

[Tex. Code Crim. Proc. Art. 46B.0735](#)

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st, 2nd and 3rd Called Sessions, and is current with the 2021 ballot proposition contingencies.

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Art. 46B.0735. Date Competency Restoration Period Begins.

The initial restoration period for a defendant under Article 46B.0711, 46B.072, or 46B.073 begins on the later of:

- (1) the date the defendant is:
 - (A) ordered to participate in an outpatient competency restoration program; or
 - (B) committed to a mental health facility, residential care facility, or jail-based competency restoration program; or
- (2) the date competency restoration services actually begin.

History

[Acts 2021, 87th Leg., ch. 936 \(S.B. 49\), § 4](#), effective September 1, 2021.

Annotations

Research References & Practice Aids

Hierarchy Notes:

[Tex. Code Crim. Proc. Title 1, Ch. 46B](#)

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Tex. Code Crim. Proc. Art. 46B.080

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Art. 46B.080. Extension of Order.

- (a) On a request of the head of a facility or a 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.
- (b) The court may 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.
- (c) The court may grant only one 60-day extension under this article in connection with the specific offense with which the defendant is charged.
- (d) An extension under this article begins on the later of:
 - (1) the date the court enters the order under Subsection (a); or
 - (2) the date competency restoration services actually begin pursuant to the order entered under Subsection (a).

History

Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 12, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 15, effective September 1, 2011; ~~am. Acts~~

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2017, 85th Leg., ch. 748 (S.B. 1326), §22, effective September 1, 2017; Acts 2021, 87th Leg., ch. 936 (S.B. 49), §5, effective September 1, 2021.

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[Tex. Code Crim. Proc. Art. 46B.090](#)

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Art. 46B.090. Jail-Based Restoration of Competency Pilot Program.

(a) [Repealed.]

(a-1) If the legislature appropriates to the commission the funding necessary for the commission to operate a jail-based restoration of competency pilot program as described by this article, the commission shall develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. In developing the pilot program, the commission shall coordinate and allow for input from each participating county.

(b) The commission shall contract with a provider of jail-based competency restoration services to provide services under the pilot program if the commission develops a pilot program under this article.

(c) The executive commissioner shall adopt rules as necessary to implement the pilot program.

(d), (e) [Repealed by Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.15(d), effective September 1, 2015.]

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

(1) be 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; and

(2) contract with a county or counties to develop and implement a jail-based competency restoration program.

(f-1) The provider's jail-based competency restoration program must:

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

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- (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 other competency restoration programs;
 - (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](#).
- (g) A contract under Subsection (b) must require the designated provider to collect and submit to the commission the information specified by rules adopted under Subsection (c).
- (h) [Repealed.]
- (i) A psychiatrist or psychologist for the provider who has the qualifications described by Article 46B.022 shall evaluate the defendant's competency and report to the court as required by Article 46B.079.
- (j) If at any time during a defendant's participation in the jail-based restoration of competency pilot program 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).
- (k) If at any time during a defendant's participation in the jail-based restoration of competency pilot program 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

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(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.

(I) If the psychiatrist or psychologist 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 in the pilot program, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this subchapter, including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

(1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or

(2) for a defendant charged with a felony or a misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 days are remaining under the extension order.

(I-1) After receipt of a notice under Subsection (I), the defendant shall be transferred without unnecessary delay to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by this subchapter, including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. If the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by this subchapter, the defendant shall be returned to the court for further proceedings. For a defendant charged with a misdemeanor, the court may:

(1) proceed under Subchapter E or F;

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

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

(I-2) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

(1) the court determines that the defendant 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

(2) the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

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(m) 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 the pilot program in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(n) If the commission develops and implements a jail-based restoration of competency pilot program under this article, not later than December 1, 2021, the executive commissioner 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 commission during the pilot program and the executive commissioner's evaluation of the outcome of the program as of the date the report is submitted.

(o) This article expires September 1, 2022. After the expiration of this article, a pilot program established under this article may continue to operate subject to the requirements of Article 46B.091.

History

Enacted by [Acts 2013, 83rd Leg., ch. 797 \(S.B. 1475\), § 2](#), effective September 1, 2013; [Acts 2015, 84th Leg., ch. 1 \(S.B. 219\), § 6.016](#), effective April 2, 2015; Acts 2015, 84th Leg., ch. 946 (S.B. 277), §§ 1.15(c), 1.15(d), effective September 1, 2015; [Acts 2017, 85th Leg., ch. 748 \(S.B. 1326\), §§ 29](#), 35(2), effective September 1, 2017; [Acts 2021, 87th Leg., ch. 936 \(S.B. 49\), § 6](#), § 11(1), effective September 1, 2021.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2015 amendment, by ch. 1, added (a); and redesignated former (a) as (a-1).

