COMPETENCY RESTORATION: IS IT EFFECTIVE

A Dissertation

by

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ABSTRACT

The number of individuals with a serious mental illness (SMI) found incompetent to stand trial (IST) and court-ordered to competency restoration is high in the United States. Defendants referred to competency restoration programs have poorer psychological, physical, social, and economic outcomes compared to others involved in the criminal justice system. Current competency restoration research focuses on forensic evaluations and the interpretation of statutes, few studies evaluate competency restoration programs and no studies evaluate rural programs. This dissertation investigates attainment outcomes in outpatient competency restoration programs in three studies.

First, a systematic literature review was conducted to identify determinants of competency, elements of competency restoration programs, and restoration outcomes. The findings from the review found that competency restoration programs were effective; and programs with high restoration rates continuously assessed clients and provided specialized holistic treatments addressing the client's strengths and needs.

Second, outpatient competency restoration programs in Texas were assessed for efficacy. Results showed OCR programs in Texas were effective. Furthermore, defendants with a diagnosis of Schizophrenia were less likely to be restored to competency compared to other clients and tailor intensive services led to higher rates of competency attainment.

Third, an analysis was conducted on rural outpatient competency restoration programs in Texas. Rural OCR programs were not different from programs in urban areas in competency restoration rates. The findings suggest rural areas were effective in restoring individuals and clients benefited from specialized services.

Future research needs to focus on the evaluation competency restoration programs and should also incorporate rural areas. More research is needed in order to expand treatment in outpatient settings, create standards for treatment, and to develop effective policy. Researchers need to prioritize competency restoration research as this is a public health concern and a legal issue impacting the mental health system.

DEDICATION

This dissertation is dedicated to my mom, Elisa Del Carmen Villarreal. I love you. Also to my brother, Luis, and sister, Monik.

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This has been a long and arduous ten-year journey filled with several setbacks, heartache, and pain. But at the end there is light. I appreciate the opportunity to graduate with my doctorate in Public Health from Texas A&M University.

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NOMENCLATURE

ABA	American Bar Association
AC	Adjudicative Competency
ACT	Assertative Community Treatment
CCP	Texas Code of Criminal Procedure
CI	Confidence Interval
CJMHS	Criminal Justice Mental Health Standards
CR	Competency Restoration
CST	Competent to Stand Trial
DA	District Attorney
DC-OCRP	Washington DC Outpatient Competency Restoration Program
DOJ	Department of Justice
DSHS	Texas Department of State Health Services
ELMHS	Eastern Louisiana Mental Health System
FAC	Forensic Aftercare Clinic
HHSC	Texas Health and Human Services Commission
IST	Incompetent to Stand Trial
LBB	Legislative Budget Board
LBHA	Local Behavioral Health Authority
LMHA	Local Mental Health Authority
LOC	Level of Care

LOS	Length of Stay
LPHA	Licensed Practitioner of the Healing Arts
M	Mean
NARMH	National Association of Rural Mental Health
NGRI	Not Guilty by Reason of Insanity
OCR	Outpatient Competency Restoration
OLS	Ordinary Least Squares
OR	Odds Ratio
QMHP-CS	Qualified Mental Health Professional in a Community Setting
SB	Senate Bill
SD	Standard Deviation
SMI	Serious Mental Illness
TAMU	Texas A&M University

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CHAPTER I

INTRODUCTION

Incompetent to stand trial (IST) is a multifaceted legal and public health issue. Individuals with a serious mental illness (SMI) have higher rates of arrests are more likely to be found incompetent to stand trial, and are more likely to be sentenced to a correctional facility (Swanson et al., 2013; Pirelli, Gottdiener, & Zapf , 2011; James & Glaze, 2006). The rate of individuals found incompetent to stand trial is projected to double or triple, as more individuals with a serious mental illness are interfacing with law enforcement and access to inpatient and outpatient mental health services are limited (Pirelli, Gottdiener, & Zapf , 2011).

