

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 17, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

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.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1326, Committee Report 1st House, Substituted: a negative impact of (\$41,283,448) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$20,403,723)
2019	(\$20,879,725)
2020	(\$20,879,725)
2021	(\$20,879,725)
2022	(\$20,789,725)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund	Change in Number of State Employees from FY 2017
	1	
2018	(\$20,403,723)	2.0
2019	(\$20,879,725)	2.0
2020	(\$20,879,725)	2.0
2021	(\$20,879,725)	2.0
2022	(\$20,789,725)	2.0

Fiscal Analysis

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 mental retardation.

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 offense.

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 permit the head of a mental health facility, jail-based competency restoration program, or outpatient program to notify the court when the head of the facility or program believes that the defendant is clinically ready to be transferred to a competency restoration program for education services. Upon this notification, the defendant would be transferred to a jail-based competency restoration program or outpatient competency restoration education program for the remainder of the competency restoration period. The bill would require the sheriff or other person having custody of the defendant 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 a court to give preference to any criminal action

against a defendant restored to competency through an outpatient, inpatient, or jail-based treatment program.

The bill would authorize the Health and Human Services Commission (HHSC) to develop and implement a jail-based restoration of competency program in any county upon agreement with a county seeking to participate in the program. The bill would outline the standards for such programs, and would require the HHSC to promulgate any rules necessary to implement the program. The bill would also require HHSC to adopt rules as necessary for a county to independently develop and implement a jail-based competency restoration program.

The bill would take effect on September 1, 2017, only if a specific appropriation for the implementation of the provisions of the bill is provided in the General Appropriations Act of the 85th Legislature.

Methodology

Under the provisions of the bill, HHSC would be authorized to coordinate with counties to establish a jail-based competency restoration programs. This analysis assumes that HHSC would establish a program consisting of 10 beds in each of the 10 counties with the highest level of need at a rate of \$478 per day and that a 25 percent increase in demand for outpatient competency restoration services would occur at the Local Mental Health Authorities. The cost associated with establishing a jail-based competency restoration program and serving additional individuals in outpatient competency restoration services is estimated to be \$20,403,723 in fiscal year 2018 and \$20,879,725 in each subsequent fiscal year. This cost includes assumptions that the provisions would require two additional full-time equivalent (FTE) positions, a Nurse V and a Program Specialist VI. The estimated costs of the two additional FTEs, including salary, technology costs, and other operating expenses would be \$146,913 with associated benefits of \$53,800 (or \$200,713) each fiscal year.

This analysis assumes that the provisions of the bill would allow the state hospitals to provide more timely services to individuals currently on the forensic waiting list, but that the demand for services would continue to exceed total capacity. To the extent that jail-based competency restoration programs established under the provisions of the bill would decrease the demand for services at the state hospitals below total capacity, there could be a savings of approximately \$477 per bed per day at the state hospitals based on FY 16 actual daily costs per bed.

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According to the Office of Court Administration, duties and responsibilities associated with implementing the remaining provisions of the bill could be accomplished by utilizing existing resources.

Technology

The technology cost would be \$24,298 in fiscal year 2018 and \$20,216 each subsequent fiscal year.

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

LBB Staff: UP, KJo, EP, MDI, MW, GDz