4-1 psychiatric, or psychological care or treatment, including care or
 4-2 treatment involving the administration of psychoactive medication,
 4-3 including those required under Article 46B.086.

4-4 SECTION 9. The heading to Article 46B.072, Code of Criminal
 4-5 Procedure, is amended to read as follows:

4-6 Art. 46B.072. RELEASE ON BAIL FOR FELONY OR CLASS A
 4-7 MISDEMEANOR.

4-8 SECTION 10. Articles 46B.072(a-1), (b), (c), and (d), Code
 4-9 of Criminal Procedure, are amended to read as follows:

4-10 (a-1) Subject to conditions reasonably related to ensuring
 4-11 [assuring] public safety and the effectiveness of the defendant's
 4-12 treatment, if the court determines that a defendant charged with an
 4-13 offense punishable as a felony or a Class A misdemeanor and found
 4-14 incompetent to stand trial is not a danger to others and may be
 4-15 safely treated on an outpatient basis with the specific objective
 4-16 of attaining competency to stand trial, and [if] an appropriate
 4-17 outpatient competency restoration [treatment] program is available
 4-18 for the defendant, the court:

4-19 (1) may release on bail a defendant found incompetent
 4-20 to stand trial with respect to an offense punishable as a felony or
 4-21 may continue the defendant's release on bail; and

4-22 (2) shall release on bail a defendant found
 4-23 incompetent to stand trial with respect to an offense punishable as
 4-24 a Class A [a] misdemeanor or shall continue the defendant's release
 4-25 on bail.

4-26 (b) The court shall order a defendant released on bail under
 4-27 Subsection (a-1) to participate in an outpatient competency
 4-28 restoration [treatment] program for a period not to exceed 120
 4-29 days.

4-30 (c) Notwithstanding Subsection (a-1), the court may order a
 4-31 defendant to participate in an outpatient competency restoration
 4-32 [treatment] program under this article only if:

4-33 (1) the court receives and approves a comprehensive
 4-34 plan that:

4-35 (A) provides for the treatment of the defendant
 4-36 for purposes of competency restoration; and

4-37 (B) identifies the person who will be responsible
 4-38 for providing that treatment to the defendant; and

4-39 (2) the court finds that the treatment proposed by the
 4-40 plan will be available to and will be provided to the defendant.

4-41 (d) An order issued under this article may require the
 4-42 defendant to participate in:

4-43 (1) as appropriate, an outpatient competency
 4-44 restoration [treatment] program administered by a community center
 4-45 or an outpatient competency restoration [treatment] program
 4-46 administered by any other entity that provides outpatient
 4-47 competency restoration services; and

4-48 (2) an appropriate prescribed regimen of medical,
 4-49 psychiatric, or psychological care or treatment, including care or
 4-50 treatment involving the administration of psychoactive medication,
 4-51 including those required under Article 46B.086.

4-52 SECTION 11. Article 46B.073, Code of Criminal Procedure, is
 4-53 amended by amending Subsections (b), (c), (d), and (e) and adding
 4-54 Subsection (f) to read as follows:

4-55 (b) For purposes of further examination and competency
 4-56 restoration services with [treatment toward] the specific
 4-57 objective of the defendant attaining competency to stand trial, the
 4-58 court shall commit a defendant described by Subsection (a) to a
 4-59 mental health facility, [or] residential care facility, or
 4-60 jail-based competency restoration program for the applicable
 4-61 period as follows:

4-62 (1) a period of not more than 60 days, if the defendant
 4-63 is charged with an offense punishable as a misdemeanor; or

4-64 (2) a period of not more than 120 days, if the
 4-65 defendant is charged with an offense punishable as a felony.

4-66 (c) If the defendant is charged with an offense listed in
 4-67 Article 17.032(a), other than an offense under Section 22.01(a)(1),
 4-68 Penal Code [listed in Article 17.032(a)(6)], or the indictment
 4-69 alleges an affirmative finding under Article 42A.054(c) or (d), the

5-1 court shall enter an order committing the defendant for competency
 5-2 restoration services to the maximum security unit of any facility
 5-3 designated by the Department of State Health Services, to an agency
 5-4 of the United States operating a mental hospital, or to a Department
 5-5 of Veterans Affairs hospital.