The upward trend of adults with SMI entering the criminal justice system is a concern for public health researchers and judicial court systems because of the physical, social, and economic impact. Justice-involved individuals with SMI, most notably re-offenders, experience unstable housing, unemployment, poverty, limited education, increased psychiatric hospitalization, disability, poor social ties, increased substance use, trauma, physical deterioration, reduced life expectancies, and poor treatment outcomes (Epstein, Barker, Vorburger, & Murtha, 2004; Koegel et al., 1988; Venez et al., 1988; Breakey et al., 1989; Teplin, 1990; Swanson et al., 2013). The financial burden of SMI is high; conservative estimates exceed $300 billion per year in the U.S. (Insel, 2008) and projected expenditures exclude those incurred by jails providing mental health services, court costs, and law enforcement.

Research supports the finding that individuals with SMI involved in the judicial system encounter multiple, complex physical, psychological, and social barriers. Limited studies focus on populations found incompetent to stand trial due to SMI. Furthermore, most published literature concentrates on the legal implications of incompetency as well as validating forensic psychiatric evaluations required to ascertain incompetence (Jackson, Rogers, & Sewell, 2005). Few articles discuss or evaluate competency restoration interventions. To date, no evidence-based practice nor guidelines exist in the provision of restoration services.

The goal of this dissertation was to examine the effectiveness of treatments aimed at restoring individuals with SMI to stand trial. Little is understood regarding the determinants in successful competency attainment. The research questions include: what current treatment options are available for competency restoration? Are the interventions effective in restoring a rational and factual understanding of the legal proceedings? What are the differences in treatment for rural versus urban settings for restoration? Analyzing the outcomes of restoration treatments will expand the knowledge of IST programs and build upon current knowledge.

The methods to address the aforementioned questions included: 1) a systematic literature review of competency restoration interventions of defendants with SMI (Chapter II) 2) an examination of the effectiveness of a statewide outpatient competency restoration program (Chapter III); and 3) an examination of the association of restoration in rural locations (Chapter IV).

Three manuscripts reflect this research. The first manuscript reviews the literature to identify effective competency restoration interventions. The challenge is defining effectiveness and limiting studies to participants with SMI, as well as determining elements of successful competency restoration. The literature review is fundamental in understanding and detecting the mechanisms of effective competency restoration. Findings can benefit treatment providers, researchers, and policy makers in the creation of standards, policies, and rules (laws) aimed at restoring individuals to competency.

The second manuscript assesses the efficacy of outpatient interventions aimed at increasing restoration of individuals with SMI found incompetent to stand trial and ordered to treatment. The challenge was determining the variables influencing restoration. The results can inform state oversight agencies regarding what components need to be in practice and help policy makers change statutory requirements for treatment as well as to improve statewide data systems. Moreover, the findings can help establish standardized competency treatment in inpatient, outpatient, and jail settings.

Lastly, the third manuscript examines the differences between rural and urban outpatient restoration programs (OCR). The challenge was to determine whether successful competency attainment is possible in rural settings. The results can inform state and local policy makers about the needs for specialized populations involved in the criminal justice system in low resource areas. The dissertation concludes with limitations of the studies and recommendations.

CHAPTER II

COMPETENCY RESTORATION TREATMENT STRATEGIES AND OUTCOMES: A LITERATURE REVIEW

Introduction

Each year an estimated 2 million individuals with Serious Mental Illness (SMI) are arrested (Swanson et al., 2013). The U.S. Department of Justice (DOJ) (James & Glaze, 2006) reported more than half of all prison and jail inmates had a diagnosis of a mental health problem. Arrest data over the past 50 years, also show an increase trend in the number of individuals with SMI being detained and entering the criminal justice system (Swanson et al., 2013).

Individuals diagnosed with SMI are more likely to interact with law enforcement, await longer trial periods, are at higher risk of victimization, have higher rates of recidivism, and are more likely to be found guilty, and serve longer time compared to persons with no history of a mental health disorder (Glaze, 2009; James & Glaze, 2006; Steadman, Osher, Robbins, et. al., 2009; Abram & Teplin, 1991; Abram, Teplin, &McClelland, 2003; West & Sobal, 2008). The upward trajectory of arrests and incarceration of individuals with SMI has gained attention from public health practitioners and researchers as justice-involved individuals with chronic and persistent mental illness have poor psychosocial, physical, and economic outcomes, as noted previously.

