



JCMH LEGISLATIVE PROPOSALS AND RESULTS
87th Legislative Session

Before the commencement of the 87th Legislative Session the JCMH developed and submitted legislative proposals to the Texas Judicial Council. This review compares those proposals to the bills passed during the 87th legislative session.

PASSED PROPOSALS & LEGISLATION

Issue	Proposal	Result
Acceptance of Plea in Justice and Municipal Courts	Amend Chapter 45 of the Texas Code of Crim. Procedure to add Art. 45.0241, which would codify the requirement that a justice of the peace or municipal court judge may accept a plea of guilty or nolo contendere only if the defendant appears to be mentally competent.	HB 3774, Section 3 , creates the recommended amendment to Chapter 45 of the Texas Code of Criminal Procedure and adds Art. 45.0241 which states, “A justice or judge may not accept a plea of guilty or plea of nolo contendere from a defendant in open court unless it appears to the justice or judge that the defendant is mentally competent, and the plea is free and voluntary.” ----- PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021
16.22 Interview for a Defendant No Longer in Custody	Amend subsection (a)(2) of Article 16.22 of the Code of Criminal Procedure to omit the requirement that a magistrate order a mental health interview for a defendant that is no longer in custody.	SB 49, Section 1 creates the recommended amendment and subsection (a)(2) of Art. 16.22 of the Code of Criminal Procedure no longer requires an interview for a defendant who is not in custody. ----- PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021

<p>Oath and Promise to Appear for Persons with Mental Illness or IDD</p>	<p>Amend Art. 17.04 of the Code of Criminal Procedure to remove the oath requirement for defendants being released under art. 17.032, art.16.22(c)(5), and CCP Chapter 46(B) Competency.</p>	<p>SB 49, Section 3, amends Code of Criminal Procedure Art. 17.04 by adding subsection (3)(b). This amendment is broader than the original JCMH proposal. This amendment precludes a personal bond oath if a magistrate makes a determination under 16.22 that the defendant has mental illness or IDD, if the defendant is released under art. 17.032, or if the defendant is found incompetency to stand trial in accordance with Chapter 46B.</p> <p>----- PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>
<p>Time Periods for Competency Orders</p>	<p>Amend Art. 46B.055 of the Code of Criminal Procedure to clarify the commencement of competency restoration, the triggering event being the latter of the date the order for restoration is signed by the Court or when the actual restoration services begin.</p>	<p>SB 49, Section 4 creates the recommended amendments and adds art. 46B.0735 which states, “The initial restoration period for a defendant under Art. 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.”</p> <p>SB 49, Section 5, also clarifies the issue and amends Art. 46B.080 by adding subsection (d), which states, “An extension under this article begins 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).”</p> <p>----- PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>
<p>Jail-Based Competency Restoration Pilot Program and County Programs</p>	<p>Amend Art. 46B.090 of the Code of Criminal Procedure to adjust the pilot program to better align with a Jail-based competency restoration (JBCR) program established by a county.</p>	<p>SB 49, Section 6 creates the recommended amendments and sets standards and procedures for a JBCR program that is aligned with JBCR programs established by a county and also mandates a sunset provision of the HHSC pilot program, set for September 1, 2022.</p> <p>----- PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>

<p>Deadlines for Competency Evaluations and Timelines in Jail-Based Competency Restoration Programs</p>	<p>Amend Art. 46B.091 of the Code of Criminal Procedure to mandate the continuation of JBCR past the initial 60-day treatment period if the defendant is waiting an inpatient bed. Amend Art. 46B.091 to provide authority to the trial court to modify an order for JBCR by ordering outpatient competency restoration, when appropriate.</p>	<p>SB 49, Section 7 creates the recommended amendments to allow for extended periods of JBCR and for outpatient competency restoration for defendants who are determined not to be a danger to others.</p> <p>-----</p> <p>PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>
<p>Possibility of a Step Down from Court-Ordered Inpatient to Outpatient Mental Health Services under 46B.105</p> <p>Modification of order following inpatient civil commitment placement</p>	<p>Add Code of Criminal Procedure art. 46B.1055 to allow for a step-down in the confinement of a defendant under an order of civil commitment with a finding of violence. The added article would allow a court to determine if an order for outpatient mental health services is an appropriate step-down of the defendant’s civil commitment order. The article would also mandate consultation with the LMHA of LBHA prior to any hearing to determine a modification.</p>	<p>SB 49, Section 8 creates the recommended amendment to Chapter 46B of the Code of Criminal Procedure by adding Art. 46B.1055. The article creates a process to request a defendant’s step-down in their civil commitment order, to include a transfer to outpatient treatment services.</p> <p>-----</p> <p>PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>
<p>Expert Qualifications in Competency and Insanity Evaluations</p>	<p>Amend CCP art. 46C.102 to eliminate the 5-year legacy exception for qualifications of experts to determine insanity. Aligns the expert qualifications for insanity and incompetency.</p>	<p>SB 49, Section 9 creates the recommended amendment to Art. 46C.102 and eliminates the 5-year legacy exception for qualifications of experts to determine insanity.</p> <p>-----</p> <p>PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>
<p>Psychiatric Stabilization at the Jail</p> <p>Continuity of prescription medications for care and treatment of prisoners with mental illness/psychiatric stabilization at the jail</p>	<p>Amend Section 511.009(d) of the Government Code to create subsection (d)(2), a provision that prisoners with mental illness be provided <i>access</i> to a necessary prescription medication.</p>	<p>SB 49, Section 10 creates the recommended amendment (but strengthens the language) by adding Section 511.009(d)(2), mandating that prisoners with mental illness <i>be provided</i> with each necessary medication that is prescribed by a qualified medical professional or mental health professional.</p> <p>-----</p> <p>PASSED: 5/31/2021 SIGNED: 6/18/2021 EFFECTIVE: 9/1/2021</p>