5-6 (d) If the defendant is not charged with an offense
 5-7 described by Subsection (c) and the indictment does not allege an
 5-8 affirmative finding under Article 42A.054(c) or (d), the court
 5-9 shall enter an order committing the defendant to a mental health
 5-10 facility or residential care facility determined to be appropriate
 5-11 by the local mental health authority or local intellectual and
 5-12 developmental disability authority or to a jail-based competency
 5-13 restoration program. A defendant may be committed to a jail-based
 5-14 competency restoration program only if the program provider
 5-15 determines the defendant will begin to receive competency
 5-16 restoration services within 72 hours of arriving at the program.

5-17 (e) Except as provided by Subsection (f), a defendant
 5-18 charged with an offense punishable as a Class B misdemeanor may be
 5-19 committed under this subchapter only to a jail-based competency
 5-20 restoration program.

5-21 (f) A defendant charged with an offense punishable as a
 5-22 Class B misdemeanor may be committed to a mental health facility or
 5-23 residential care facility described by Subsection (d) only if a
 5-24 jail-based competency restoration program is not available
 5-25 [Notwithstanding Subsections (b), (c), and (d) and notwithstanding
 5-26 the contents of the applicable order of commitment, in a county in
 5-27 which the Department of State Health Services operates a jail-based
 5-28 restoration of competency pilot program under Article 46B.090, a
 5-29 defendant for whom an order is issued under this article committing
 5-30 the defendant to a mental health facility or residential care
 5-31 facility shall be provided competency restoration services at the
 5-32 jail under the pilot program if the service provider at the jail
 5-33 determines the defendant will immediately begin to receive
 5-34 services. If the service provider at the jail determines the
 5-35 defendant will not immediately begin to receive competency
 5-36 restoration services, the defendant shall be transferred to the
 5-37 appropriate mental health facility or residential care facility as
 5-38 provided by the court order. This subsection expires September 1,
 5-39 2019].

5-40 SECTION 12. Article 46B.074(a), Code of Criminal Procedure,
 5-41 is amended to read as follows:

5-42 (a) A defendant may be committed to a jail-based competency
 5-43 restoration program, mental health facility, or residential care
 5-44 facility under this subchapter only on competent medical or
 5-45 psychiatric testimony provided by an expert qualified under Article
 5-46 46B.022.

5-47 SECTION 13. Article 46B.075, Code of Criminal Procedure, is
 5-48 amended to read as follows:

5-49 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR
 5-50 [OUTPATIENT TREATMENT] PROGRAM. An order issued under Article
 5-51 46B.0711, 46B.072, or 46B.073 must place the defendant in the
 5-52 custody of the sheriff for transportation to the facility or
 5-53 [outpatient treatment] program, as applicable, in which the
 5-54 defendant is to receive [treatment for purposes of] competency
 5-55 restoration services.

5-56 SECTION 14. Articles 46B.0755(a), (b), and (d), Code of
 5-57 Criminal Procedure, are amended to read as follows:

5-58 (a) Notwithstanding any other provision of this subchapter,
 5-59 if the court receives credible evidence indicating that the
 5-60 defendant has been restored to competency at any time after the
 5-61 defendant's incompetency trial under Subchapter C but before the
 5-62 defendant is transported under Article 46B.075 to the [a mental
 5-63 health facility, residential care] facility[7] or [outpatient
 5-64 treatment] program, as applicable, the court may appoint
 5-65 disinterested experts to reexamine the defendant in accordance with
 5-66 Subchapter B. The court is not required to appoint the same expert
 5-67 or experts who performed the initial examination of the defendant
 5-68 under that subchapter.

5-69 (b) If after a reexamination of the defendant the applicable

6-1 expert's report states an opinion that the defendant remains
 6-2 incompetent, the court's order under Article 46B.0711, 46B.072, or
 6-3 46B.073 remains in effect, and the defendant shall be transported
 6-4 to the facility or [~~outpatient treatment~~] program as required by
 6-5 Article 46B.075. If after a reexamination of the defendant the
 6-6 applicable expert's report states an opinion that the defendant has
 6-7 been restored to competency, the court shall withdraw its order
 6-8 under Article 46B.0711, 46B.072, or 46B.073 and proceed under
 6-9 Subsection (c) or (d).

