

- SUBJECT:** Time credits for certain confinements for incompetent defendants
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler
- 0 nays
- WITNESSES:** For — Kym Bolado, NAMI - San Antonio, Oscar Kazen, Bexar County; John Smith, Center for Health Care Service; Sally Taylor, University Health System (*Registered, but did not testify*: Denise Baldarrama; Steven Been; Terri Been; Mark Carmona; Alison Dieter; Roger Dovalina (Bexar County Sheriff's Office; Thomas Guevara, Bexar County Commissioners Court; Keith Hampton, Harold Oliver, Robin Peyson, National Alliance on Mental Illness - Texas; Susan Milam, National Association of Social Workers/Texas Chapter; Beth Mitchell, Disability Rights TX; Morris Munoz, Bexar County Sheriff's Office; Andrew Smith, University Health System; Lupe Torres)
- Against — None
- On — (*Registered, but did not testify*: Chris Lopez, Department of State Health Services)
- BACKGROUND:** Code of Criminal Procedure, ch. 46B establishes procedures and standards for determining if a criminal defendant is competent to stand trial. People are considered incompetent to stand trial if they do not have sufficient present ability to consult with their lawyers with a reasonable degree of rational understanding or with a rational and factual understanding of the proceedings against them.
- Time credits.** Under Code of Criminal Procedure 46B.009, a court sentencing a person convicted of a criminal offense must credit to the term of the person's sentence the time the person is confined in a mental health facility, residential care facility, or jail pending an incompetency trial.

**Time credit for time spent in jail between arrest and sentence.** Code of Criminal Procedure, art. 42.03 requires that a judge give the defendant credit on the defendant's sentence for the time that the defendant has spent:

- in jail for the case, other than confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court; or
- in a substance abuse treatment facility for felony offenders operated by the Texas Department of Criminal Justice, or another court-ordered residential program or facility successfully completed as a condition of deferred adjudication community supervision.

**Maximum term of offense limits time in treatment facility.** Code of Criminal Procedure 46B.0095 prohibits an incompetent defendant from spending more time in a state facility commitment or participation in an outpatient treatment program than the maximum term possible for the offense for which the person originally was arrested. If the defendant was charged with a misdemeanor and ordered only to participate in an outpatient treatment program, the maximum period of restoration of competency to stand trial is two years beginning on the date the initial order for outpatient treatment program participation was entered. Pursuant to civil commitment proceedings, a defendant may be civilly confined for an additional period as appropriate.

**Mandatory dismissal of misdemeanor charges.** Code of Criminal Procedure 46B.010 provides that if a court orders a defendant who was charged with a misdemeanor punishable by confinement to be committed or to participate in an outpatient treatment program and the defendant is not tried before the date of expiration of the maximum period of restoration of competence to stand trial, the court, on motion by the prosecutor, shall dismiss the charge.

**Order for medication and expiration of order.** Health and Safety Code sec. 574.106 provides that the court may issue an order authorizing the administration of psychoactive medication to a patient who is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months before a hearing under this section. Health and Safety Code, sec. 574.110(b) provides that the order for medication for a patient awaiting trial expires the date the defendant is acquitted, is convicted, enters a plea of guilty, or the charges are

dismissed. A continued order for medication must be reviewed by the issuing court every six months.

DIGEST:

**Time credits.** By amending Code of Criminal Procedure 46B.009, CSHB 748 would require the court to give credit to the term of a defendant's sentence for confinement in a mental health facility, residential care facility, or jail for any period of confinement pending a determination of competency to stand trial and any period of confinement that occurred between the date of initial determination of the defendant's incompetency and the date the defendant was taken to jail following a final judicial determination that the person has been restored to competency.

**Time credit for time spent in jail between arrest and sentence.** By amending Code of Criminal Procedure, art. 42.03, CSHB 748 also would require a judge to give a convicted defendant credit on the defendant's sentence for the time that the defendant spent in confinement as described above (Code of Criminal Procedure 46B.009).

**Maximum term of offense limits time in treatment facility.** To calculate the maximum period allowed in a treatment facility, the timetable would begin on the date the initial order of commitment or initial order for outpatient treatment program participation was entered and would include any time after the initial order that the defendant was confined in a correctional facility awaiting:

- transfer to a mental hospital or other inpatient or residential facility;
- release on bail to participate in an outpatient treatment program; or
- a criminal trial following any temporary restoration of the defendant's competency to stand trial.

The court would be allowed to credit for the calculation on the maximum time allowed any time the defendant was confined in a correctional facility following arrest but before the initial order of commitment or initial order for outpatient treatment program participation was entered and any time for good conduct.

On expiration of the maximum restoration period, the treatment provider would be required to assess the defendant to determine if civil proceedings for treatment under the mental health and mental retardation chapters of the Health and Safety Code would be appropriate.

**Mandatory dismissal of misdemeanor charges.** CSHB 748 would allow the defendant to make a motion for mandatory dismissal of misdemeanor charges if the defendant was not tried before the expiration of the maximum period of restoration. The court would be required to set the matter for hearing no more than 10 days after the motion was filed, and dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration.

**Order for medication and expiration of order.** Instead of requiring a review every six months for a defendant ordered to take psychoactive medication while awaiting trial, CSHB 748 would provide that the order would be in effect until the earlier of the following:

- the 180th day after the date the defendant was returned to the correctional facility;
- the date the defendant was acquitted, was convicted, or entered a plea of guilty; or
- the date charges were dismissed.

**Effective date.** The bill would take effect September 1, 2011, and would apply only to proceedings for a defendant conducted under Code of Criminal Procedure 46B on or after that date and only to psychoactive medication orders issued on or after that date.

**SUPPORTERS  
SAY:**

CSHB 748 would address two important issues related to the time served by defendants incompetent to stand trial. First, CSHB 748 would allow judges to give credit on sentences for time the defendant spent in jail waiting for a determination of incompetency and the time the defendant was confined in a mental health facility or treatment facility after the determination of competency.

Second, the bill would address the inequity currently in the law that does not allow the judge to give time credit for when the defendant was waiting for a competency hearing or waiting in jail for a bed to open up at a mental health treatment facility for calculating the maximum time allowed in a treatment facility. The time in the treatment facility cannot exceed the maximum time possible for the offense.

For example, consider the person who is unruly and kicks over a flower pot on the Riverwalk, gets arrested, spends two months in jail waiting on a finding of incompetency, then spends two months in jail waiting for a

treatment facility bed. The person then spends the six months in the mental health facility. In determining the maximum time allowed before a dismissal would be required, the bill would allow the judge to credit the two months the person spent in jail waiting on the finding of incompetency and the two months the person spent in jail waiting for a treatment facility bed.

The bill would practically not apply to felony cases because felony sentences are longer and would not bump up against maximum restoration time. The bill would free up treatment beds for the more serious criminals.

**NOTES:**

The Senate companion bill, SB 1439 by Van de Putte, was referred to Senate Criminal Justice Committee on March 22.