

BILL ANALYSIS

Senate Research Center

S.B. 49
By: Zaffirini
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When there is reasonable cause to believe that a person in custody has a mental health condition or an intellectual or developmental disability (IDD), current law requires an assessment to be performed. Although a written report regarding the assessment is required to be provided to the defendant's lawyer, the prosecutor, and the trial court, it is not given to the officials, such as sheriffs and personal bond officers, who are responsible for the person in custody. Information regarding such persons' mental health or IDD could be vital to those officials' ability to safely hold or effectively supervise them.

S.B. 49 would ensure that officials responsible, including sheriffs and personal bond officers, for the incarcerated persons in their custody, or for their supervision if they are out on bail, have access to information regarding a mental health condition or intellectual or developmental disability defendants might have. This would ensure that such persons are treated appropriately given their condition and provided with an adequate amount of supervision.

(Original Author's/Sponsor's Statement of Intent)

S.B. 49 amends current law relating to procedures regarding defendants who are or may be persons with mental illness or intellectual disability.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of the Department of State Health Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 6 (Article 46B.090, Code of Criminal Procedure) of this bill.

Rulemaking authority previously granted to the Texas Commission on Jail Standards is modified in SECTION 10 (Section 511.009, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 16.22(a)(2), Code of Criminal Procedure, to provide that the magistrate is not required to order the interview and collection of other information under Subdivision (1) (relating to certain provisions and requirements regarding the early identification of a defendant suspected of having a mental illness or intellectual disability) under certain circumstances, including if the defendant is no longer in custody.

SECTION 2. Amends Article 16.22, Code of Criminal Procedure, by amending Subsection (b-1) and adding Subsection (b-2), as follows:

(b-1) Requires the magistrate to provide copies of the written report regarding a defendant suspected of having a mental illness or an intellectual disability to certain interested parties, including to the sheriff or other person responsible for the defendant's medical records while such a defendant is confined in county jail and, as applicable, to any personal bond office established under Article 17.42 (Personal Bond Office) for the county in which the defendant is being confined or the director of the office or department that is responsible for supervising the defendant while the defendant is

released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail. Makes nonsubstantive changes.

(b-2) Creates this subsection from existing text and makes no further changes.

SECTION 3. Amends Article 17.04, Code of Criminal Procedure, as follows:

Art. 17.04. REQUISITES OF A PERSONAL BOND. (a) Creates this subsection from existing text. Requires that a personal bond, in addition, contain:

(1) and (2) makes no changes to these subdivisions; and

(3) except as provided by Subsection (b), a certain oath sworn and signed by the defendant.

(b) Provides that a personal bond is not required to contain the oath described by Subsection (a)(3) if:

(1) the magistrate makes a determination under Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability) that the defendant has a mental illness or is a person with an intellectual disability, including by using the results of a previous determination under that article;

(2) the defendant is released on personal bond under Article 17.032 (Release on Personal Bond of Certain Defendants With Mental Illness or Intellectual Disability); or

(3) the defendant is found incompetent to stand trial in accordance with Chapter 46B (Incompetency to Stand Trial).

SECTION 4. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.0735, as follows:

Art. 46B.0735. DATE COMPETENCY RESTORATION PERIOD BEGINS. Provides that the initial restoration period for a defendant under Article 46B.0711 (Release on Bail for Class B Misdemeanor), 46B.072 (Release on Bail for Felony or Class A Misdemeanor), or 46B.073 (Commitment for Restoration to Competency) begins on the later of:

(1) the date the defendant is:

(A) ordered to participate in an outpatient competency restoration program; or

(B) committed to a mental health facility, residential care facility, or jail-based competency restoration program; or

(2) the date competency restoration services actually begin.

SECTION 5. Amends Article 46B.080, Code of Criminal Procedure, by adding Subsection (d), as follows:

(d) Provides that an extension under Article 46B.080 (Extension of Order) begins on the later of:

(1) the date the court enters the order under Subsection (a) (relating to authorizing the court, on request of the head of a facility or a program provider, to enter an order extending the initial restoration period for an additional period of 60 days); or

(2) the date competency restoration services actually begin pursuant to the order entered under Subsection (a).

SECTION 6. Amends Article 46B.090, Code of Criminal Procedure, by amending Subsections (a-1), (b), (c), (f), (g), (i), (j), (k), (l), (m), and (n) and adding Subsections (f-1), (l-1), (l-2), and (o), as follows:

(a-1) Requires the Health and Human Services Commission (HHSC), rather than the Department of State Health Services (DSHS), if the legislature appropriates the funding necessary to operate a jail-based restoration of competency pilot program as described by Article 46B.090 (Jail-Based Restoration of Competency Pilot Program), to develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. Makes conforming changes.