6-10 (d) The court shall hold a hearing to determine whether the
 6-11 defendant has been restored to competency if any party fails to
 6-12 agree or if the court fails to concur that the defendant is
 6-13 competent to stand trial. If a court holds a hearing under this
 6-14 subsection, on the request of the counsel for either party or the
 6-15 motion of the court, a jury shall make the competency
 6-16 determination. For purposes of the hearing, incompetency is
 6-17 presumed, and the defendant's competency must be proved by a
 6-18 preponderance of the evidence. If after the hearing the defendant
 6-19 is again found to be incompetent to stand trial, the court shall
 6-20 issue a new order under Article 46B.0711, 46B.072, or 46B.073, as
 6-21 appropriate based on the defendant's current condition.

6-22 SECTION 15. Article 46B.076, Code of Criminal Procedure, is
 6-23 amended to read as follows:

6-24 Art. 46B.076. COURT'S ORDER. (a) If the defendant is
 6-25 found incompetent to stand trial, not later than the date of the
 6-26 order of commitment or of release on bail, as applicable, the court
 6-27 shall send a copy of the order to the applicable facility [~~to which~~
 6-28 ~~the defendant is committed~~] or [~~the outpatient treatment~~
 6-29 ~~to which the defendant is released~~]. The court shall also provide
 6-30 to the facility or [~~outpatient treatment~~] program copies of the
 6-31 following made available to the court during the incompetency
 6-32 trial:

- 6-33 (1) reports of each expert;
- 6-34 (2) psychiatric, psychological, or social work
 6-35 reports that relate to the mental condition of the defendant;
- 6-36 (3) documents provided by the attorney representing
 6-37 the state or the attorney representing the defendant that relate to
 6-38 the defendant's current or past mental condition;
- 6-39 (4) copies of the indictment or information and any
 6-40 supporting documents used to establish probable cause in the case;
- 6-41 (5) the defendant's criminal history record; and
- 6-42 (6) the addresses of the attorney representing the
 6-43 state and the attorney representing the defendant.

6-44 (b) The court shall order that the transcript of all medical
 6-45 testimony received by the jury or court be promptly prepared by the
 6-46 court reporter and forwarded to the applicable [~~proper~~] facility or
 6-47 [~~outpatient treatment~~] program.

6-48 SECTION 16. Article 46B.077, Code of Criminal Procedure, is
 6-49 amended to read as follows:

6-50 Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The
 6-51 facility or jail-based competency restoration program to which the
 6-52 defendant is committed or the outpatient competency restoration
 6-53 [treatment] program to which the defendant is released on bail
 6-54 shall:

- 6-55 (1) develop an individual program of treatment;
- 6-56 (2) assess and evaluate whether the defendant is
 6-57 likely to be restored to competency in the foreseeable future; and
- 6-58 (3) report to the court and to the local mental health
 6-59 authority or to the local intellectual and developmental disability
 6-60 authority on the defendant's progress toward achieving competency.

6-61 (b) If the defendant is committed to an inpatient mental
 6-62 health facility, [~~or to a~~] residential care facility, or jail-based
 6-63 competency restoration program, the facility or program shall
 6-64 report to the court at least once during the commitment period.

6-65 (c) If the defendant is released to an outpatient competency
 6-66 restoration [~~a treatment~~] program [~~not provided by an inpatient~~
 6-67 ~~mental health facility or a residential care facility~~], the
 6-68 [~~treatment~~] program shall report to the court:

- 6-69 (1) not later than the 14th day after the date on which

7-1 the defendant's competency restoration services begin [~~treatment~~
7-2 ~~begins~~]; and

7-3 (2) until the defendant is no longer released to the
7-4 [~~treatment~~] program, at least once during each 30-day period
7-5 following the date of the report required by Subdivision (1).

