

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 15.17, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) If a magistrate is provided written or electronic notice of credible information that may establish reasonable cause to believe that a person brought before the magistrate has a mental illness or is a person with an intellectual disability, the magistrate shall conduct the proceedings described by Article 16.22 or 17.032, as appropriate.

SECTION 2. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a) (1) Not later than 12 [~~72~~] hours after the

sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives [~~receiving~~] credible information that may establish reasonable cause to believe that the [~~a~~] defendant [~~committed to the sheriff's custody~~] has a mental illness or is a person with an intellectual disability [~~mental retardation, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant~~], the sheriff or municipal jailer shall provide written or electronic notice [~~of the information~~] to the magistrate. The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [~~mental retardation~~], the magistrate, except as provided by Subdivision (2), shall order the local mental health [~~or mental retardation~~] authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability [~~mental~~

~~retardation]~~ expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with an intellectual disability [~~mental retardation~~] as defined by Section 591.003, Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A) on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(b), Health and Safety Code.

(2) The magistrate is not required to order the collection of information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [~~mental retardation~~] by the local mental health [~~or mental retardation~~] authority, local intellectual and developmental disability authority, or another mental health or intellectual disability [~~mental retardation~~] expert described by Subdivision (1). A court that elects to use the results of that

previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a jail or in another place [~~mental health facility~~] determined to be appropriate by the local mental health [~~or mental retardation~~] authority or local intellectual and developmental disability authority for a reasonable period not to exceed 72 hours [~~21 days~~]. If applicable, the [~~The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Department of Aging and Disability Services for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Department of Aging and Disability Services for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That~~] county in which the committing court is located shall reimburse the local mental health authority or local intellectual and developmental

disability authority [facility] for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel regulations in effect at the time.

(b) Except as otherwise permitted by the magistrate for good cause shown, a [A] written assessment of the information collected under Subsection (a) (1) (A) shall be provided to the magistrate:

(1) for a defendant held in custody, not later than 96 hours after the time an order was issued under Subsection (a); or

(2) for a defendant released from custody, not later than the 30th day after the date an [~~of any~~] order was issued under Subsection (a).

(b-1) The [~~in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the~~] magistrate shall provide copies of the written assessment to the defense counsel, the [~~prosecuting~~] attorney representing the state, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a) (1) (A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [~~mental~~]

~~retardation~~];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) any appropriate or recommended treatment or service.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) [~~(b)~~] or elects to use the results of a previous determination as described by Subsection (a) (2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [~~mental retardation~~] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; [~~or~~]

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the

defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision; or

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article:

(1) releasing a defendant who has a mental illness [~~mentally ill~~] or is a person with an intellectual disability [~~mentally retarded defendant~~] from custody on personal or surety bond, including imposing as a condition of release that the defendant submit to an examination or other assessment; or

(2) ordering an examination regarding the defendant's competency to stand trial.

(e) The magistrate shall submit to the Office of Court Administration of the Texas Judicial System on a monthly basis the number of written assessments provided to the court under Subsection (a) (1) (B).

SECTION 3. Articles 17.032(a), (b), (c), and (d), Code of

Criminal Procedure, are amended to read as follows:

(a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

- (1) Section 19.02 (murder);
- (2) Section 19.03 (capital murder);
- (3) Section 20.03 (kidnapping);
- (4) Section 20.04 (aggravated kidnapping);
- (5) Section 21.11 (indecenty with a child);
- (6) Section 22.01(a)(1) (assault), if the offense involved family violence as defined by Section 71.004, Family Code;
- (7) Section 22.011 (sexual assault);
- (8) Section 22.02 (aggravated assault);
- (9) Section 22.021 (aggravated sexual assault);
- (10) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (11) Section 29.03 (aggravated robbery);
- (12) Section 21.02 (continuous sexual abuse of young child or children); or
- (13) Section 20A.03 (continuous trafficking of persons).