PROPOSALS THAT DID NOT PASS

Issue	Proposal	Result
Good Time Credit for Defendants Released to Outpatient Competency Restoration Programs	Amend art. 46B.009 of the Code of Criminal Procedure to allow good time credit for defendants who attend or participate in an outpatient competency restoration program.	This proposal was included in SB 1739 and HB 4212. SB 1739 did not make it past committee. HB 4212 did pass in the House of Representatives but was not taken up by the Senate.
Clarification of Officer’s Duties Upon Presenting a Person for Mental Health Services	Amend Section 573.012 of the Health and Safety Code to clarify that a peace officer has no duty or obligation to remain at a facility or emergency department after that officer has transported an individual for emergency mental health services with proper completed documentation.	Proposal was not included in any bill introduced during the legislative session.
Expansion of Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant	Amend Section 573.012 of the Health and Safety Code by adding subsection (h-2) that would allow a magistrate or judge to permit an application for emergency detention warrant from a licensed physician’s assistant, nurse practitioner, or a non-physician mental health professional.	This proposed amendment was included in SB 1511 (Sec. 2) and HB 3977 (Sec. 2). SB 1511 did not make it out of committee. HB 3977 also died in committee. The proposed amendment was not attached to any other bill.
Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention	Amend Section 573.012 of the Health and Safety Code to add subsection (d-1), which would authorize a law enforcement officer to seize a firearm that is in the possession of an individual who is the subject of an emergency detention warrant.	This proposed amendment was included in SB 1511 (Sec. 2) and HB 3977 (Sec. 2). SB 1511 did not make it out of committee. HB 3977 also died in committee. The proposed amendment was not attached to any other bill.
Authorization for Blood Draws to Monitor Blood Levels of Psychoactive Medications Involuntarily Administered to Patients in Accordance with Lawful Orders	Amend Section 574.106 of the Health and Safety Code to add subsection (a-1) to allow mandatory blood draws for patients admitted to the state hospitals for involuntary psychoactive medication administration purposes.	This proposed amendment was included in SB 1511 (Sec. 3) and HB 3977 (Sec. 3). SB 1511 did not make it out of committee. HB 3977 also died in committee. The proposed amendment was not attached to any other bill.

<p>Defendant with Lack of Capacity in Justice and Municipal Courts</p> <p>Authority for Justices of the Peace and Municipal Court Judges to dismiss Class C misdemeanors when the defendant lacks capacity.</p>	<p>Add CCP art. 45.0214, which would allow a judge/justice, on a motion by the state, the defendant, or person standing in parental relation, or on the court's own motion, to determine if probable cause exists to believe that the defendant lacks the capacity to understand criminal proceedings or to assist in the defendant's own defense and is unfit to proceed. And if PC is found, to dismiss the Class C complaint.</p>	<p>This proposal was included in SB 1739 and HB 4212, section 3. SB 1739 did not make it past committee. HB 4212 did pass in the House of Representatives but was not taken up by the Senate.</p>
<p>Statutory Authority to Delay the Arrest of a Mental Health Patient Detained under an Emergency Detention or Order of Protective Custody, Who Engages in Conduct that May Subject the Patient to Arrest for an Assault or Other Low-Level Offense, until the Patient's Mental Health Condition has been Stabilized</p>	<ol style="list-style-type: none"> 1. Amend Chapter 15 of the Code of Criminal Procedure by adding new section 15A, which would create statutory authority to delay the arrest of a mental health patient until the patient's condition has been stabilized. and/or 2. Amend Sec. 22.01 of the Penal Code to make an exception to the provisions regarding assault of a public servant and emergency service provider. Said exception would diminish the offense from a felony to a misdemeanor. and/or 3. Allow an exception, defense, affirmative defense, or mitigation instruction in favor of a defendant charged with felony assault who was at the time under an order or protective custody or emergency detention. 	<p>Proposals were not included in any bill introduced during the legislative session.</p>