

## **BILL ANALYSIS**

C.S.S.B. 49  
By: Zaffirini  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 2019, the Texas Supreme Court's Commission on Mental Health established a task force composed of judicial stakeholders and mental health providers intersecting with the courts to study and make recommendations to improve or refine laws and rules relating to mental health and intellectual and developmental disabilities. C.S.S.B. 49 makes these improvements, including revisions to criminal trial and sentencing procedures, competency restoration programs, and outpatient treatment programs for civilly committed individuals.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Commission on Jail Standards in SECTION 13 of this bill.

### **ANALYSIS**

Certain recently enacted legislation provides for a phased transition of the health and human services system, including the abolishment and consolidation of various state agencies and entities. To the extent practicable, this bill analysis is written to accurately reflect rulemaking authority within the health and human services system, which Section 531.0055, Government Code, expressly grants to the executive commissioner of the Health and Human Services Commission, and to update outdated references as necessary to reflect an agency's or entity's current authority with respect to a particular health and human services program or function.

C.S.S.B. 49 makes revisions to criminal trial and sentencing procedures relating to defendants who may have a mental illness or be a person with an intellectual disability, makes revisions to competency restoration programs, and sets out provisions relating to outpatient treatment program participation for civilly committed individuals.

#### **Criminal Trial and Sentencing Procedures for Certain Defendants**

C.S.S.B. 49 amends the Code of Criminal Procedure to establish that a magistrate is not required to order an applicable service provider to interview and collect information on a defendant suspected of having a mental illness or an intellectual disability if that defendant is no longer in custody. The bill requires a magistrate to submit a written report of any interview ordered for an applicable defendant suspected of having a mental illness or an intellectual disability to the following persons:

- the sheriff or other person responsible for the defendant's medical records while the defendant is confined in county jail;

- any personal bond office for the county in which the defendant is being confined, as applicable; and
- 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, as applicable.

C.S.S.B. 49 excepts a personal bond for a defendant from the requirement to contain an oath sworn and signed by the defendant if:

- the magistrate makes a determination that the defendant has a mental illness or is a person with an intellectual disability, including by using the results of a previous determination;
- the defendant is released on personal bond in relation to a conclusion by an applicable expert that the defendant has a mental illness or is a person with an intellectual disability; or
- the defendant is found incompetent to stand trial.

C.S.S.B. 49 requires a justice or judge, on motion by the state, the defendant, or a person who stands in a parental relation to the defendant or who acts as the defendant's caregiver, or on the court's own motion, to determine whether probable cause exists to believe that a defendant:

- lacks the capacity to understand the proceedings in criminal court or to assist in the defendant's own defense; or
- is unfit to proceed.

If the court determines that such probable cause exists, after providing notice to the state, the court may dismiss the complaint. The bill authorizes the dismissal to be appealed by the state. The bill prohibits a justice or judge from accepting a plea of guilty or nolo contendere from a defendant in a justice or municipal court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

C.S.S.B. 49 requires a court sentencing a person convicted of a criminal offense to credit to the term of the person's sentence any period during which the person participated in an outpatient competency restoration program. The bill provides for the beginning date of an initial restoration period for certain defendants who have been determined to be incompetent to stand trial and the beginning date of an extension of such a period.

C.S.S.B. 49, for purposes of the eligibility of a psychiatrist or psychologist as a court-ordered expert, removes the requirement that the person:

- have at least five years of experience in performing criminal forensic evaluations for courts; and
- document required hours of continuing education with the court.

These provisions apply to an expert for a defendant against whom applicable proceedings are initiated before, on, or after the bill's effective date.

### **Competency Restoration Programs**

C.S.S.B. 49 removes the requirements for the executive commissioner of the Health and Human Services Commission (HHSC), in adopting rules to implement the jail-based competency restoration pilot program, to specify the types of information HHSC must collect during the operation of the program.

C.S.S.B. 49 removes the following eligibility requirements for a provider of jail-based competency restoration services to contract with HHSC for purposes of providing services under the pilot program:

- that the provider must have previously provided such services for one or more years;
- that the provider be certified by a nationwide nonprofit organization that accredits health care organizations and programs;

- that the provider have a 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; and
- that the provider demonstrate these facts to HHSC.

C.S.S.B. 49 includes as requirements for a provider's competency restoration program:

- providing services through licensed or qualified mental health professionals;
- operating in the jail in a designated space that is separate from the space used for the general population;
- ensuring coordination of general health care;
- providing mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and
- supplying clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with state law.

The bill removes the duty of counties that contract with the provider to ensure the safety of defendants who participate in the jail-based restoration of competency pilot program and to provide the same basic care to the participants as is provided to other inmates of a jail. The bill authorizes a qualified psychologist to perform the duties of the psychiatrist under the program.