(b) Notwithstanding Article 17.03(b), or a bond schedule adopted or a standing order entered by a judge, a [A] magistrate shall release a defendant on personal bond unless good cause is

shown otherwise if ~~the~~:

(1) the defendant is not charged with and has not been previously convicted of a violent offense;

(2) the defendant is examined by the local mental health ~~[or mental retardation]~~ authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert under Article 16.22 ~~[of this code]~~;

(3) the applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability ~~[mental retardation]~~ and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability services for the defendant, as applicable; ~~[and]~~

(4) the magistrate determines, in consultation with the local mental health ~~[or mental retardation]~~ authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual disability ~~[mental retardation]~~ services for the defendant are available in accordance with ~~[through the Texas Department of~~

~~Mental Health and Mental Retardation under~~ Section 534.053 or  
534.103, Health and Safety Code, or through another mental health  
or intellectual disability [~~mental retardation~~] services provider;  
and

(5) the magistrate finds, after considering all the  
circumstances, a pretrial risk assessment, if applicable, and any  
other credible information provided by the attorney representing  
the state or the defendant, that release on personal bond would  
reasonably ensure the defendant's appearance in court as required  
and the safety of the community and the victim of the alleged  
offense.

(c) The magistrate, unless good cause is shown for not  
requiring treatment, shall require as a condition of release on  
personal bond under this article that the defendant submit to  
outpatient or inpatient mental health [~~or mental retardation~~]  
treatment or intellectual disability services as recommended by the  
local mental health [~~or mental retardation~~] authority, local  
intellectual and developmental disability authority, or another  
qualified mental health or intellectual disability expert if the  
defendant's:

(1) mental illness or intellectual disability [~~mental  
retardation~~] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

(d) In addition to a condition of release imposed under Subsection (c) [~~of this article~~], the magistrate may require the defendant to comply with other conditions that are reasonably necessary to ensure the defendant's appearance in court as required and the safety of [protect] the community and the victim of the alleged offense.

SECTION 4. Article 32A.01, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

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

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

SECTION 5. Article 46B.001, Code of Criminal Procedure, is

amended by adding Subdivision (9) to read as follows:

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

SECTION 6. The heading to Article 46B.0095, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR [~~OUTPATIENT TREATMENT~~] PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE.

SECTION 7. Articles 46B.0095(a), (b), (c), and (d), Code of Criminal Procedure, are amended to read as follows:

(a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, ordered to participate in an outpatient competency restoration or treatment program, or subjected to any combination of [both] inpatient treatment, [and] outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter for a cumulative period that exceeds the maximum term

provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient competency restoration or treatment program under Subchapter D or E, the maximum period of restoration is two years.

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

(c) The cumulative period described by Subsection (a):

(1) begins on the date the initial order of commitment or initial order for outpatient competency restoration or treatment

program participation is entered under this chapter; and

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

(A) the defendant's transfer to:

(i) a mental hospital or other inpatient or residential facility; or

(ii) a jail-based competency restoration program;

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

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

(d) The court shall credit to the cumulative period described by Subsection (a) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for

outpatient competency restoration or treatment program participation is entered under this chapter.

SECTION 8. Article 46B.010, Code of Criminal Procedure, is amended to read as follows:

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

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

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

(A) shall set the matter to be heard not later 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 9. 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 10. 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 11. 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, psychiatric, or psychological care or treatment.

SECTION 12. The heading to Article 46B.072, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.072. RELEASE ON BAIL FOR FELONY OR CLASS A MISDEMEANOR.

SECTION 13. Articles 46B.072 (a-1), (b), (c), and (d), Code of Criminal Procedure, are amended to read as follows:

(a-1) Subject to conditions reasonably related to ensuring [~~assuring~~] public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a felony or a Class A 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 [~~if~~] an appropriate outpatient competency restoration [~~treatment~~] program is available for the defendant, the court:

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

(2) shall release on bail a defendant found incompetent

to stand trial with respect to an offense punishable as a Class A  
[a] misdemeanor or shall continue the defendant's release on bail.

