

## **SB 1164 (Sen. Zaffirini) / HB 5463 (Rep. Moody)**

### **Emergency Detention**

#### **Update the Law Enforcement Emergency Detention Form**

- This bill improves the form required by Health and Safety Code § 573.002(d) for peace officers carrying out emergency detentions without a warrant. The current form lacks prompts to elicit necessary information.
- The proposed modifications add areas for officers to explain the bases for affirmative declarations of evidence of mental illness, substantial risk of harm, and the need for temporary restraint.

#### **Clarify a Peace Officer's duties in an Emergency Detention at a Facility**

- Currently, when a peace officer presents an individual at a facility for an emergency detention authorized by warrant, the peace officer may then return to their community duties.
- To make the two provisions consistent, this bill adds subsection (f) to § 573.002 to state that a peace officer has no duty to remain at a facility or an emergency room once the officer presents a person for emergency mental health services under an Apprehension by a Peace Officer Without a Warrant and completes the required documentation. This language largely parallels the 2023 addition of § 573.012(d-1).

### **Court-Ordered Mental Health Services**

#### **Clarify Court-ordered Mental Health Services Venue Law**

- This bill amends Health and Safety Code § 574.001(b) to clarify the appropriate venue for filing an Application for Court-ordered Mental Health Services and Order of Protective Custody.
- This adjustment clarifies that venue is proper in either the county where the person was apprehended by a peace officer or the county where the person is located when the application is filed.

#### **Clarify Capacity Standard for Civil Commitment**

- This bill amends provisions of Health and Safety Code §§ 573-574 to improve access to mental health care when a person has anosognosia, a neurological condition that causes people to be unaware of their psychiatric condition and can be diagnosed in connection with psychotic disorders, including schizophrenia and bipolar disorder.
- This section clarifies the capacity standard for inpatient court-ordered mental health treatment. It applies when it is shown that persons with mental illness lacks the capacity to recognize their symptoms of a serious mental illness and are thereby unable to make a rational and informed treatment decision or appreciate the risks or benefits of treatment, and, in the absence of treatment, are likely to experience a relapse or deterioration resulting in risks of serious harms to self or others. The proposal also clarifies that evidence of severe emotional distress and deterioration “may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment.”

## **SB 2213 (Zaffirini) / HB 5465 (Moody)**

### **Early Identification and Referral to Treatment**

#### **Expand law enforcement pre-arrest treatment options**

- Code of Criminal Procedure article 16.23 currently requires law enforcement to make a good faith effort to divert a person suffering a mental health crisis to a treatment center in the agency's jurisdiction.
- This bill amends article 16.23 to allow law enforcement to develop and implement a more flexible plan tailored to the county's available or nearby resources, including a regional treatment center. This amendment would permit use of a Mobile Crisis Outreach Team, where the current statute requires a "treatment center"—often interpreted as requiring a brick-and-mortar location. This change also eliminates the requirement that such a place or program be located within the jurisdiction of the law enforcement agency, because many rural jurisdictions do not have such a facility or program.
- This amendment would also require law enforcement agencies to report their article 16.23 plan to the Texas Commission on Law Enforcement, thereby facilitating collaboration within counties to provide guidance for diversion to their law enforcement agencies.

### **Specialty Courts**

#### **Clarify that Assisted Outpatient Treatment courts may qualify as a type of specialty court**

- To create more collaboration between criminal and civil mental health court programs, this amendment expands the definition of a "mental health court program" in Government Code § 125.001 to include civil courts operating an Assisted Outpatient Treatment program if they otherwise meet the statutory criteria. The definition currently includes only criminal mental health courts, so the suggested language would allow both criminal and civil courts to be recognized as mental health court programs where appropriate.
- It would be beneficial for the civil and criminal courts to work together more seamlessly to avoid further justice involvement where possible. Another goal of the amendment would be to open funding opportunities to civil Assisted Outpatient Treatment court programs. To qualify for funding from the Office of the Governor, a court must meet the definition of a specialty court program. Allowing civil courts to apply for that funding would support momentum in Texas to create more Assisted Outpatient Treatment courts, which provide earlier intervention in the lives of the individuals before they commit serious crimes.