2015 amendment, by ch. 946, deleted "in consultation with a stakeholder workgroup established by the department as provided by Subsection (d)" after "the department" in the first sentence of (c); repealed (d) and (e), which read: "(d) The commissioner of the department shall establish a stakeholder workgroup to participate in developing and establishing rules for the pilot program. The stakeholder workgroup must be composed of: (1) one member who is a sheriff; (2) one member who represents a local mental health authority; (3) one member who is a county commissioner, county judge, or elected county officer; (4) one member who is a district attorney or county attorney

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with criminal jurisdiction; (5) one member who is a defense attorney; (6) one member who is a judge of a district criminal court or county criminal court; (7) two members who are mental health advocates; and (8) any other member the department considers appropriate to appoint to the stakeholder workgroup. (e) This subsection and Subsection (d) expire not later than the 30th day after the date rules are adopted under Subsection (c).”; and substituted “September 1, 2019” for “September 1, 2017” in (o).

The 2021 amendment by S.B. 49, §§ 6, 11, rewrote the section.

Applicability

Acts 2013, 83rd Leg., ch. 797 (S.B. 1475), § 3 provides: “The change in law made by this Act applies only to a defendant against whom proceedings have not been initiated under Chapter 46B, Code of Criminal Procedure, as amended by this Act, before the effective date of this Act [September 1, 2013]. The determination of incompetency for a defendant against whom proceedings have been initiated under Chapter 46B, Code of Criminal Procedure, before the effective date of this Act is covered by the law in effect when the proceedings were initiated, and the former law is continued in effect for that purpose.”

Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 37 provides: “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.”

Research References & Practice Aids

Hierarchy Notes:

[*Tex. Code Crim. Proc. Title 1, Ch. 46B*](#)

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Art. 46B.090. Jail-Based Restoration of Competency Pilot Program.

- (a) ~~In this article, "department" means the Department of State Health Services.~~ [Repealed.]
- (a-1) If the legislature appropriates to the ~~department~~ commission the funding necessary for the ~~department~~ commission to operate a jail-based restoration of competency pilot program as described by this article, the ~~department~~ commission shall develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. In developing the pilot program, the ~~department~~ commission shall coordinate and allow for input from each participating county.
- (b) The ~~department~~ commission shall contract with a provider of jail-based competency restoration services to provide services under the pilot program if the ~~department~~ commission develops a pilot program under this article.
- (c) ~~Not later than November 1, 2013, the commissioner of the department~~ The executive commissioner shall adopt rules as necessary to implement the pilot program. ~~In adopting rules under this article, the commissioner shall specify the types of information the department must collect during the operation of the pilot program for use in evaluating the outcome of the pilot program.~~
- (d), (e) [Repealed by Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.15(d), effective September 1, 2015.]
- (f) To contract with the ~~department~~ commission under Subsection (b), a provider of jail-based competency restoration services must ~~demonstrate to the department that:~~
- (1) be a local mental health authority or local behavioral health authority that is in good standing with the ~~provider:~~ (A) ~~has previously provided~~ 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 ~~for one or more years; or~~ and

~~(B2) is a local mental health authority that has previously provided competency restoration services;~~(2) the contract with a county or counties to develop and implement a jail-based competency restoration program.

(f-1) The provider's jail-based competency restoration program must:

~~(A)uses~~ 1) through the use of a multidisciplinary treatment team ~~to provide clinical treatment that is,~~ provide jail-based competency restoration services that are:

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

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

~~(B2) employs~~ employ or ~~contracts~~ contract for the services of at least one psychiatrist; and

(3) provide jail-based competency restoration services through licensed or qualified mental health professionals;

(4) provide weekly competency restoration ~~C)provides weekly treatment~~ hours commensurate to the ~~treatment~~ hours provided as part of a ~~other~~ competency restoration ~~program at an inpatient mental health facility~~ programs;

(35) ~~the~~ 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 ~~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.

(g) A contract under Subsection (b) must require the designated provider to collect and submit to the ~~department~~ commission the information specified by rules adopted under Subsection (c).

~~(h) The designated provider shall enter into a contract with the participating county or counties. The contract must require the participating county or counties to:~~(1) [Repealed.]

