

BILL ANALYSIS

Senate Research Center
82R4044 KEL-F

S.B. 931
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Criminal Justice
4/14/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is a severe backlog of persons waiting in county jails to receive competency restoration services in the state mental hospital system. Competency restoration services are ordered for persons who have been ruled to be unable to stand trial because they do not have the ability to consult with their attorney within a reasonable degree of rational understanding or do not have a rational or factual understanding of the proceedings against them. These persons are ordered for forensic commitment to the state mental hospital if a bed is available. If a bed is not available, the person must wait while confined in the county jail until a bed is available. The lack of available beds for forensic commitment has caused a backlog in county jails.

S.B. 931 attempts to eliminate the backlog of those waiting to receive competency restoration services in county jails by modifying several procedures and requirements related to competency restoration. These changes include shortening the periods allowed for competency restoration while in state hospitals, limiting the number of extensions for restoration, allowing the consideration of additional information in determining the need for or an extension of competency restoration, and encouraging the use of alternate community-based programs when necessary and available.

As proposed, S.B. 931 amends current law relating to the determination of incompetency in criminal cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 46B.001, Code of Criminal Procedure, by adding Subdivision (1-a), to define "developmental disability."

SECTION 2. Amends Article 46B.0095, Code of Criminal Procedure, as follows:

Art. 46B.0095. New heading: MAXIMUM PERIOD OF COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) Prohibits a defendant from being committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment under Subchapter D (Procedures After Determination of Incompetency) or E (Civil Commitment: Charges Pending) or any other provision of 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 treatment program under Subchapter D or E, the maximum period of restoration is two years. Deletes existing text providing that the two-year maximum period begins on the date of the initial order for outpatient treatment program participation was entered.

(b) Authorizes the defendant, on expiration of the maximum restoration period under Subsection (a), to be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil proceedings under Subtitle C (Texas Mental Health Code) or D (Persons With Mental Retardation Act), Title 7 (Mental Health and Mental Retardation), Health and Safety Code, rather than pursuant to civil commitment proceedings.

(c) Provides that the cumulative period described by Subsection (a):

(1) begins on the date the initial order of commitment or initial order for outpatient treatment program participation is entered under this chapter; and

(2) 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 (Definitions), Penal Code, while awaiting:

(A) transfer to a mental hospital or other inpatient or residential facility;

(B) release on bail to participate in an outpatient treatment program; or

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

SECTION 3. Amends Article 46B.022(a), Code of Criminal Procedure, as follows:

(a) Requires a psychiatrist or psychologist, to qualify for appointment under this subchapter as an expert, to:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

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

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) training consisting of at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations.

Deletes existing text requiring a psychiatrist or psychologist to have, in addition to proper licensure, for an appointment made before January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts, or for an appointment made on or after January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts and eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court, to qualify for appointment under this subchapter as an expert if the psychiatrist or psychologist does not have the requisite training. Makes nonsubstantive and conforming changes.

SECTION 4. Amends Article 46B.024, Code of Criminal Procedure, as follows:

Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. Requires an expert, during an examination under this subchapter and in any report based on that examination, to consider, in addition to other issues determined relevant by the expert, the following:

- (1) Makes no changes to this subdivision;
- (2) as supported by current indications or the defendant's personal history, whether the defendant:
 - (A) has a mental illness, rather than a diagnosable mental illness;
 - (B) is a person with mental retardation or other developmental disability; or
 - (C) has any other medical condition that significantly limits the defendant's cognitive functioning;
- (3) whether the identified condition has lasted or is expected to last continuously for at least one year;
- (4) the degree of impairment resulting from, rather than the impact of, the mental illness, mental retardation or other developmental disability, or other cognitive impairment, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and
- (5) Redesignates existing Subdivision (4) as Subdivision (5). Makes no further changes.

Makes nonsubstantive changes.