#### **Allow Statutory County Courts to have jurisdiction over certain felony cases in specialty court programs**

- County court-at-law judges who oversee a specialty court program would like to have the authority to admit individuals charged with felony offenses into their specialty court. Although this has been a routine practice for specialty court dockets, it generally has been addressed by local administrative orders.
- This bill codifies this type of authorization for specialty court programs. This amendment

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does not expand authority outside of specialty courts. For example, it would not allow county courts-at-law to have regular felony dockets but rather would only allow more flexibility with the specialty court dockets.

- This bill modifies Government Code Chapter 121 to ensure that specialty court programs presided over by a County Court-at-Law Judge have jurisdiction to preside over both misdemeanor and felony cases when those defendants are admitted to a specialty court program overseen by the County Court-at-Law Judge.

### **Competency Restoration**

#### **Use Outpatient Competency Restoration or Civil Commitment for Some Nonviolent Misdemeanors**

- This amendment to the Code of Criminal Procedure Chapter 46B limits the use of inpatient competency restoration services for people charged with nonviolent misdemeanors to extraordinary circumstances. This amendment also sets out the procedures for what to do when a defendant is deemed unlikely to be restored to competency.
- Within this bill are other clarifying provisions, including a functional definition of what it means for someone to be restorable in the “foreseeable future.” The definition asks appointed medical experts whether this person is capable of being restored to competency within the statutory period allowed under subchapter D—60 days for misdemeanors and 120 days for felonies along with a possible 60-day extension.
- The other provisions clarify procedures when the defendant is not restorable or not restored within the statutory time limits.

#### **Provide Options for Jails to Use Jail-based Competency Restoration for All Offense Types**

- This bill allows some people charged with violent or deadly weapon offenses to receive competency restoration services from a local jail-based competency restoration program instead of being ordered to an inpatient maximum-security unit operated by the state.
- Article 46B.073 currently requires that defendants who are found to be incompetent to stand trial and who are charged with a violent offense must be ordered to competency restoration services at a facility designated by the state commission, i.e., a maximum-security state inpatient facility.
- Some of the offenses included in this manifestly dangerous category are misdemeanor-level family violence assault cases. On its face, the statute does not permit the court to order incompetent defendants in such cases to jail-based competency restoration.
- Although there has been an interpretation of the law to allow individuals charged with one of these violent offenses into a jail-based bill on a case-by-case basis, the plain language of the statute states otherwise. This proposal specifically provides courts with the option to order jail-based competency restoration for these defendants.

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- Jails with competency restoration programs provide considerable security within the jail for their efforts. This proposal can therefore reduce the state hospital waitlist, jail days at the local level, and expenses on both the state and local levels.

### **Clarify Procedures When Defendant's Mental Condition Deteriorates After Competency Has Been Restored**

- Currently, Texas Code of Criminal Procedure 46B.084 does not address individuals who deteriorate between competency restoration and the resumption of adjudicative proceedings.
- This section amends article 46B.084 to clarify a process for identifying and evaluating recently restored defendants whose mental health has deteriorated while in custody awaiting disposition of their case and provides similar guidance on issues pertaining to defendants under civil commitment orders who have charges pending.