(b) Makes conforming changes to this subsection.

(c) Requires the executive commissioner of HHSC to adopt rules as necessary to implement the pilot program. Deletes existing text requiring the commissioner of DSHS (commissioner), not later than November 1, 2013, to adopt rules as necessary to implement the pilot program. Deletes existing text requiring the commissioner, in adopting rules under Article 46B.090, to specify the types of information DSHS is required to collect during the operation of the pilot program for use in evaluating the outcome of the pilot program.

(f) Requires a provider of jail-based competency restoration services, to contract with HHSC under Subsection (b), to:

(1) be a local mental health authority or local behavioral health authority that is in good standing with HHSC, which may include an authority that is in good standing with HHSC and subcontracts with a provider of jail-based competency restoration services;

(2) contract with a county or counties to develop and implement a jail-based competency restoration program.

Deletes existing text requiring a provider of jail-based competency restoration services, to contract with DSHS under Subsection (b), to demonstrate to DSHS that the provider has previously provided jail-based competency restoration services for one or more years and is a local mental health authority that has previously provided competency restoration services.

(f-1) Creates this subsection from existing text. Requires that the provider's jail-based competency restoration program:

(1) through the use of a multidisciplinary treatment team, provide jail-based competency restoration services that are:

(A) directed toward the specific objective of restoring the defendant's competency to stand trial, rather than uses a multidisciplinary treatment team to provide clinical treatment that is directed toward the specific objective of restoring the defendant's competency to stand trial; and

(B) similar to other competency restoration programs;

(2) employ or contract for the services of at least one psychiatrist;

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

- (4) provide weekly competency restoration hours commensurate to the hours provided as part of other competency restoration programs;
- (5) operate in the jail in a designated space that is separate from the space used for the general population of the jail;
- (6) ensure coordination of general health care;
- (7) provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and
- (8) supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article 46B.086 (Court-Ordered Medications) of this code or Section 574.106 (Hearing and Order Authorizing Psychoactive Medication), Health and Safety Code.

Deletes existing text requiring a provider of jail-based competency restoration services, to contract with DSHS under Subsection (b), to demonstrate to DSHS that the provider's jail-based competency restoration program uses a multidisciplinary treatment team to provide clinical treatment that is similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility and provides weekly treatment hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility; that the provider is certified by a nationwide nonprofit organization that accredits health care organizations and programs, such as the Joint Commission on Health Care Staffing Services, or the provider is a local mental health authority in good standing with DSHS; and that the provider has a demonstrated history of successful jail-based competency restoration outcomes or, if the provider is a local mental health authority, a demonstrated history of successful competency restoration outcomes. Makes nonsubstantive changes.

(g) Makes a conforming change to this subsection.

(i) Requires a psychiatrist or psychologist for the provider who has the qualifications described by Article 46B.022 (Experts: Qualifications) to evaluate the defendant's competency and report to the court as required by Article 46B.079 (Notice and Report to Court).

Deletes existing text requiring the psychiatrist for the provider to conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. Deletes existing text requiring the psychiatrist to conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the pilot program. Deletes existing text requiring the psychiatrist to submit to the court a report concerning each evaluation required under this subsection.

(j) and (k) Makes conforming changes to these subsections.

(l) Requires the jail-based competency restoration program, if the psychiatrist or psychologist for the provider determines that a defendant ordered to participate in the pilot program has not been restored to competency by the end of the 60th day after the date the defendant began receiving services in the pilot program, to continue to provide competency restoration services to the defendant for the period authorized by Subchapter D (Procedures After Determination of Incompetency), including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

- (1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or

(2) for a defendant charged with a felony or a misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 days are remaining under the extension order.

Makes a conforming change.

(1-1) Creates this subsection from existing text. Requires the defendant, after receipt of a notice under Subsection (1), to be transferred without unnecessary delay to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by Subchapter D, including any extension ordered under Article 46B.080 if an extension has not previously been ordered under that article. Requires the defendant, if the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by Subchapter D to be returned to the court for further proceedings. Authorizes the court, for a defendant charged with a misdemeanor, to:

(1) proceed under Subchapter E (Civil Commitment: Charges Pending) or F (Civil Commitment: Charges Dismissed);

(2) release the defendant on bail as permitted under Chapter 17 (Bail); or

(3) dismiss the charges in accordance with Article 46B.010 (Mandatory Dismissal of Misdemeanor Charges).