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

(c) Notwithstanding Subsection (a-1), the court may order a defendant to participate in an outpatient competency restoration [~~treatment~~] 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 [~~treatment~~] program administered by a community center or an outpatient competency restoration [~~treatment~~] program administered

by any other entity that provides outpatient competency restoration services; and

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

SECTION 14. Article 46B.073, Code of Criminal Procedure, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (f) to read as follows:

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

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

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

(c) If the defendant is charged with an offense listed in Article 17.032(a), other than an offense under Section 22.01(a)(1),

Penal Code [~~listed in Article 17.032(a)(6)~~], or the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services to the maximum security unit of any facility designated by the Department of State Health Services, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

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

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

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

SECTION 15. Article 46B.074(a), Code of Criminal Procedure,

is amended to read as follows:

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

SECTION 16. Article 46B.075, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR [~~OUTPATIENT TREATMENT~~] PROGRAM. An order issued under Article 46B.0711, 46B.072, or 46B.073 must place the defendant in the custody of the sheriff or sheriff's deputy for transportation to the facility or [~~outpatient treatment~~] program, as applicable, in which the defendant is to receive [~~treatment for purposes of~~] competency restoration services.

SECTION 17. Articles 46B.0755(a), (b), and (d), Code of Criminal Procedure, are amended to read as follows:

(a) Notwithstanding any other provision of this subchapter, if the court receives credible evidence indicating that the defendant has been restored to competency at any time after the defendant's incompetency trial under Subchapter C but before the defendant is transported under Article 46B.075 to the [~~a mental~~

~~health facility, residential care~~ facility[7] or [~~outpatient treatment~~] program, as applicable, the court may appoint disinterested experts to reexamine the defendant in accordance with Subchapter B. The court is not required to appoint the same expert or experts who performed the initial examination of the defendant under that subchapter.

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

(d) The court shall hold a hearing to determine whether the defendant has been restored to competency if any party fails to agree or if the court fails to concur that the defendant is competent to stand trial. If a court holds a hearing under this subsection, on the request of the counsel for either party or the motion of the court, a jury shall make the competency

determination. For purposes of the hearing, incompetency is presumed, and the defendant's competency must be proved by a preponderance of the evidence. If after the hearing the defendant is again found to be incompetent to stand trial, the court shall issue a new order under Article 46B.0711, 46B.072, or 46B.073, as appropriate based on the defendant's current condition.

SECTION 18. Article 46B.076, Code of Criminal Procedure, is amended to read as follows:

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

- (1) reports of each expert;
- (2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;
- (3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the

defendant's current or past mental condition;

(4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;

(5) the defendant's criminal history record; and

(6) the addresses of the attorney representing the state and the attorney representing the defendant.

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

SECTION 19. Article 46B.077, Code of Criminal Procedure, is amended to read as follows:

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

(1) develop an individual program of treatment;

(2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) report to the court and to the local mental health authority or to the local intellectual and developmental disability

authority on the defendant's progress toward achieving competency.

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

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

(1) not later than the 14th day after the date on which the defendant's competency restoration services begin ~~[treatment begins]~~; and

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

SECTION 20. Article 46B.078, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the charges pending against a defendant are dismissed, the court that issued the order under Article 46B.0711, 46B.072, or 46B.073 shall send a copy of the order of dismissal to the sheriff of the county in which the court is located and to the head of the facility, the

provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration [~~treatment~~] program, as appropriate. On receipt of the copy of the order, the facility or [~~outpatient treatment~~] program shall discharge the defendant into the care of the sheriff or sheriff's deputy for transportation in the manner described by Article 46B.082.

SECTION 21. Article 46B.079, Code of Criminal Procedure, is amended to read as follows:

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

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

(1) the defendant is clinically ready and can be safely transferred to a competency restoration program for education

services but has not yet attained competency to stand trial;

(2) the defendant has attained competency to stand trial; or

(3) [~~+2~~] the defendant is not likely to attain competency in the foreseeable future.

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

(1) the defendant has attained competency to stand trial; or

(2) the defendant is not likely to attain competency in the foreseeable future.