Determinants and Influencing Factors

The literature establishes, and research supports, the assertion that individuals with SMI involved in the judicial system encounter multiple, complex barriers (Glaze, 2009; James & Glaze, 2006; Steadman, Osher, Robbins, et. al., 2009; Abram & Teplin, 1991; Abram, Teplin, &McClelland, 2003; West & Sobal, 2008). However, limited research has focused on the issue of incompetence to stand trial (IST); more specifically, the treatment and interventions for competency restoration. Incompetent to stand trial (IST) is an intricate legal and behavioral concept. Several determinants including age, diagnosis, sex, treatment, social support, state policies governing statutory requirements for individuals found IST, and federal policies influence competency attainment (restorability) (Mossman, 2007). Environmental context and embedded systems shape competence (behavior) (Bronfenbrenner, 1979). The Social Ecological Model (Figure 1) provides the theoretical framework identifying the inter-relationships between an individual's ability to attain competency and the environment (McLeroy, Bibeau, Steckler, & Glanz, 1988).

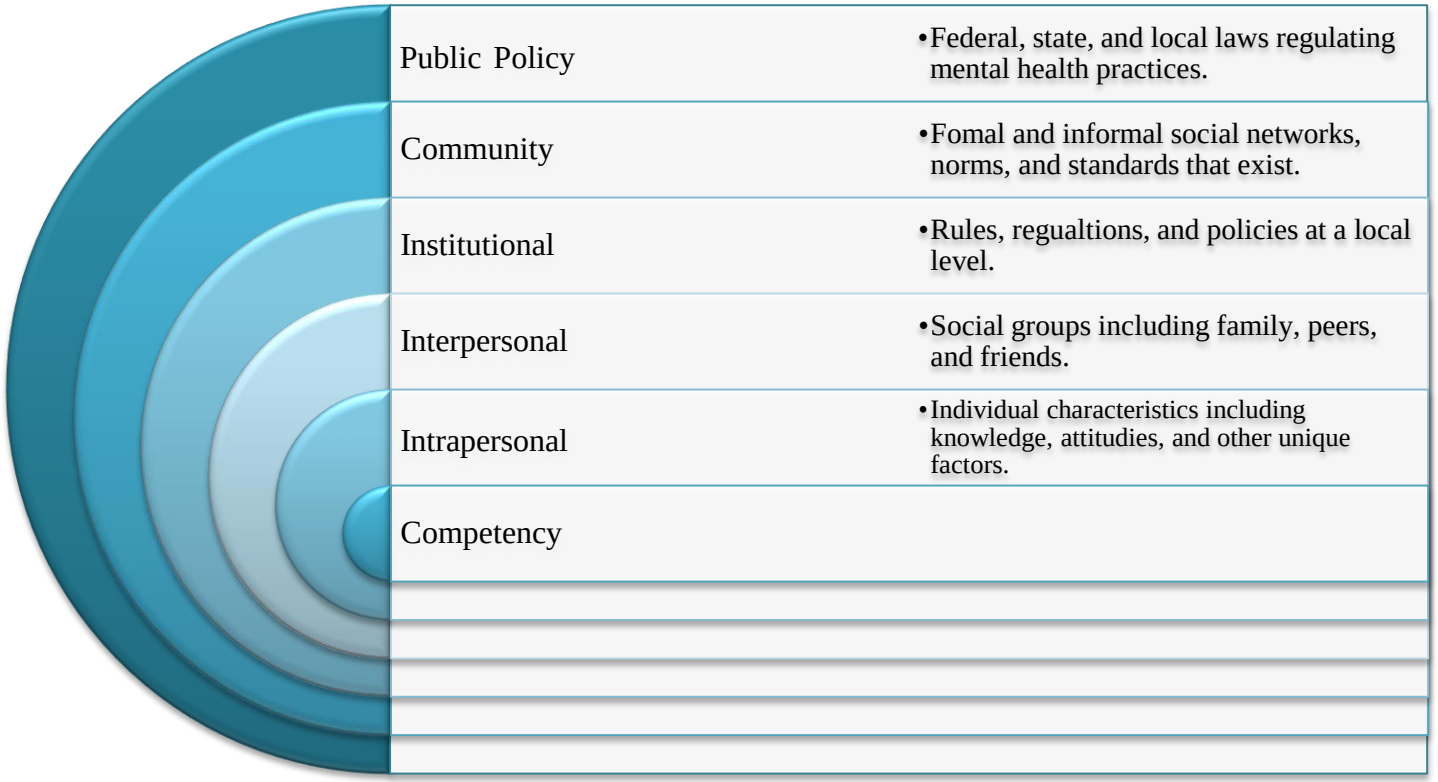

Figure 1: Social Ecological Model of Competency Restoration for Individuals with SMI (Adapted from McLeroy, Steckler, & Bibeau, D, 1988)

Two significant studies in forensic psychiatric law examine intrapersonal and interpersonal factors predicting the restorability of incompetent criminal defendants. Hubbard, Zapf, and Ronan (2003) reviewed 468 competency evaluations of individuals committed to Taylor Hardin Secure Medical Facility (THSMF) in Alabama from 1994 through 1997. Restored persons were younger, previously employed, white, charged with misdemeanors, and did not have a SMI diagnosis (Hubbard, Zapf, and Ronan, 2003).

Mossman's (2007) analysis of 328 psychiatric hospital records from IST defendants in Ohio from 1995 through 1999 yielded similar outcomes. Pre-trial defendants received inpatient mental health services that included psychotropic medication; clinical interventions; and intensive weekly didactic sessions by the treatment team designed to improve factual understanding of legal proceedings, legal pleas, trial outcomes and consequences, and