Deletes existing text providing that if the psychiatrist for the provider determines that a defendant ordered to participate in the pilot program has not been restored to competency by the end of the 60th day after the defendant began receiving services, for a defendant charged with a felony, the defendant is required to be transferred, without unnecessary delay and for the remainder of a certain period of time, to the first available facility that is appropriate for that defendant as authorized by certain articles and for a defendant charged with a misdemeanor, the court is authorized, to order a single extension under Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by a certain article for the remainder of the period under the extension. Makes nonsubstantive changes.

(1-2) Provides that the court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

(1) the court determines that the defendant 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

(2) the other requirements of Subchapter D relating to an order for outpatient competency restoration services are met.

(m) Provides that, unless otherwise provided by Article 46B.090, the provisions of Chapter 46B, including the maximum periods prescribed by Article 46B.0095 (Maximum Period of Commitment or Program Participation Determined by Maximum Term for Offense), apply to a defendant receiving competency restoration services, including competency restoration education services, under the pilot program in the same manner as those provisions apply to any other defendant who is subject to proceedings under Chapter 46B.

(n) Requires the executive commissioner, if HHSC develops and implements a jail-based restoration of competency pilot program under Article 46B.090, not later than December 1, 2021, to submit a report concerning the pilot program to the presiding officers of the

standing committees of the Texas Senate and the Texas House of Representatives having primary jurisdiction over health and human services issues and over criminal justice issues. Makes conforming changes.

(o) Provides that Article 46B.090 expires September 1, 2022. Provides that, after the expiration of Article 46B.090, a pilot program established under Article 46B.090 is authorized to continue to operate subject to the requirements of Article 46B.091 (Jail-Based Competency Restoration Program Implemented by County).

SECTION 7. Amends Article 46B.091, Code of Criminal Procedure, by amending Subsections (g) and (j) and adding Subsections (j-1) and (m), as follows:

(g) Requires a psychiatrist or psychologist for the provider who has the qualifications described by Article 46B.022 to evaluate the defendant's competency and report to the court as required by Article 46B.079. Deletes existing text requiring a psychiatrist or psychologist to conduct at least two full psychiatric or psychological evaluations of the defendant during the period the defendant receives competency restoration services in the jail. Deletes existing text relating to when the evaluations are required to be conducted and requiring that a certain report be submitted to the court.

(j) Requires a jail-based competency restoration program implemented by a county, if the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under Article 46B.091 has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the program, to continue to provide competency restoration services to the defendant for the period authorized by Subchapter D, including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

- (1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or
- (2) for a defendant charged with a felony or a misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 days are remaining under the extension order.

(j-1) Creates this subsection from existing text. Requires the defendant, after receipt of a notice under Subsection (j), to be transferred without unnecessary delay to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by Subchapter D, including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. Requires the defendant, if the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by Subchapter D, to be returned to the court for further proceedings. Authorizes the court, for a defendant charged with a misdemeanor, to:

- (1) proceed under Subchapter E or F;
- (2) release the defendant on bail as permitted under Chapter 17; or
- (3) dismiss the charges in accordance with Article 46B.010.

Deletes existing text requiring a defendant charged with a felony to be transferred, without unnecessary delay and for the remainder of the period prescribed by Article 46B.073(b) (relating to requiring the court, for purposes of further examination and competency restoration services with the specific objective of the defendant attaining competency to stand trial, to commit a defendant to a mental health facility, residential care facility, or jail-based competency restoration program for an applicable period), to

the first available facility that is appropriate for that defendant as provided by certain articles and for a defendant charged with a misdemeanor, authorizing the court to order a single extension under Article 46B.080 and, notwithstanding Articles 46B.073(e) (relating to authorizing a defendant charged with an offense punishable as a Class B misdemeanor to be committed only to a jail-based competency restoration program) and (f) (relating to authorizing a defendant charged with an offense punishable as a Class B misdemeanor to be committed to a mental health facility or residential care facility only if a jail-based competency restoration program is not available or a licensed or qualified mental health professional determines that a jail-based competency restoration program is not appropriate), the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by a certain article for the remainder of the period under the extension.

(m) Provides that the court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

(1) the court determines that the defendant 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

(2) the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

SECTION 8. Amends Subchapter E, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.1055, as follows:

Art. 46B.1055. MODIFICATION OF ORDER FOLLOWING INPATIENT CIVIL COMMITMENT PLACEMENT. (a) Provides that this article applies to a defendant who has been transferred under Article 46B.105 (Transfer Following Civil Commitment Placement) from a maximum security unit to any facility other than a maximum security unit.