(c) When the head of the facility or [~~outpatient treatment~~] program provider gives notice to the court under Subsection (a), [or] (b), or (b-1), the head of the facility or [~~outpatient treatment~~] program provider also shall file a final report with the court stating the reason for the proposed discharge or transfer under this chapter and including a list of the types and dosages of medications prescribed for the defendant while the defendant was receiving competency restoration services in the facility or through [~~participating in~~] the [~~outpatient treatment~~] program. The [~~To enable any objection to the findings of the report to be made~~

~~in a timely manner under Article 46B.084(a-1), the]~~ court shall provide ~~[copies of the report]~~ to the attorney representing the defendant and the attorney representing the state copies of a report based on notice under this article, other than notice under Subsection (b)(1), to enable any objection to the findings of the report to be made in a timely manner as required under Article 46B.084(a-1).

(d) If the head of the facility or ~~[outpatient treatment]~~ program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request. An explanation provided under this subsection must include a description of any evidence indicating a reduction in the severity of the defendant's symptoms or impairment.

SECTION 22. Article 46B.080(a), Code of Criminal Procedure, is amended to read as follows:

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

SECTION 23. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by adding Articles 46B.0805 and 46B.0825 to read as follows:

Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES.

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

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

(1) the sheriff of the county in which the court is located;

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

(3) the local mental health authority or local intellectual and developmental disability authority, as appropriate.

(c) As soon as practicable but not later than the 10th day

after the date of receipt of a copy of an order under Subsection (b) (2), the applicable facility shall discharge the defendant into the care of the sheriff of the county in which the court is located or into the care of the sheriff's deputy. The sheriff or sheriff's deputy shall transport the defendant to the jail-based competency restoration program or outpatient competency restoration program, as appropriate.

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

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

(2) subsequent notice as otherwise required under Article 46B.079.

Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN CUSTODY OF SHERIFF. (a) A sheriff or sheriff's deputy having custody of a defendant for transportation as required by Article 46B.0805 or 46B.082 or during proceedings described by Article 46B.084 shall, according to information available at the time and unless directed otherwise by a physician treating the defendant, ensure that the defendant is provided with the types and dosages of medication

prescribed for the defendant.

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

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

SECTION 24. Article 46B.081, Code of Criminal Procedure, is amended to read as follows:

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

SECTION 25. Article 46B.082, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.082. TRANSPORTATION OF DEFENDANT TO COURT. (a) On notification from the court under Article 46B.078, the sheriff of the county in which the court is located or the sheriff's deputy [~~designee~~] shall transport the defendant to the court.

(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 26. 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 27. 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 28. 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

hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient competency restoration [~~treatment~~] program;

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

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

(D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) of that article;

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

(4) who, after a hearing held under Section 574.106 or 592.156, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1)

or 592.156(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

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

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed, may authorize the director of the [~~correctional~~] facility or

the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be conducted using an electronic broadcast system as provided by Article 46B.013.

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

SECTION 29. Articles 46B.090(f), (l), and (n), Code of Criminal Procedure, are amended to read as follows:

(f) To contract with the department under Subsection (b), a provider of jail-based competency restoration services must demonstrate to the department that:

(1) the provider:

(A) has previously provided jail-based competency restoration services for one or more years; or

(B) is a local mental health authority that has

previously provided competency restoration services;

(2) the provider's jail-based competency restoration program:

(A) uses a multidisciplinary treatment team to provide clinical treatment that is:

(i) directed toward the specific objective of restoring the defendant's competency to stand trial; and

(ii) similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility;

(B) employs or contracts for the services of at least one psychiatrist; and

(C) [~~assigns staff members to defendants participating in the program at an average ratio not lower than 3.7 to 1; and~~

~~(D)] provides weekly treatment hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;~~

(3) 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 the department; and

(4) 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.

(1) 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 date the defendant began to receive services [~~participate~~] in the pilot program:

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

(2) for a defendant charged with a misdemeanor, the court may:

(A) 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 Article 46B.073(d) for the remainder of the period under the extension;

(B) proceed under Subchapter E or F;

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

(D) dismiss the charges in accordance with Article 46B.010.