(i) A psychiatrist or psychologist for the provider who has the qualifications described by Article 46B.022 shall evaluate the defendant's competency and report to the court as required by Article 46B.079. ~~ensure the safety of defendants who participate in the jail-based restoration of competency pilot program;~~ (2) ~~designate a separate space in the jail for the provider to conduct the pilot program;~~ (3) ~~provide the same basic care to the participants as is provided to other inmates of a jail; and~~ (4) ~~supply clinically appropriate psychoactive medications to the mental health service provider for purposes of administering court-ordered medication to the participants in accordance with Article 46B.086 of this code and Section 574.106, Health and Safety Code.~~ (i) ~~The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the pilot program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection.~~

(j) If at any time during a defendant's participation in the jail-based restoration of competency pilot program 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).

(k) If at any time during a defendant's participation in the jail-based restoration of competency pilot program 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.

(l) If the psychiatrist or psychologist 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 in the pilot program, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this subchapter, including any extension ordered under Article 46B.080, unless the jail-based competency

restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

- (1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or ~~(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 felony or a misdemeanor, ~~the court may:~~ (A) ~~order a single extension~~ an extension has been ordered under Article 46B.080 and ~~the transfer of the defendant~~ not less than 45 days are remaining under the extension order.

(l-1) After receipt of a notice under Subsection (l), the defendant shall be transferred without unnecessary delay to the appropriate mental health facility ~~or~~, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by this subchapter, including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. If the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by this subchapter, the defendant shall be returned to the court for further proceedings. For a defendant charged with a misdemeanor, the court may:

- (1) ~~as provided by Article 46B.073(d) for the remainder of the period under the extension;~~ (B) proceed under Subchapter E or F;
- (~~C~~2) release the defendant on bail as permitted under Chapter 17; or
- (~~D~~3) dismiss the charges in accordance with Article 46B.010.

(l-2) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

- (1) the court determines that the defendant 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
- (2) the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

(m) 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 the pilot program in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(n) If the ~~department~~ commission develops and implements a jail-based restoration of competency pilot program under this article, not later than December 1, ~~2018~~2021, the executive 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~~ commission during the pilot program and the executive commissioner's evaluation of the outcome of the program as of the date the report is submitted.

(o) ~~[Repealed.]~~ This article expires September 1, 2022. After the expiration of this article, a pilot program established under this article may continue to operate subject to the requirements of Article 46B.091.

History

Enacted by Acts 2013, 83rd Leg., ch. 797 (S.B. 1475), §2, effective September 1, 2013; ~~am.~~ Acts 2015, 84th Leg., ch. 1 (S.B. 219), §6.016, effective April 2, 2015; ~~am.~~ Acts 2015, 84th Leg., ch. 946 (S.B. 277), §§1.15(c), 1.15(d), effective September 1, 2015; ~~am.~~ Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§29, 35(2), effective September 1, 2017; Acts 2021, 87th Leg., ch. 936 (S.B. 49), §6, §11(1), effective September 1, 2021.

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Art. 46B.091. Jail-Based Competency Restoration Program Implemented by County.

- (a) [Repealed.]
- (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;

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- (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 who has the qualifications described by Article 46B.022 shall evaluate the defendant's competency and report to the court as required by Article 46B.079.
- (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.

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(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, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this subchapter, including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

- (1)** for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or
- (2)** for a defendant charged with a felony or a misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 days are remaining under the extension order.

(j-1) After receipt of a notice under Subsection (j), the defendant shall be transferred without unnecessary delay to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by this subchapter, including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. If the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by this subchapter, the defendant shall be returned to the court for further proceedings. For a defendant charged with a misdemeanor, the court may:

- (1)** proceed under Subchapter E or F;
- (2)** release the defendant on bail as permitted under Chapter 17; or
- (3)** 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.

(l) 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.

(m) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

- (1)** the court determines that the defendant 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
- (2)** the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

History

[Acts 2017, 85th Leg., ch. 748 \(S.B. 1326\), § 30](#), effective September 1, 2017; [Acts 2021, 87th Leg., ch. 936 \(S.B. 49\), § 7](#), § 11(2), effective September 1, 2021.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

The 2021 amendment by S.B. 49, §§ 7, 11, rewrote the section.

Applicability

Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 37 provides: “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.”

Research References & Practice Aids

Hierarchy Notes:

[Tex. Code Crim. Proc. Title 1, Ch. 46B](#)

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Tex. Code Crim. Proc. Art. 46B.091

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st, 2nd and 3rd Called Sessions, and is current with the 2021 ballot proposition contingencies.

Texas Statutes & Codes Annotated by LexisNexis® > Code of Criminal Procedure > Title 1 Code of Criminal Procedure of 1965 (Arts. 1.01 - 67.305) > Miscellaneous Proceedings (Chs. 46 - 100) > Chapter 46B Incompetency to Stand Trial (Subchs. A - G) > Subchapter D Procedures After Determination of Incompetency (Arts. 46B.071 - 46B.091)

Art. 46B.091. Jail-Based Competency Restoration Program Implemented by County.