(b) Authorizes the defendant, the head of the facility to which the defendant is committed, or the attorney representing the state to request that the court modify an order for inpatient treatment or residential care to order the defendant to participate in an outpatient treatment program.

(c) Requires the court, if the head of the facility to which the defendant is committed makes a request under Subsection (b), not later than the 14th day after the date of the request to hold a hearing to determine whether the court should modify the order for inpatient treatment or residential care, in accordance with Subtitle C (Texas Mental Health Code), Title 7 (Mental Health and Intellectual Disability), Health and Safety Code.

(d) Requires the court, if the defendant or the attorney representing the state makes a request under Subsection (b), not later than the 14th day after the date of the request, to grant the request, deny the request, or hold a hearing on the request to determine whether the court should modify the order for inpatient treatment or residential care. Provides that a court is not required to hold a hearing under this subsection unless the request and any supporting materials provided to the court provide a basis for believing modification of the order may be appropriate.

(e) Requires the court, on receipt of a request to modify an order under Subsection (b), to require the local mental health authority or local behavioral health authority to submit to the court, before any hearing is held under this article, a statement regarding whether treatment and supervision for the defendant can be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services are available to the defendant.

(f) Requires the head of the facility, if the head of the facility to which the defendant is committed believes that the defendant is a person with mental illness who meets the criteria for court-ordered outpatient mental health services under Subtitle C, Title 7, Health and Safety Code, to submit to the court before the hearing a certificate of medical examination for mental illness stating that the defendant meets the criteria for court-ordered outpatient mental health services.

(g) Provides that if a request under Subsection (b) is made by a defendant before the 91st day after the date the court makes a determination on a previous request under that subsection, the court is not required to act on the request until the earlier of:

(1) the expiration of the current order for inpatient treatment or residential care; or

(2) the 91st day after the date of the court's previous determination.

(h) Provides that the proceedings for commitment of the defendant to a court-ordered outpatient treatment program are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with Chapter 46B, except that the criminal court is required to conduct the proceedings regardless of whether the criminal court is also the county court.

(i) Requires the court to rule on a request made under Subsection (b) as soon as practicable after a hearing on the request, but not later than the 14th day after the date of the request.

(j) Prohibits an outpatient treatment program from refusing to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

SECTION 9. Amends Article 46C.102(a), Code of Criminal Procedure, as follows:

(a) Authorizes the court to appoint qualified psychiatrists or psychologists as experts under Chapter 46C (Insanity Defense). Requires a psychiatrist or psychologist, to qualify for appointment under Subchapter C (Court-Ordered Examination and Report) as an expert, to:

(1) makes no changes to this subdivision; and

(2) have the following certification or training, rather than the following certification or experience or training:

(A) makes no changes to this paragraph; or

(B) training, rather than experience or training, consisting of:

(i) makes a nonsubstantive change to this subparagraph; and

(ii) at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment, rather than eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court.

Deletes existing text requiring a psychiatrist or psychologist to have at least five years of experience in performing criminal forensic evaluations for courts to qualify for appointment under Subchapter C as an expert. Makes nonsubstantive changes.

SECTION 10. Amends Section 511.009(d), Government Code, to require that the rules and procedures adopted by the Texas Commission on Jail Standards (TCJS) regarding the continuity of prescription medications for prisoners require that a prisoner with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determines is necessary for the care, treatment, or stabilization of the prisoner. Makes nonsubstantive changes.

SECTION 11. Repealers: Articles 46B.090(a) (relating to the definition of "department") and (h) (relating to requiring the designated provider to enter into a certain contract relating to the jail-based restoration of competency pilot program with the participating county or counties), Code of Criminal Procedure; and

Repealer: Article 46B.091(a) (relating to the definitions of "commission" and "executive commissioner"), Code of Criminal Procedure.

SECTION 12. Makes application of Article 16.22, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 13. Makes application of Article 17.04, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 14. Provides that the change in law made by this Act to Article 46C.102(a), Code of Criminal Procedure, applies to a defendant against whom proceedings are initiated under Chapter 46C, Code of Criminal Procedure, before, on, or after the effective date of this Act.

SECTION 15. Requires TCJS, not later than December 1, 2021, to adopt the rules and procedures required by Section 511.009(d), Government Code, as amended by this Act.

SECTION 16. Effective date: September 1, 2021.