

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 22, 2017**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **SB1326** by Zaffirini (Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend sections of the Code of Criminal Procedure and Health and Safety Code to address the screening and assessment of defendants for mental health and competency. The bill would require a magistrate to undertake certain proceedings for early identification and evaluation if the magistrate receives written or electronic notice that a defendant may have a mental illness or intellectual disability. The bill would establish procedures for the early identification of defendants suspected of having mental illness or intellectual disability.

The bill would require a sheriff or other person having custody of the person for a Class B or higher offense to transmit a written or electronic notice of information in their possession that indicates a person in custody has a mental illness or an intellectual disability to a magistrate within 12 hours of its receipt.

The bill would require that a written mental health assessment ordered by a judge be provided to the magistrate within 96 hours if the defendant is held in custody or within 30 days if the defendant has been released from custody after the assessment was ordered by the magistrate. If a defendant failed or refused to submit to the assessment as ordered, the defendant could be ordered to submit to an examination in a jail or another appropriate place for a reasonable period not to exceed 72 hours. The written assessment would be required to be provided to the magistrate on a form promulgated and approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

The bill would authorize the magistrate to require the submission of a defendant to a mental health examination or other assessment as a condition of release from custody. The bill would authorize the assessment to be used to refer the defendant to an appropriate specialty court. The magistrate would be required to report the number of mental health assessments to the Office of Court Administration. The bill clarifies that a magistrate must release from custody, notwithstanding a locally-adopted bond schedule or other standing order, individuals not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability when appropriate treatment is available in the community, and the release of the defendant would ensure the defendant's appearance in court and the safety of the community and the victim of the alleged defense.

The bill would authorize the court to commit an incompetent defendant charged with a Class B misdemeanor to a jail-based competency restoration program or to a mental health facility or residential care facility. If the court determines that an incompetent defendant charged with a Class B misdemeanor is not a danger to others and may be safely treated on an outpatient basis, the bill would require the court to order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days. If a defendant charged with a Class B misdemeanor completed an outpatient treatment program, the court would be required to dismiss the case if the prosecutor made that motion or to proceed with the case. If the defendant did not complete the program, the defendant could be committed to a jail-based competency program or the court would dismiss the case on the motion of the prosecutor.

The bill would require the sheriff or sheriff's deputy person having custody of the defendant for certain types of transportation to ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant until otherwise directed by a physician treating the defendant, and if state funding is available for the purpose of reimbursing the expenses of the sheriff.

The bill would require the Executive Commissioner of HHSC to adopt necessary rules for a county to develop and implement a jail-based competency restoration program, including contract monitoring and oversight authority for a local mental health authority or behavioral health authority that contracts with a county to provide competency restoration services. The bill would authorize HHSC to inspect any aspect of a county jail-based competency restoration program. The bill would also require HHSC to submit a report regarding information collected during the program and an evaluation of outcomes no later than December 1, 2018, if the agency develop and implements a jail-based restoration of competency pilot program. The bill would take effect on September 1, 2017.

Based on the LBB's analysis of the Health and Human Services Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. The Office of Court Administration and the Department of Criminal Justice indicate that any costs associated with the bill could be absorbed within existing resources.

### **Local Government Impact**

According to the Office of Court Administration, the fiscal impact to local courts is not anticipated to be significant.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 696 Department of Criminal Justice, 537 State Health Services, Department of

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