7-6 SECTION 17. Article 46B.078, Code of Criminal Procedure, is
7-7 amended to read as follows:

7-8 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
7-9 charges pending against a defendant are dismissed, the court that
7-10 issued the order under Article 46B.0711, 46B.072, or 46B.073 shall
7-11 send a copy of the order of dismissal to the sheriff of the county in
7-12 which the court is located and to the head of the facility, the
7-13 provider of the jail-based competency restoration program, or the
7-14 provider of the outpatient competency restoration [~~treatment~~]
7-15 program, as appropriate. On receipt of the copy of the order, the
7-16 facility or [~~outpatient treatment~~] program shall discharge the
7-17 defendant into the care of the sheriff for transportation in the
7-18 manner described by Article 46B.082.

7-19 SECTION 18. Article 46B.079, Code of Criminal Procedure, is
7-20 amended to read as follows:

7-21 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of
7-22 the facility, the provider of the jail-based competency restoration
7-23 program, or the provider of the outpatient competency restoration
7-24 [~~treatment~~] program, as appropriate, not later than the 15th day
7-25 before the date on which the initial restoration period is to expire
7-26 according to the terms of the order or under Article 46B.0095 or
7-27 other applicable provisions of this chapter, shall notify the
7-28 applicable court that the period is about to expire.

7-29 (b) The head of the facility or jail-based competency
7-30 restoration [~~or outpatient treatment~~] program provider shall
7-31 promptly notify the court when the head of the facility or
7-32 [~~outpatient treatment~~] program provider believes that:

7-33 (1) the defendant is clinically ready and can be
7-34 safely transferred to a competency restoration program for
7-35 education services but has not yet attained competency to stand
7-36 trial;

7-37 (2) the defendant has attained competency to stand
7-38 trial; or

7-39 (3) [~~(2)~~] the defendant is not likely to attain
7-40 competency in the foreseeable future.

7-41 (b-1) The outpatient competency restoration program
7-42 provider shall promptly notify the court when the program provider
7-43 believes that:

7-44 (1) the defendant has attained competency to stand
7-45 trial; or

7-46 (2) the defendant is not likely to attain competency
7-47 in the foreseeable future.

7-48 (c) When the head of the facility or [~~outpatient treatment~~]
7-49 program provider gives notice to the court under Subsection (a),
7-50 [~~or~~] (b), or (b-1), the head of the facility or [~~outpatient~~
7-51 ~~treatment~~] program provider also shall file a final report with the
7-52 court stating the reason for the proposed discharge or transfer
7-53 under this chapter and including a list of the types and dosages of
7-54 medications prescribed for the defendant while the defendant was
7-55 receiving competency restoration services in the facility or
7-56 through [~~participating in~~] the [~~outpatient treatment~~] program. The
7-57 [~~To enable any objection to the findings of the report to be made in~~
7-58 ~~a timely manner under Article 46B.084(a-1), the~~] court shall
7-59 provide [~~copies of the report~~] to the attorney representing the
7-60 defendant and the attorney representing the state copies of a
7-61 report based on notice under this article, other than notice under
7-62 Subsection (b)(1), to enable any objection to the findings of the
7-63 report to be made in a timely manner as required under Article
7-64 46B.084(a-1).

7-65 (d) If the head of the facility or [~~outpatient treatment~~]
7-66 program provider notifies the court that the initial restoration
7-67 period is about to expire, the notice may contain a request for an
7-68 extension of the period for an additional period of 60 days and an
7-69 explanation for the basis of the request. An explanation provided

8-1 under this subsection must include a description of any evidence
8-2 indicating a reduction in the severity of the defendant's symptoms
8-3 or impairment.

8-4 SECTION 19. Article 46B.080(a), Code of Criminal Procedure,
8-5 is amended to read as follows:

8-6 (a) On a request of the head of a facility or a [~~treatment~~]
8-7 program provider that is made under Article 46B.079(d) and
8-8 notwithstanding any other provision of this subchapter, the court
8-9 may enter an order extending the initial restoration period for an
8-10 additional period of 60 days.

8-11 SECTION 20. Subchapter D, Chapter 46B, Code of Criminal
8-12 Procedure, is amended by adding Articles 46B.0805 and 46B.0825 to
8-13 read as follows:

8-14 Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES.

