

SUBJECT: Creating a jail-based competency restoration pilot program

COMMITTEE: Corrections — favorable, without amendment

VOTE: 5 ayes — Parker, White, Allen, Rose, J.D. Sheffield

0 nays

2 absent — Riddle, Toth

SENATE VOTE: On final passage, April 29 — 30-1 (Nichols)

WITNESSES: No public hearing

DIGEST: SB 1475 would direct the Department of State Health Services (DSHS) to develop and implement a four-year pilot treatment program in one or two counties that chose to participate for defendants who were judged not competent to stand trial. DSHS only would create the pilot program if the Legislature funded it. DSHS would coordinate the program design with each participating county.

DSHS would contract with a provider of jail-based competency restoration services to provide services to the pilot program. The provider would have to have previously provided competency restoration services and could be either a private provider or the local mental health authority.

DSHS would develop rules and adopt them by November 1, 2013 to implement the pilot program. The rules would specify the types of information the department would collect during the pilot's operation for use in evaluating its outcome.

Stakeholder work group. The DSHS commissioner would establish a stakeholder work group to help develop rules for the pilot program.

The stakeholder work group would consist of: a county sheriff; a representative of a local mental health authority; a county commissioner, a county judge, or an elected county officer; an elected prosecuting attorney; a defense attorney; a judge of a criminal court; two mental health

advocates; and any other member DSHS considered appropriate to appoint to the stakeholder group.

The work group would disband 30 days after rules for the pilot program had been adopted.

Contractor eligibility. To be eligible, a provider of jail-based competency restoration services would have to:

- have previously engaged in jail-based competency restoration services for one or more years or is a local mental health authority that has previously provided competency restoration services;
- use a multidisciplinary treatment team to provide clinical treatment that was directed toward restoring a defendant's competency to stand trial and was similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility;
- utilize the services of at least one psychiatrist;
- assign staff members to defendants participating in the program at an average ratio not lower than 3.7 to 1;
- provide weekly treatment hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;
- be certified by a nationwide nonprofit organization that accredits health care organizations; and
- have a demonstrated history of successful competency restoration outcomes.

County requirements. The contract between the provider and the counties would require the counties to:

- ensure the safety of defendants who participate in the jail-based restoration of competency pilot program;
- designate a separate space in the jail for the provider to conduct the program;
- provide the same basic care to the program's participants as is provided to other inmates of a jail; and
- supply clinically appropriate psychoactive medications to the mental health service provider for purposes of court-ordered medication for restoration of competency under applicable laws.

Psychiatric evaluations. The provider's psychiatrist would conduct at least two full psychiatric evaluations of the defendant during the period the defendant received competency restoration services in the jail. The psychiatrist would conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant began to participate in the pilot program. The psychiatrist would submit to the court a report concerning each required evaluation.

Under the bill, in a county that operated a jail-based competency restoration project, a defendant committed to a mental health facility or residential care facility would be provided competency restoration services at the county jail from the pilot program if the service provider at the jail decided the defendant would immediately begin to receive treatment. If the service provider at the jail determined the defendant would not begin to receive treatment immediately, then the defendant would be transferred to the appropriate mental health facility or residential care facility as provided by court order.

If the provider's psychiatrist determined the defendant had become competent to stand trial the psychiatrist would promptly send to the court a report demonstrating those findings. The court would consider such a report to be that of an expert stating an opinion that the defendant had been restored to competency.

If the provider's psychiatrist determined the defendant was unlikely to be restored in the foreseeable future, the psychiatrist would send the court a report demonstrating those findings. The court would then order the transfer of the defendant to the first available facility appropriate for the defendant's needs or order the release the defendant on bail under applicable laws.

If the provider's psychiatrist determined that a defendant charged with a felony had not been restored to competency by end of the 60th day after the date the defendant began to receive treatment in the pilot program, the defendant would be transferred to the first available appropriate facility. If the defendant had been charged with a misdemeanor, the court would either: order a single 60-day extension of treatment; civilly commit the defendant; release the defendant on bail; or dismiss the charges.

Protections for defendants. Unless otherwise specified by SB 1475, the protections for defendants found in the Code of Criminal Procedure,

including maximum periods of court-ordered treatment, would apply to participants in the pilot program.

Deadline and dates. DSHS would submit a report on the pilot to the presiding officers of the standing committees of the Senate and the House having primary jurisdiction over health and human services. The report would be issued by December 1, 2016.

The pilot program would expire September 1, 2017.

The bill would take effect on September 1, 2013. It would only be applicable to defendants who were found incompetent to stand trial on or after the effective date of the bill.

**SUPPORTERS
SAY:**

SB 1475 would allow the state and up to two willing counties to explore a jail-based competency restoration treatment option that would provide high-level, quality treatment for those who were judged not competent to stand trial.

The bill would create a four-year, pilot program in county jails as recommended in the January 2013 Texas Government Effectiveness and Efficiency Report, *Use Alternative Settings to Reduce Forensic Cases in the State Mental Health Hospital System*.