### **Allow Outpatient Civil Commitment for Defendants with IDD after Unsuccessful Competency Restoration**

- This amendment to the Code of Criminal Procedure article 46B.1055 permits people with intellectual and developmental disabilities and pending nonviolent criminal charges who have not successfully had competency restored under 46B to participate in court-ordered community-based living plans. This allows the criminal court to maintain oversight and helps to decrease the forensic waitlist by freeing a bed at a state facility.
- When someone is found incompetent to stand trial, they typically undergo competency restoration services. When initial restoration efforts are unsuccessful, the next step is typically to attempt civil commitment procedures under Subchapter E or F of Chapter 46B. Under Subchapter F, charges are dismissed, and the case is transferred to a probate court for civil commitment proceedings. Under Subchapter E, charges remain pending, and the criminal court can commit the defendant to inpatient or outpatient mental health services, or only to a residential care facility if the defendant has intellectual and developmental disabilities. Proceeding under Subchapter E with charges pending allows the prosecutor to maintain the charges against the defendant and the criminal court to maintain oversight of the defendant.
- However, the law currently excludes individuals with intellectual and developmental disabilities from outpatient civil commitment while charges are pending, meaning they can never be stepped down to a court-ordered, outpatient, community-based living plan. This discrepancy creates a conflict if the residential care facility reports the defendant no longer meets criteria for placement in a residential care facility. The court must then decide whether to overrule the recommendation of the facility and continue to occupy a state facility bed to maintain court oversight and keep the person in a residential care facility indefinitely, or to release the person back into the community without criminal court oversight.
- This bill creates the opportunity for judges to order a stepdown plan for a person with intellectual and developmental disabilities charged with a nonviolent offense from a residential care facility into court-ordered community-based services after an unsuccessful attempt at 46B competency restoration, allowing the criminal court to maintain oversight. Additionally, this procedure would decrease the forensic competency restoration waitlist by freeing a bed at a state facility.

### Permit Class C Misdemeanor Dismissal when the Defendant Lacks Capacity

- This bill amends Code of Criminal Procedure Chapter 45A to create a process for a court to consider dismissing a Class C misdemeanor when the judge has probable cause to believe that the charged individual lacks the capacity to understand the criminal proceedings or to assist in the defendant's defense and is unfit to proceed.
- Individuals who may be incompetent but who are charged with only class C misdemeanors are not permitted to be court-ordered to competency restoration services of any type because Chapter 46B is inapplicable. However, as a matter of constitutional law, the State is not allowed to proceed with the prosecution of a case against an individual who is not competent. This situation leaves courts with a subset of stagnant criminal cases on their dockets.
- This addition permits the state, the defendant, a person standing in a parental relation to the defendant, or the Court to move to dismiss the Class C misdemeanor charge because the defendant lacks the capacity to understand the criminal proceedings or to assist in the defendant's own defense and is unfit to proceed.

### Court-Ordered Medication

#### Allow APRNs and PAs to Apply and Testify for Court Ordered Medications

- Currently, in civil cases, a treating physician must file the application for court-ordered medications, and CCP Art. 46B.086(d) requires two different physicians to testify at a medication hearing for competency cases.
- In Texas, all but eight of our 254 counties are considered Mental Health Professional Shortage Areas, with two of those eight considered to be partial shortage areas.<sup>1</sup> Most communities in Texas, therefore, do not have access to psychiatrists or physicians with mental health expertise for these statutory requirements. Rural jurisdictions, in particular, have significant difficulty finding physicians who are able and willing to participate in medication hearings. Additionally, due to this shortage, physicians authorized by statute to write the applications and testify are typically not the primary medical professionals providing services to the patient.
- This bill creates a definition of Primary Care Provider for court-ordered medications to include physicians, advance practice registered nurses (APRNs), and physician's assistants (PAs).
- This allows for the medical professional who is actually providing services to make an application to the court for court-ordered medications, rather than only a supervising physician who may not have regular direct contact with the patient.
- This proposal also makes similar changes in CCP art 46B for medication orders in competency cases and extend deadlines for certain medication orders for persons who are recommitted as unrestored to competency.

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<sup>1</sup> *Health Professional Shortage Areas: Mental Health, by County, April 2025 – Texas*, RURAL HEALTH INFORMATION HUB, <https://www.ruralhealthinfo.org/charts/7?state=TX> (last visited April 9, 2025).