8-15 (a) On notification from the head of a facility or a program
8-16 provider under Article 46B.079(b)(1), the court shall order the
8-17 defendant to receive competency restoration education services in a
8-18 jail-based competency restoration program or an outpatient
8-19 competency restoration program, as appropriate and if available.

8-20 (b) If a defendant for whom an order is entered under
8-21 Subsection (a) was committed for competency restoration to a
8-22 facility other than a jail-based competency restoration program,
8-23 the court shall send a copy of that order to:

8-24 (1) the sheriff of the county in which the court is
8-25 located;

8-26 (2) the head of the facility to which the defendant was
8-27 committed for competency restoration; and

8-28 (3) the local mental health authority or local
8-29 intellectual and developmental disability authority, as
8-30 appropriate.

8-31 (c) As soon as practicable but not later than the 10th day
8-32 after the date of receipt of a copy of an order under Subsection
8-33 (b)(2), the applicable facility shall discharge the defendant into
8-34 the care of the sheriff of the county in which the court is located.
8-35 The sheriff shall transport the defendant to the jail-based
8-36 competency restoration program or outpatient competency
8-37 restoration program, as appropriate.

8-38 (d) A jail-based competency restoration program or
8-39 outpatient competency restoration program that receives a
8-40 defendant under this article shall give to the court:

8-41 (1) notice regarding the defendant's entry into the
8-42 program for purposes of receiving competency restoration education
8-43 services; and

8-44 (2) subsequent notice as otherwise required under
8-45 Article 46B.079.

8-46 Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN
8-47 CUSTODY OF SHERIFF. (a) A sheriff having custody of a defendant
8-48 for transportation as required by Article 46B.075, 46B.0805, or
8-49 46B.082 shall, according to information available at the time and
8-50 unless directed otherwise by a physician treating the defendant,
8-51 ensure that the defendant is provided with the types and dosages of
8-52 medication prescribed for the defendant.

8-53 (b) To the extent funds are appropriated for that purpose, a
8-54 sheriff is entitled to reimbursement from the state for providing
8-55 the medication required by Subsection (a).

8-56 (c) If the sheriff determines that funds are not available
8-57 from the state to reimburse the sheriff as provided by Subsection
8-58 (b), the sheriff is not required to comply with Subsection (a).

8-59 SECTION 21. Article 46B.081, Code of Criminal Procedure, is
8-60 amended to read as follows:

8-61 Art. 46B.081. RETURN TO COURT. Subject to Article
8-62 46B.082(b), a defendant committed or released on bail under this
8-63 subchapter shall be returned to the applicable court as soon as
8-64 practicable after notice to the court is provided under Article
8-65 46B.079(a), (b)(2), (b)(3), or (b-1) [46B.079], but not later than
8-66 the date of expiration of the period for restoration specified by
8-67 the court under Article 46B.0711, 46B.072, or 46B.073.

8-68 SECTION 22. The heading to Article 46B.082, Code of
8-69 Criminal Procedure, is amended to read as follows:

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

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

(b) If before the 15th day after the date on which the court received notification under Article 46B.079(a), (b)(2), (b)(3), or (b-1) [46B.079] a defendant committed to a facility or jail-based competency restoration program or ordered to participate in an outpatient competency restoration [~~treatment~~] program has not been transported to the court that issued the order under Article 46B.0711, 46B.072, or 46B.073, as applicable, the head of the facility or provider of the jail-based competency restoration program to which the defendant is committed or the provider of the outpatient competency restoration [~~treatment~~] program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse [~~the Department of State Health Services or~~] the Health and Human [Department of Aging and Disability] Services Commission or program provider, as appropriate, for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

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

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

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

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

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

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

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

(a) This article applies only to a defendant:
(1) who is determined under this chapter to be incompetent to stand trial;
(2) who either:
(A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72

10-1 hours while awaiting transfer to an inpatient mental health
10-2 facility, a residential care facility, a jail-based competency
10-3 restoration program, or an outpatient competency restoration
10-4 [treatment] program;

10-5 (B) is committed to an inpatient mental health
10-6 facility, ~~[or]~~ a residential care facility, or a jail-based
10-7 competency restoration program for the purpose of competency
10-8 restoration;