(n) If the department develops and implements a jail-based restoration of competency pilot program under this article, not later than December 1, 2018 [~~2016~~], the commissioner of the department shall submit a report concerning the pilot program to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues and over criminal justice issues. The report must include the information collected by the department during the pilot program and the commissioner's evaluation of the outcome of the program as of the date the report is submitted.

SECTION 30. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by adding Article 46B.091 to read as follows:

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

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

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

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

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

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

(A) 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 a competency restoration program at an inpatient mental health facility;

(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 of this code or Section 574.106, Health and Safety Code.

(e) The executive commissioner shall adopt rules as necessary for a county to develop and implement a program under this article.

The commission shall, as part of the rulemaking process, establish contract monitoring and oversight requirements for a local mental health authority or local behavioral health authority that contracts with a county to provide jail-based competency restoration services under this article. The contract monitoring and oversight requirements must be consistent with local mental health authority or local behavioral health authority performance

contract monitoring and oversight requirements, as applicable.

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

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

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

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

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

(i) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

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

(2) the court shall:

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

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

(j) If the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article 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:

(1) for a defendant charged with a felony, the defendant shall be transferred, without unnecessary delay and for the

remainder of the period prescribed by Article 46B.073(b), to the first available facility that is appropriate for that defendant as provided by Article 46B.073(c) or (d); and

(2) for a defendant charged with a misdemeanor, the court may:

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

(B) proceed under Subchapter E or F;

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

(D) dismiss the charges in accordance with Article 46B.010.

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

(1) This article does not affect the responsibility of a county to ensure the safety of a defendant who is committed to the program and to provide the same adequate care to the defendant as is provided to other inmates of the jail in which the defendant is located.

SECTION 31. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.032 to read as follows:

Sec. 72.032. BEST PRACTICES EDUCATION. The director shall make available to courts information concerning best practices for addressing the needs of persons with mental illness in the court system, including the use of the preferred terms and phrases provided by Section 392.002.

SECTION 32. Chapter 121, Government Code, is amended by adding Section 121.003 to read as follows:

Sec. 121.003. SPECIALTY COURTS REPORT. (a) In this section, "office" means the Office of Court Administration of the Texas Judicial System.

(b) For the period beginning September 1, 2017, and ending September 1, 2018, the office shall collect information from specialty courts in this state regarding outcomes of participants in those specialty courts who are persons with mental illness, including recidivism rates of those participants, and other

relevant information as determined by the office.

(c) Not later than December 1, 2018, the office shall submit to the legislature a report containing and evaluating the information collected under Subsection (b).

(d) This section expires September 1, 2019.

SECTION 33. Section 574.034(g), Health and Safety Code, is amended to read as follows:

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

SECTION 34. Section 614.0032(b), Health and Safety Code, is amended to read as follows:

(b) The office shall~~+~~

~~[(1) with the special assistance of committee members appointed under Section 614.002(b)(1):~~

~~[(A) review examinations to determine the competency of defendants in criminal cases to stand trial and examinations to determine the fitness of children to proceed with respect to adjudications of delinquent conduct or conduct indicating a need for supervision; and~~

~~[(B) periodically report to the legislature and the court of criminal appeals findings made as a result of the review described by Paragraph (A); and~~

~~[(2)]~~ approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure.

SECTION 35. The following provisions are repealed:

- (1) Article 46B.026(c), Code of Criminal Procedure;
- (2) Article 46B.090(o), Code of Criminal Procedure; and
- (3) Section 614.0032(c), Health and Safety Code.

SECTION 36. Not later than November 1, 2017, the executive commissioner of the Health and Human Services Commission shall adopt the rules described by Article 46B.091(e), Code of Criminal Procedure, as added by this Act.

SECTION 37. The changes in law made by this Act apply only to a defendant charged with an offense committed on or after the effective date of this Act. A defendant charged with an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 38. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1326 passed the Senate on April 24, 2017, by the following vote: Yeas 29, Nays 1; and that the Senate concurred in House amendments on May 27, 2017, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1326 passed the House, with amendments, on May 22, 2017, by the following vote: Yeas 144, Nays 1, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

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Governor