roles of courtroom staff (Mossman, 2007). The cohort study identified eight variables associated with reduced likelihood of competency restoration —severity of the charge (degree of felony), older age of admission, dual diagnosis of an intellectual disability disorder, SMI diagnosis, previous hospitalizations, long lengths of stays, co-occurring substance use, and African-American or Latino (Mossman, 2007).

Community and institutional factors also influence an individual's competency attainment. In 2015, the Hogg Foundation for Mental Health at University of Texas (Graziani, Guzman, Mahometa, & Shafer, 2015) evaluated the state's Outpatient Competency Restoration Programs (OCR). Eleven cohorts (n=644) were surveyed and

participant data were collected from June 2008 through June 2012 (Graziani, Guzman, Mahometa, & Shafer, 2015). Severity of mental health condition, previous treatment compliance, social support, substance use history, access to community resources, and criminal history were related to a participant's positive outcome (Graziani, Guzman, Mahometa, & Shafer, 2015). A key finding in the report was the impact of the relationship between the client, program staff, and judicial system (institution and community) (Graziani, Guzman, Mahometa, & Shafer, 2015). OCR program directors who had engaged a "champion" judge; received support from the district attorney (DA); fostered strong relationships with law enforcement and sheriffs; established a mental health docket or court; and provided ongoing community training about the program reported program success and improved participant's competency attainment (Graziani, Guzman, Mahometa, & Shafer, 2015).

Reviews of Competency Research

In the landmark case of *Dusky v. United States* (1960), the Supreme Court established the legal standard for defining competency. Following the ruling, various studies were published focusing on determining competency status via evaluations, correlates of competency, performance of defendants on traditional psychological tests, and performance of defendants on specialized competency assessment measures (Pierelli, Gottdiener, & Zapf, 2011). Despite the wealth of studies published after 1960, limited studies tested the effectiveness of treatment modalities.