10-9 (C) is confined in a correctional facility while
10-10 awaiting further criminal proceedings following competency
10-11 restoration ~~[treatment]~~;

10-12 (D) is subject to Article 46B.0711, if the court
10-13 has made the determinations required by Subsection (b) of that
10-14 article; or

10-15 (E) ~~[(D)]~~ is subject to Article 46B.072, if the
10-16 court has made the determinations required by Subsection (a-1) of
10-17 that article;

10-18 (3) for whom a correctional facility or jail-based
10-19 competency restoration program that employs or contracts with a
10-20 licensed psychiatrist, an inpatient mental health facility, a
10-21 residential care facility, or an outpatient competency restoration
10-22 [treatment] program provider has prepared a continuity of care plan
10-23 that requires the defendant to take psychoactive medications; and

10-24 (4) who, after a hearing held under Section 574.106 or
10-25 592.156, Health and Safety Code, if applicable, has been found to
10-26 not meet the criteria prescribed by Sections 574.106(a) and (a-1)
10-27 or 592.156(a) and (b), Health and Safety Code, for court-ordered
10-28 administration of psychoactive medications.

10-29 (b) If a defendant described by Subsection (a) refuses to
10-30 take psychoactive medications as required by the defendant's
10-31 continuity of care plan, the director of the ~~[correctional]~~
10-32 facility or the [outpatient treatment] program provider, as
10-33 applicable, shall notify the court in which the criminal
10-34 proceedings are pending of that fact not later than the end of the
10-35 next business day following the refusal. The court shall promptly
10-36 notify the attorney representing the state and the attorney
10-37 representing the defendant of the defendant's refusal. The
10-38 attorney representing the state may file a written motion to compel
10-39 medication. The motion to compel medication must be filed not later
10-40 than the 15th day after the date a judge issues an order stating
10-41 that the defendant does not meet the criteria for court-ordered
10-42 administration of psychoactive medications under Section 574.106
10-43 or 592.156, Health and Safety Code, except that, for a defendant in
10-44 an outpatient competency restoration [treatment] program, the
10-45 motion may be filed at any time.

10-46 (c) The court, after notice and after a hearing held not
10-47 later than the 10th day after the motion to compel medication is
10-48 filed, may authorize the director of the ~~[correctional]~~ facility or
10-49 the program provider, as applicable, to have the medication
10-50 administered to the defendant, by reasonable force if necessary. A
10-51 hearing under this subsection may be conducted using an electronic
10-52 broadcast system as provided by Article 46B.013.

10-53 (d) The court may issue an order under this article only if
10-54 the order is supported by the testimony of two physicians, one of
10-55 whom is the physician at or with the applicable ~~[correctional]~~
10-56 facility or ~~[outpatient treatment]~~ program who is prescribing the
10-57 medication as a component of the defendant's continuity of care
10-58 plan and another who is not otherwise involved in proceedings
10-59 against the defendant. The court may require either or both
10-60 physicians to examine the defendant and report on the examination
10-61 to the court.

10-62 SECTION 27. Subchapter D, Chapter 46B, Code of Criminal
10-63 Procedure, is amended by adding Article 46B.091 to read as follows:

10-64 Art. 46B.091. JAIL-BASED COMPETENCY RESTORATION PROGRAM
10-65 IMPLEMENTED BY COUNTY. (a) In this article:

10-66 (1) "Commission" means the Health and Human Services
10-67 Commission.

10-68 (2) "Executive commissioner" means the executive
10-69 commissioner of the Health and Human Services Commission.

11-1 (b) A county or counties jointly may develop and implement a
 11-2 jail-based competency restoration program.

11-3 (c) A county that implements a program under this article
 11-4 shall contract with a provider of jail-based competency restoration
 11-5 services that is a local mental health authority or local
 11-6 behavioral health authority that is in good standing with the
 11-7 commission, which may include an authority that is in good standing
 11-8 with the commission and subcontracts with a provider of jail-based
 11-9 competency restoration services.