(a) ~~In this article:~~(1) [Repealed.]

(~~"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.~~ who has the qualifications described by Article 46B.022 shall evaluate the defendant's competency and report to the court as required by Article 46B.079.
- (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, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this subchapter, including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

(1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or ~~(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 felony or a misdemeanor, ~~the court may:~~ (A) ~~order a single extension~~ an extension has been ordered under Article 46B.080 and ~~, notwithstanding Articles 46B.073(e) and (f), the transfer of the defendant~~ not less than 45 days are remaining under the extension order.

~~(j-1)~~ After receipt of a notice under Subsection (j), the defendant shall be transferred without unnecessary delay to the appropriate mental health facility ~~or, residential care facility,~~ or outpatient competency restoration program for the remainder of the period permitted by this subchapter, including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. If the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by this subchapter, the defendant shall be returned to the court for further proceedings. For a defendant charged with a misdemeanor, the court may:

~~(1 -as provided by Article 46B.073(d) for the remainder of the period under the extension;~~ (B) proceed under Subchapter E or F;

- (~~C~~2) release the defendant on bail as permitted under Chapter 17; or
- (~~D~~3) 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.

(l) 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.

(m) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

- (1) the court determines that the defendant 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
- (2) the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

History

~~Enacted by~~ Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 30, effective September 1, 2017; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 7, § 11(2), effective September 1, 2021.

[Tex. Code Crim. Proc. Art. 46B.1055](#)

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st, 2nd and 3rd Called Sessions, and is current with the 2021 ballot proposition contingencies.

Texas Statutes & Codes Annotated by LexisNexis® > Code of Criminal Procedure > Title 1 Code of Criminal Procedure of 1965 (Arts. 1.01 — 67.305) > Miscellaneous Proceedings (Chs. 46 — 100) > Chapter 46B Incompetency to Stand Trial (Subchs. A — G) > Subchapter E Civil Commitment: Charges Pending (Arts. 46B.101 — 46B.117)

Art. 46B.1055. Modification of Order Following Inpatient Civil Commitment Placement.

- (a) This article applies to a defendant who has been transferred under Article 46B.105 from a maximum security unit to any facility other than a maximum security unit.
- (b) The defendant, the head of the facility to which the defendant is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order the defendant to participate in an outpatient treatment program.
- (c) If the head of the facility to which the defendant is committed makes a request under Subsection (b), not later than the 14th day after the date of the request the court shall hold a hearing to determine whether the court should modify the order for inpatient treatment or residential care in accordance with Subtitle C, Title 7, Health and Safety Code.
- (d) If the defendant or the attorney representing the state makes a request under Subsection (b), not later than the 14th day after the date of the request the court shall grant the request, deny the request, or hold a hearing on the request to determine whether the court should modify the order for inpatient treatment or residential care. A court is not required to hold a hearing under this subsection unless the request and any supporting materials provided to the court provide a basis for believing modification of the order may be appropriate.
- (e) On receipt of a request to modify an order under Subsection (b), the court shall require the local mental health authority or local behavioral health authority to submit to the court, before any hearing is held under this article, a statement regarding whether treatment and supervision for the defendant can be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services are available to the defendant.

Tex. Code Crim. Proc. Art. 46B.1055

(f) If the head of the facility to which the defendant is committed believes that the defendant is a person with mental illness who meets the criteria for court-ordered outpatient mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility shall submit to the court before the hearing a certificate of medical examination for mental illness stating that the defendant meets the criteria for court-ordered outpatient mental health services.

(g) If a request under Subsection (b) is made by a defendant before the 91st day after the date the court makes a determination on a previous request under that subsection, the court is not required to act on the request until the earlier of:

(1) the expiration of the current order for inpatient treatment or residential care; or

(2) the 91st day after the date of the court's previous determination.

(h) Proceedings for commitment of the defendant to a court-ordered outpatient treatment program are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings regardless of whether the criminal court is also the county court.

(i) The court shall rule on a request made under Subsection (b) as soon as practicable after a hearing on the request, but not later than the 14th day after the date of the request.

(j) An outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

History

[Acts 2021, 87th Leg., ch. 936 \(S.B. 49\), § 8](#), effective September 1, 2021.

Annotations

Research References & Practice Aids

Hierarchy Notes:

[Tex. Code Crim. Proc. Title 1, Ch. 46B](#)

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