SECTION 5. Amends Articles 46B.025(a) and (b), Code of Criminal Procedure, as follows:

(a) Requires that an expert's report to the court state an opinion on a defendant's competency or incompetency to stand trial or explain why the expert is unable to state such an opinion and also:

- (1)-(2) Makes no changes to these subdivisions;
- (3) in specific, rather than general, terms, describe procedures, techniques, and tests used in the examination, the purpose of each procedure, technique, or test, and the conclusions reached; and
- (4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

(b) Requires the expert, if in the opinion of an expert appointed under Article 46B.021 (Appointment of Experts) the defendant is incompetent to proceed, to state in the report:

- (1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness, mental retardation or other developmental disability, or other cognitive impairment, if any, and the impact of the identified condition on the factors listed in Article 46B.024 (Factors Considered in Examination);

(2) an estimate of the period needed to restore the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) prospective treatment options and the least restrictive setting in which treatment may be delivered, as appropriate for the defendant.

Makes nonsubstantive changes.

SECTION 6. Amends Article 46B.071, Code of Criminal Procedure, as follows:

Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY. (a) Requires the court, except as provided by Subsection (b), on a determination that a defendant is incompetent to stand trial, to:

(1) commit the defendant to a facility under Article 46B.073 (Commitment for Restoration to Competency); or

(2) release the defendant on bail under Article 46B.072 (Release on Bail).

(b) Requires the court, on a determination that a defendant is incompetent to stand trial and is unlikely to be restored to competency in the foreseeable future, to:

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

(2) take other action authorized by law.

SECTION 7. Amends Article 46B.072, Code of Criminal Procedure, by amending Subsections (a), (b), and (c) and adding Subsection (a-1), as follows:

(a) Provides that this article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071 (Options on Determination of Incompetency).

(a-1) Redesignates existing Subsection (a) as Subsection (a-1). Makes no further changes.

(b) Requires the court to order a defendant released on bail under Subsection (a-1), rather than under Subsection (a), to participate in an outpatient treatment program for a period not to exceed 60 days, rather than for a period not to exceed 120 days.

(c) Makes a conforming change.

SECTION 8. Amends Articles 46B.073(a) and (b), Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to a defendant not released on bail who is subject to an initial restoration period based on Article 46B.071.

(b) Requires the court to commit a defendant described by Subsection (a) to a mental health facility or residential care facility for a period not to exceed 60, rather than 120, days for further examination and treatment toward the specific objective of attaining competency to stand trial.

SECTION 9. Amends Article 46B.076(a), Code of Criminal Procedure, as follows:

(a) Requires the court, 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, to send a copy of the order to the facility of the department to which the defendant is committed or the outpatient treatment program to which the defendant is released. Requires the court to

also provide to the facility or outpatient treatment program copies of certain materials made available to the court during the incompetency trial, including psychiatric, psychological, or social work reports that relate to the medical condition of the defendant, rather than the mental condition of the defendant, and documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past medical condition, rather than the defendant's current or past mental condition.

SECTION 10. Amends Article 46B.077, Code of Criminal Procedure, as follows:

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) Requires the facility to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail to perform certain tasks, including assessing and evaluating whether the defendant is likely to be restored to competency in the foreseeable future, rather than assessing and evaluating whether the defendant will obtain competency in the foreseeable future.

(b) Requires a treatment program not provided by an inpatient mental health facility or a residential care facility, if the defendant is released to such a treatment program, to report to the court:

(1) Makes no changes to this subdivision; and

(2) until the defendant is no longer released to the treatment program, at least once during each 15-day period following the date of the report required by Subdivision (1), rather than at least once during each 30-day period following the date of the report required by Subdivision (1).

SECTION 11. Amends Article 46B.079, Code of Criminal Procedure, as follows:

Art. 46B.079. NOTICE AND REPORT TO COURT. (a) Requires the head of the facility or the provider of the outpatient treatment program, as appropriate, not later than the 15th day before the date on which the initial restoration period, rather than a restoration period, is to expire, to notify the applicable court that the period is about to expire. Makes a conforming change.

(b) Requires the head of the facility or outpatient treatment program provider to promptly notify the court when the head of the facility or outpatient treatment program provider believes that:

(1) Makes no changes to this subdivision; or

(2) the defendant is not likely to attain, rather than will not attain, competency in the foreseeable future.

(c) Requires the head of the facility or outpatient treatment program provider, when the head of the facility or outpatient treatment program provider gives notice to the court under Subsection (a) or (b), to also file a final report with the court stating the reason for the proposed discharge under this chapter and including a list of the types and dosages of medications with which the defendant was treated, rather than including a list of the types and dosages of medications with which the defendant was treated for mental illness, while in the facility or participating in the outpatient treatment program.