Four qualitative literature reviews conducted by Grisso and associates examined the adjudicated competency (AC) process over a nineteen-year span (Cooper & Grisso,

1997; Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013; Grisso, 1992; Mumley, Tillbrook, & Grisso, 2003). Studies were assessed and categorized by eight themes: 1) the systemic context of evaluations of adjudicative competence (AC); 2) conceptual and theoretical guidelines for competency evaluations; 3) research on competency assessment methods; 4) empirical correlates of AC judgments and psycho-legal abilities; 5) quality of psychological competency evaluations and reports; 6) interpretation of evaluation data; 7) difficulties in competency assessment of special populations (e.g., juveniles, persons with intellectual disabilities and disorders, individuals with cognitive impairments or neurological damage, and women); and 8) treatment to restore competence (Cooper & Grisso, 1997; Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013; Grisso, 1992; Mumley, Tillbrook, & Grisso, 2003).

The latest literature review (articles published from 2001- 2010) provided the most robust identification of studies examining the effectiveness of restoration treatments (Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013). Grisso and colleagues (Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013) concluded most restoration treatment occurred in inpatient psychiatric hospitals and many states' statutory requirements do not allow for outpatient treatment (Miller, 2003). Competency interventions included an array of individualized instruction (Bertman et. al, 2003) and group education (Bertman et. al, 2003) paired with medication management. Two studies employed visual and tactical methods to teaching legal concepts and competency related information (Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013). Montgomery and Brooks (2005) utilized videotaped episodes of the crime drama "Law

and Order" and participants showed significant performance improvement in pre- and post-tests. Mueller and Wylie (2007) tested a board game called the "Fitness Game," and found no difference between the control and experimental groups.

Purpose

The purpose of this study was to examine the literature for competency restoration studies, focusing on intervention strategies and adjudication results of defendants on court-ordered commitments. Specifically, the purpose was to investigate how individual characteristics and elements of treatment interact with successful outcomes. The review had three aims: (1) review the literature on adjudicative restoration models for individuals with SMI; (2) describe participant's traits and detail the core principles of the interventions; and (3) provide recommendations for future competency research.

Methods

Retrieval Procedures

Studies were searched in the following electronic databases: ERIC (EBSCO), MEDLINE (PubMed), MEDLINE (Ovid), PsychINFO, and JSTOR. This literature review modified Pirelli, Gottidiener, and Zapf's (2011) procedures with the addition of the search "treatment". Key terms included: (1) adjudicative competenc*; competenc*to stand trial; trial competenc*; restoration of competenc*; treatment of incompetent defendants; competenc* restoration; fit to proceed; and (2) treatment; intervention, or therapy. Medical subject headings (MeSH) and tags were also incorporated.

Inclusion and Exclusion Criteria

Included studies had to be written in English and published in a peer-reviewed journal. Eligibility and ineligibility criteria were based on the PICOS method (Population, Intervention, Comparison, Outcome, Study design) (Sackett, Richardson, Rosenberg, & Haynes, 1997). The inclusionary and exclusionary standards follow.

Population: Adults aged 18 years or older with a diagnosis of a serious and persistent mental illness (SMI) on a court-ordered commitment for competency restoration in the United States were included. Youth under the age of 18 years, adults with neurological deficits, adults with intellectual disabilities, court-ordered commitments outside the U.S. and adults found not guilty by reason of insanity (NGRI) were not included.

Interventions: Studies incorporated in the review included participants receiving either outpatient or inpatient competency rehabilitation. Treatment must have occurred in an inpatient setting, such as a state mental health facility or a psychiatric hospital; or an outpatient program, for example, a local mental or behavioral health authority in the community, county jails, or private mental health entity in the community. Articles whose studies precluded competency restoration treatment and investigated psychiatric competency evaluations, psychotropic medications, assessments, or psychosocial and behavioral rehab were not included.

Comparison: Studies had to compare differences via pre-post testing or a control group. Papers lacking a comparison group were omitted from the review.

Outcomes: Articles measuring competency attainment were incorporated. For the purpose of this literature review, competency is defined by its legal construct. Per the landmark case of *Dusky v. United States* (1960), the Supreme Court held the following ruling: " It is not enough for the district judge to find that "the defendant [is] oriented to time and place and [has] some recollection of events," but that the "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him" (p. 402)." In other words, an individual is deemed incompetent to stand trial if he or she is unable to consult with counsel, have a reasonable degree of rationality, and comprehend the charges. Furthermore, studies had to report demographic characteristics of participants, for instance, age, sex, diagnosis, offense, and previous hospitalization. Published articles containing data on participant's length of stay were also counted.