With respect to both the jail-based competency restoration pilot program and jail-based competency restoration programs implemented by county governments, the bill does the following:

- removes the requirement for at least two full psychiatric or psychological evaluations of a defendant to be conducted during the period of the defendant's competency restoration, as applicable, and a related reporting requirement;
- revises the continuation of program services for a defendant who has not been restored to competency by requiring services to be provided by the programs and limiting the transfer of such defendants to a facility or outpatient competency restoration program based on the number of days remaining in the defendant's restoration period;
- requires the return of a defendant who is not transferred and who has been determined not restored to competency to the court for proceedings; and
- establishes that an applicable 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 under certain conditions.

The provisions relating to the pilot program expire September 1, 2022, after which the pilot program may continue to operate subject to the requirements for jail-based competency restoration programs implemented by county governments.

### **Outpatient Treatment Program Participation Following Civil Commitment**

C.S.S.B. 49 authorizes the following individuals to request that a court modify an order for inpatient treatment or residential care to order a civilly committed defendant to participate in an outpatient treatment program:

- any defendant who has been transferred from a maximum security unit to any facility other than a maximum security unit;
- the head of the facility to which the defendant is committed; and
- the state's attorney.

If the defendant or the state's attorney makes the request, the court must grant or deny the request or, if such a request and any supporting materials provided to the court provide a basis for believing modification of the order may be appropriate, hold a hearing on the matter, before a specified deadline. If the head of the facility makes the request, the court must first hold a hearing, before a specified deadline, to determine whether the court should modify the order.

C.S.S.B. 49 requires the court, on receipt of the request, to require the local mental health authority or local behavioral health authority to submit to the court, before any hearing is held, a statement regarding whether:

- treatment and supervision for the defendant can be safely and effectively provided on an outpatient basis; and
- appropriate outpatient mental health services are available to the defendant.

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, the head of the facility must submit to the court, before the hearing, a certificate of medical examination for mental illness stating that the defendant meets such criteria. The bill establishes that proceedings for commitment of the defendant to a court-ordered outpatient treatment program are governed by the Texas Mental Health Code to the extent that the code applies and does not conflict with the bill's provisions, except that the criminal court must conduct the proceedings regardless of whether the criminal court is also the county court.

C.S.S.B. 49 sets a deadline by which the court must make a determination on the request and sets a deadline for court action on a request made by a defendant subsequent to the court's determination on a previous request. The bill prohibits an outpatient treatment program from refusing to accept a placement on the grounds that criminal charges against the defendant are pending.

### **Other Provisions**

C.S.S.B. 49 amends the Government Code to require the Commission on Jail Standards, not later than December 1, 2021, to adopt reasonable rules and procedures that require 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.

### **Repealers**

C.S.S.B. 49 repeals the following provisions of the Code of Criminal Procedure:

- Articles 46B.090(a) and (h); and
- Article 46B.091(a).

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 49 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes the following provisions, which did not appear in the engrossed:

- a requirement for a justice or judge on an applicable motion to determine whether probable cause exists to believe that a defendant lacks the capacity to understand proceedings in criminal court or to assist in their own defense or is unfit to proceed and, if determining that such probable cause exists, to dismiss the complaint;
- a prohibition against a justice or judge accepting a plea of guilty or nolo contendere unless it appears the defendant is mentally competent and the plea is free and voluntary;
- a requirement for a court sentencing a person convicted of a criminal offense to credit to the term of the person's sentence any period during which the person participated in an outpatient competency restoration program;
- provisions establishing the beginning date of an initial restoration period for certain defendants who have been determined to be incompetent to stand trial and the beginning date of an extension of such a period;

- provisions that revise statutory requirements relating to the jail-based competency restoration pilot program and jail-based competency restoration programs implemented by county governments, including a provision establishing the expiration of the pilot program on September 1, 2022, and authorizing its continuation under provisions relating to programs implemented by county governments;
- provisions relating to the modification of an order for inpatient treatment or residential care for purposes of ordering a civilly committed defendant to participate in an outpatient treatment program;
- requirements for the Commission on Jail Standards to adopt rules and procedures that require a prisoner with a mental illness to be provided with appropriate prescription medication;
- provisions that revise the eligibility of a psychiatrist or psychologist to serve as a court-ordered expert; and
- an exception from the statutory requirement for a personal bond to contain a sworn and signed oath for a defendant who has a mental illness, is a person with an intellectual disability, or is incompetent to stand trial.

The substitute repeals statutory provisions to conform to changes made by the substitute, whereas the engrossed did not repeal those provisions.