(d) Authorizes a notice, if the head of the facility or outpatient treatment program provider notifies the court that the initial restoration period is about to expire, to contain a request for an extension of the period for an additional period of 30 days, rather than an additional period of 60 days, and an explanation for the basis of the request.

SECTION 12. Amends Articles 46B.080(a) and (b), Code of Criminal Procedure, as follows:

(a) Authorizes the court, on its own motion or the motion of any party, rather than on a request of the head of a facility or a treatment program provider that is made under Article 46B.079(d), to enter an order extending the initial restoration period for an additional period of 30, rather than 60, days, notwithstanding any other provision of this subchapter.

(b) Authorizes the court to enter an order under Subsection (a) only if the court determines that:

(1) the defendant has not attained competency; and

(2) an extension of the initial restoration period will likely enable the facility or program to restore the defendant to competency within the period of the extension.

Deletes existing text authorizing the court to enter an order under Subsection (a) only if the court makes certain determinations on the basis of information provided by the head of the facility or the treatment program provider.

SECTION 13. Redesignates Article 46B.080(c), Code of Criminal Procedure, as Article 46B.0805, Code of Criminal Procedure, and amends it as follows:

Art. 46B.0805. SECOND EXTENSION PERMITTED IN CERTAIN CIRCUMSTANCES. Authorizes the court to grant a second extension with respect to a period of restoration ordered under this subchapter, rather than authorizing the court to grant only one extension under this article, for a period of restoration ordered under this subchapter, if medical evidence shows a reduction in the severity of the defendant's symptoms or functional impairment.

SECTION 14. Amends Article 46B.084(a), Code of Criminal Procedure, as follows:

(a) Requires the court, on the return of a defendant to the court, to make a determination with regard to the defendant's competency to stand trial. Authorizes the court to make the determination based, rather than based solely, on the report filed under Article 46B.079(c) and on other medical information or personal history information relating to the defendant, unless any party objects in writing or in open court to the findings of the report not later than the 15th day after the date on which the court received notification under Article 46B.079.

SECTION 15. Amends Article 46B.085, Code of Criminal Procedure, as follows:

Art. 46B.085. SUBSEQUENT RESTORATION PERIODS AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) Authorizes the court to order only one initial period of restoration and two extensions, rather than one extension, under this subchapter in connection with the same offense.

(b) Requires any subsequent court orders for treatment to be issued under Subchapter E or F after an initial restoration period and one or two extensions, rather than an extension, are ordered as described by Subsection (a).

SECTION 16. Amends Article 46B.086(a), Code of Criminal Procedure, to provide that this article applies only to certain defendants, including a defendant who is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) of that article, rather than Subsection (a) of that article.

SECTION 17. Amends Article 46B.101, Code of Criminal Procedure, to provide that this subchapter applies to a defendant against whom a court is required to proceed according to, rather than under, Article 46B.084(e) (relating to continuing proceedings under Subchapter E if

the defendant is found incompetent to stand trial and if all charges pending against the defendant are not dismissed) or according to the court's appropriate determination under Article 46B.071.

SECTION 18. Amends Article 46B.151(a), Code of Criminal Procedure, to require a court, if the court is required by Article 46B.084(f) (relating to proceeding under Subchapter F if the defendant is found incompetent to stand trial and if all charges pending against the defendant are dismissed) or by its appropriate determination under Article 46B.071 to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) (relating to authorizing the court on motion of the attorney representing the state to dismiss all charges) to proceed under this subchapter, to determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with mental retardation.

SECTION 19. Requires the Health and Human Services Commission, to increase community-based placement alternatives to incarceration, to apply for and actively pursue a waiver or other authorization to the state Medicaid plan from the federal Centers for Medicare and Medicaid Services or any other federal agency as necessary to provide Medicaid home and community-based services to persons with severe and persistent mental illness who have a history of more than one forensic commitment under Chapter 46B, Code of Criminal Procedure.

SECTION 20. Provides that the change in law made by this Act applies only to a defendant with respect to whom any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

SECTION 21. Effective date: September 1, 2011.