Studies: The search included quantitative and qualitative studies. Editorials, reviews, commentaries, legal proceedings, policy reports, dissertations, books including chapters, and court rulings were excluded. Articles had to be published between the dates of January 2009 to March 2018. The start date (2009) was influenced by two factors: first, Grisso and his partner's systematic literature review evaluated one study published in 2009; second, *Indiana v. Edwards* (2008) was the most recent Supreme Court landmark case regarding competency restoration that influenced legal and treatment practices.

Study Selection Process

The literature review followed PRISMA standards and included the four levels of review including the identification, screening, eligibility, and inclusion process (Moher, Liberati, Tetzlaff & Altman, 2008). A two-tier method was used to assess the articles. The preliminary screening phase evaluated the title, abstract, and keywords in the article. Based on the inclusion criteria, articles were omitted or entered in the second level. In the secondary screening process the full articles were read in-depth and determined further eligibility for qualitative synthesis.

Data Extraction

Garrad's (2007) matrix method was applied to record the essential elements of each study. The matrix comprised of three main sections: study descriptions, study methodological attributes, and empirical findings. Data collected included: author's name, year of publication, purpose of the study, sample characteristics, study design, statistical methods, treatment, competency restoration attainment assessments tools, and findings.

Results

Four hundred and forty-five records were screened; out of 377 unique studies only four met the inclusion criteria (Figure 2). Seventy percent of the studies (265 articles) were rejected because they did not discuss or provide any competency restoration treatment but rather focused on forensic competency evaluations, legal interpretations of competency restoration, or did not have competency attainment as an

outcome. Approximately twenty percent of studies (74 articles) were not published between January 2009 and March 2018 and were eliminated from further review. The remaining ten percent of rejected studies focused on juveniles (18 articles), occurred outside of the United States, and served individuals with a sole diagnosis of an intellectual or developmental disability (7). The remaining four studies were incorporated in the literature matrix (Table 1). The studies were all published in peer-reviewed journals specializing in psychiatric law within the past seven years (2012-2017) and all quantitative methods. The purpose of all the studies was to describe and present information on individual's competency versus incompetency to stand trial. Half of the studies (2 articles) incorporated into the matrix described treatment delivered in an outpatient community-based setting, one study delivered jail-based restoration services within a county correctional facility, and one study served pre-trial defendants in a state funded inpatient psychiatric hospital.

Sample sizes were relatively small and ranged from 58-170 participants. Defendants were from 19 to 68+ years. Three studies had a mean age of 33-37 years. One study had a mean age of 42 years and many participants were between the ages of 48 and 58 (Johnson & Candilis, 2015). In all the studies most of the participants were male (70% being the highest rate); and few studies included women. A majority of participants were racial/ ethnic minorities; three-fourths of the studies had over 80% African- Americans. The county jail restoration program served 25% African-Americans and 25% Hispanics, the largest ethnic group was 43% Caucasians (Rice & Jennings, 2014). Psychotic and thought disorders were the largest diagnostic groups.