11-10 (d) A jail-based competency restoration program must:

11-11 (1) provide jail-based competency restoration
 11-12 services through the use of a multidisciplinary treatment team that
 11-13 is:

11-14 (A) directed toward the specific objective of
 11-15 restoring the defendant's competency to stand trial; and

11-16 (B) similar to other competency restoration
 11-17 programs;

11-18 (2) employ or contract for the services of at least one
 11-19 psychiatrist;

11-20 (3) provide jail-based competency restoration
 11-21 services through licensed or qualified mental health
 11-22 professionals;

11-23 (4) provide weekly competency restoration hours
 11-24 commensurate to the hours provided as part of a competency
 11-25 restoration program at an inpatient mental health facility;

11-26 (5) operate in the jail in a designated space that is
 11-27 separate from the space used for the general population of the jail;

11-28 (6) ensure coordination of general health care;

11-29 (7) provide mental health treatment and substance use
 11-30 disorder treatment to defendants, as necessary, for competency
 11-31 restoration; and

11-32 (8) supply clinically appropriate psychoactive
 11-33 medications for purposes of administering court-ordered medication
 11-34 to defendants as applicable and in accordance with Article 46B.086
 11-35 of this code or Section 574.106, Health and Safety Code.

11-36 (e) The executive commissioner shall adopt rules as
 11-37 necessary for a county to develop and implement a program under this
 11-38 article. The commission shall, as part of the rulemaking process,
 11-39 establish contract monitoring and oversight requirements for a
 11-40 local mental health authority or local behavioral health authority
 11-41 that contracts with a county to provide jail-based competency
 11-42 restoration services under this article. The contract monitoring
 11-43 and oversight requirements must be consistent with local mental
 11-44 health authority or local behavioral health authority performance
 11-45 contract monitoring and oversight requirements, as applicable.

11-46 (f) The commission may inspect on behalf of the state any
 11-47 aspect of a program implemented under this article.

11-48 (g) A psychiatrist or psychologist for the provider shall
 11-49 conduct at least two full psychiatric or psychological evaluations
 11-50 of the defendant during the period the defendant receives
 11-51 competency restoration services in the jail. The psychiatrist or
 11-52 psychologist must conduct one evaluation not later than the 21st
 11-53 day and one evaluation not later than the 55th day after the date
 11-54 the defendant is committed to the program. The psychiatrist or
 11-55 psychologist shall submit to the court a report concerning each
 11-56 evaluation required under this subsection.

11-57 (h) If at any time during a defendant's commitment to a
 11-58 program implemented under this article the psychiatrist or
 11-59 psychologist for the provider determines that the defendant has
 11-60 attained competency to stand trial:

11-61 (1) the psychiatrist or psychologist for the provider
 11-62 shall promptly issue and send to the court a report demonstrating
 11-63 that fact; and

11-64 (2) the court shall consider that report as the report
 11-65 of an expert stating an opinion that the defendant has been restored
 11-66 to competency for purposes of Article 46B.0755(a) or (b).

11-67 (i) If at any time during a defendant's commitment to a
 11-68 program implemented under this article the psychiatrist or
 11-69 psychologist for the provider determines that the defendant's

12-1 competency to stand trial is unlikely to be restored in the
 12-2 foreseeable future:

12-3 (1) the psychiatrist or psychologist for the provider
 12-4 shall promptly issue and send to the court a report demonstrating
 12-5 that fact; and

12-6 (2) the court shall:

12-7 (A) proceed under Subchapter E or F and order the
 12-8 transfer of the defendant, without unnecessary delay, to the first
 12-9 available facility that is appropriate for that defendant, as
 12-10 provided under Subchapter E or F, as applicable; or

12-11 (B) release the defendant on bail as permitted
 12-12 under Chapter 17.

12-13 (j) If the psychiatrist or psychologist for the provider
 12-14 determines that a defendant committed to a program implemented
 12-15 under this article has not been restored to competency by the end of
 12-16 the 60th day after the date the defendant was committed to the
 12-17 program:

12-18 (1) for a defendant charged with a felony, the
 12-19 defendant shall be transferred, without unnecessary delay and for
 12-20 the remainder of the period prescribed by Article 46B.073(b), to
 12-21 the first available facility that is appropriate for that defendant
 12-22 as provided by Article 46B.073(c) or (d); and

12-23 (2) for a defendant charged with a misdemeanor, the
 12-24 court may:

12-25 (A) order a single extension under Article
 12-26 46B.080 and, notwithstanding Articles 46B.073(e) and (f), the
 12-27 transfer of the defendant without unnecessary delay to the
 12-28 appropriate mental health facility or residential care facility as
 12-29 provided by Article 46B.073(d) for the remainder of the period
 12-30 under the extension;

12-31 (B) proceed under Subchapter E or F;

12-32 (C) release the defendant on bail as permitted
 12-33 under Chapter 17; or

12-34 (D) dismiss the charges in accordance with
 12-35 Article 46B.010.