Texas defendants who are incompetent to stand trial typically receive competency restoration treatment for a statutorily prescribed time at either a state mental health hospital, residential care facility, or through an out-patient treatment program.

Texas lacks sufficient bed capacity to admit these defendants to a mental health facility immediately after the court finds them incompetent. Immediate treatment is critical because, many times, the sooner a defendant receives psychiatric intervention, the sooner they can be stabilized and restored to competency. Recognizing that early treatment was paramount, a Texas court ruled in 2012 that the state must provide defendants found incompetent to stand trial with competency restoration treatment within 21 days from receiving a court commitment order.

Under SB 1475 restoration of competency treatment will be provided in a county jail until a defendant is restored, but not for more than 60 days without an additional court hearing. The state would pay the provider for

services and provider would pay the local jails for use of their space and other resources. Should a defendant not be restored by the pilot program and additional treatment is required, the defendant would be transferred to the appropriate state hospital or other designated facility.

SB 1475 would be another treatment option for counties and it would free up beds in the state hospital system for other community treatment needs. It would not circumvent any current programs counties may be using to restore competency.

The providers selected for the pilot program would provide care at least comparable to that currently offered by state hospitals. The bill would require providers to maintain a 3.7:1 ratio and to provide weekly treatment hours that are commensurate to the treatment hours provided in a state hospital for a competency restoration program. State hospitals do maintain psychiatric nurses on-site around the clock, but they do not have psychiatrists, psychologists, therapists and rehab therapists on duty more than a normal business day for a unit of 24 beds in a sub-acute state hospital unit.

SB 1475 would save the state money. It would free up state hospital beds and help clear the back log of defendants and patients waiting to utilize them. Further, renting space for the program from county jails likely would be cheaper than expanding state hospital facilities. Finally, if the pilot program does not succeed or is cost ineffective, it would terminate as program automatically sunsets after four years.

Despite some opponents' claims, this bill would not encourage law enforcement to inappropriately arrest the mentally ill in an effort to get them treatment through the pilot program. Such violations by law enforcement would quickly be detected and stopped by local authorities. Further, the pilot-program providers would quickly reassign them to other, more appropriate facilities for treatment.

The bill would not encourage judges to use a jail-based restoration program when an outpatient program is available. The bill only would provide judges with an additional tool for inmates directed to inpatient treatment. Further, the pilot program would likely be established in one or two of the large urban counties where the local judiciary has experience with defendants found incompetent to stand trial. These experienced judges would be able to properly understand and utilize these jail-based

competency restoration programs.

The initial screening provided by the pilot program would mean treatment could be initiated sooner, improving the chances of successful restoration. Providers would select inmates who had the best chance for success; those the provider thought it could not successfully treat would be sent to other facilities with more resources, such as the state hospital system. Despite opponents' claims that this selection process would be rigged for provider success, this no different than other areas of medicine where patients are sent to the facilities best able to care for their specific needs.

SB 1475 would direct providers to report to the court those patients who are not responding to treatment. The court, armed with the evaluations would then decide appropriate action. These requirements would prevent defendants from languishing in the pilot program.

OPPONENTS
SAY:

SB 1475 would privatize competency restoration treatment in the counties where it was implemented, which would mean a decline in the quality of care for inmates who were incompetent to stand trial. That's because the only way private medical providers can make money in the mental health setting is to cut corners, reduce staff, and deny care. While many private providers only offer treatment to patients during normal work hours Monday through Friday, the state hospital system offers round-the-clock access to nurses with doctors on call. The Legislature must be careful when deciding who treats such a vulnerable part of the community.

According to the Legislative Budget Board fiscal note, SB 1475 would cost the state \$3 million during the next biennium. These funds would be better invested in existing competency restoration facilities, such as the state hospitals.

Jail-based mental health treatment programs, such as the one envisioned by SB 1475, could encourage law enforcement to inappropriately arrest the mentally ill and accuse them of crimes, knowing that the person could receive mental-health treatment in jail they wouldn't otherwise receive.

The program also could deter judges from selecting outpatient treatment if a jail-based option was available. That's because many judges default to selecting the most secure setting for the treatment of defendants accused of crimes. Judges should be encouraged, not deterred, from using out-patient treatment whenever appropriate.

SB 1475 would not provide enough time for DSHS to make appropriate rules. Requiring them to be made by November 1, 2013 when the bill would take effect on September 1, 2013 would not provide enough time to appoint a stake holder committee, seek its recommendations on multiple draft rules created by DSHS staff, and properly revise and implement them.

The pilot program also is rigged for provider success because the provider would have the ability to select which defendants it would treat. The provider would have an incentive to only accept those defendants it was certain could be restored to competency, therefore guaranteeing a high success rate. Other more severely mentally incompetent defendants would be sloughed back onto the normal providers of competency restoration treatments.

Finally, SB 1475 would provide too much time for jail-based treatment. It is usually clear which defendants will or won't respond after 30 days of treatment. Those people who are not responding be transferred to more comprehensive psychiatric facilities more quickly.