12-36 (k) Unless otherwise provided by this article, the
 12-37 provisions of this chapter, including the maximum periods
 12-38 prescribed by Article 46B.0095, apply to a defendant receiving
 12-39 competency restoration services, including competency restoration
 12-40 education services, under a program implemented under this article
 12-41 in the same manner as those provisions apply to any other defendant
 12-42 who is subject to proceedings under this chapter.

12-43 (l) This article does not affect the responsibility of a
 12-44 county to ensure the safety of a defendant who is committed to the
 12-45 program and to provide the same adequate care to the defendant as is
 12-46 provided to other inmates of the jail in which the defendant is
 12-47 located.

12-48 SECTION 28. Section 574.034(g), Health and Safety Code, is
 12-49 amended to read as follows:

12-50 (g) An order for temporary inpatient or outpatient mental
 12-51 health services shall state that treatment is authorized for not
 12-52 longer than 45 [90] days, except that the order may specify a period
 12-53 not to exceed 90 days if the judge finds that the longer period is
 12-54 necessary. [The order may not specify a shorter period.]

12-55 SECTION 29. Section 614.0032(b), Health and Safety Code, is
 12-56 amended to read as follows:

12-57 (b) The office shall[+
 12-58 ~~(1) with the special assistance of committee members~~
 12-59 ~~appointed under Section 614.002(b)(1):~~
 12-60 ~~[(A) review examinations to determine the~~
 12-61 ~~competency of defendants in criminal cases to stand trial and~~
 12-62 ~~examinations to determine the fitness of children to proceed with~~
 12-63 ~~respect to adjudications of delinquent conduct or conduct~~
 12-64 ~~indicating a need for supervision; and~~
 12-65 ~~[(B) periodically report to the legislature and~~
 12-66 ~~the court of criminal appeals findings made as a result of the~~
 12-67 ~~review described by Paragraph (A); and~~
 12-68 ~~[(2)] approve and make generally available in~~
 12-69 electronic format a standard form for use by experts in reporting

13-1 competency examination results under Chapter 46B, Code of Criminal
13-2 Procedure.

13-3 SECTION 30. The following provisions are repealed:
13-4 (1) Article 46B.026(c), Code of Criminal Procedure;
13-5 (2) Article 46B.090(o), Code of Criminal Procedure;

13-6 and
13-7 (3) Section 614.0032(c), Health and Safety Code.

13-8 SECTION 31. Not later than November 1, 2017, the executive
13-9 commissioner of the Health and Human Services Commission shall
13-10 adopt the rules described by Article 46B.091(e), Code of Criminal
13-11 Procedure, as added by this Act.

13-12 SECTION 32. (a) Except as provided by Subsection (b) of
13-13 this section, the changes in law made by this Act apply only to a
13-14 defendant charged with an offense committed on or after the
13-15 effective date of this Act. A defendant charged with an offense
13-16 committed before the effective date of this Act is governed by the
13-17 law in effect on the date the offense was committed, and the former
13-18 law is continued in effect for that purpose. For purposes of this
13-19 subsection, an offense was committed before the effective date of
13-20 this Act if any element of the offense occurred before that date.

13-21 (b) The change in law made by this Act to Section
13-22 574.034(g), Health and Safety Code, applies only to an order for
13-23 court-ordered temporary mental health services that is issued on or
13-24 after the effective date of this Act. An order issued before the
13-25 effective date of this Act is governed by the law in effect on the
13-26 date the order was issued, and the former law is continued in effect
13-27 for that purpose.

13-28 SECTION 33. This Act takes effect September 1, 2017.

13-29 * * * * *