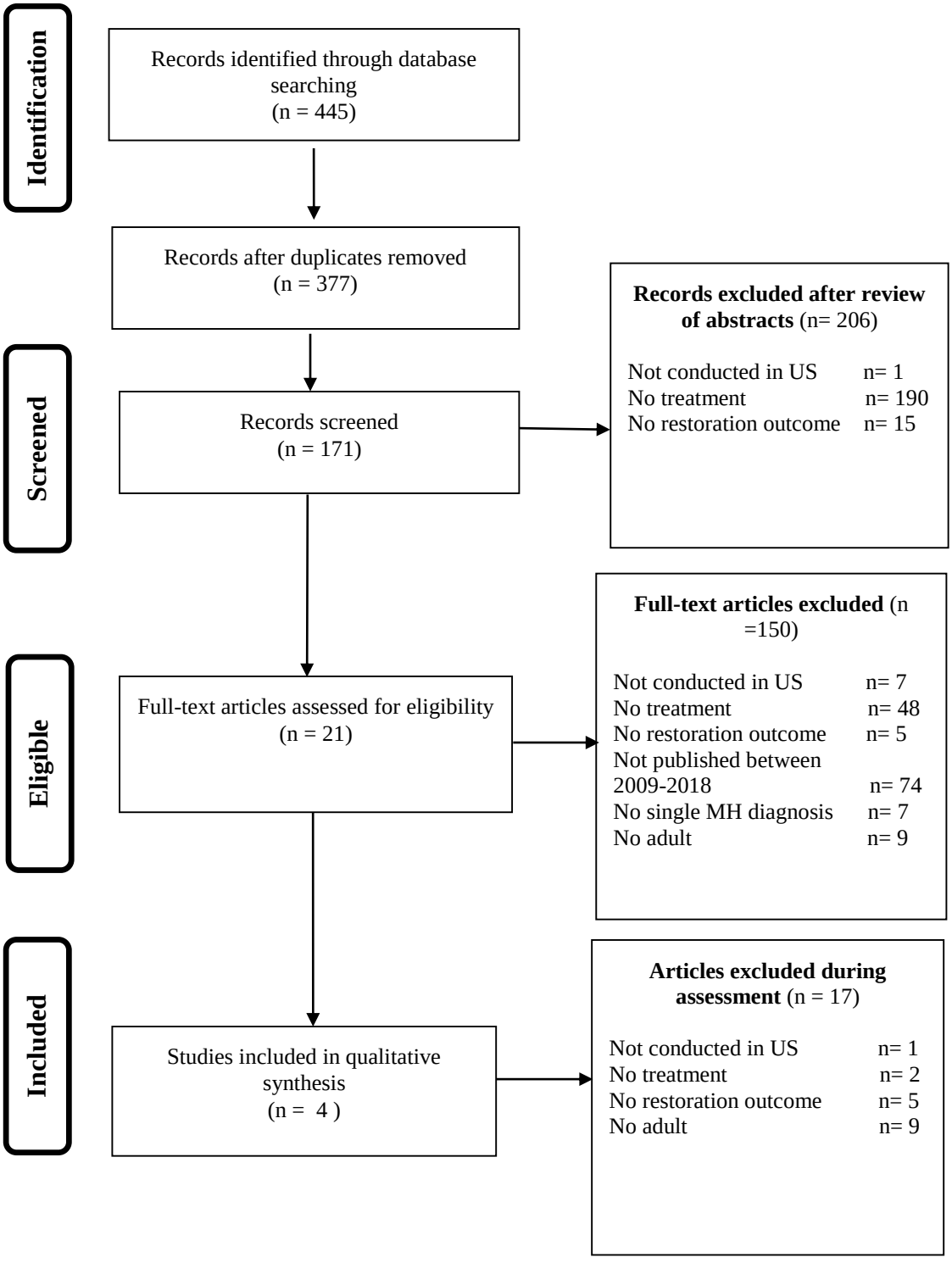

Figure 2. Flow diagram of Literature Review

Table 1. Literature Review Matrix

Author	Purpose	Sample Characteristics	Study Design	Treatment	Analytic Methods	Competency Attainment Measure	Findings
Advokat, Guidry, Burnett, Manguno-Mire, & Thompson Year: 2012	To gather more evidence on poor psycholegal comprehension and positive psychotic symptomology of defendants deemed incompetent to stand trial.	65 males and 14 females patients at the Eastern Louisiana Mental Health System (ELMHS), forensic inpatient division, admitted between June 2002-August 2003	Retrospective quantitative study. Archival data pulled from hospital and medical charts.	Routine assessments: The Georgia Court Competency Test-Mississippi Version Revised (GCCT-MSH), Quick Test, The Brief Psychiatric Rating Scale (BPRS), Mini Mental State Exam (MMSE), Rapid Estimate of Adult Literacy in Medicine (REALM), Rey 15 Item Memory Test. Individual psychiatric treatment, psychotropic medication, group competency education, recreational therapy, individual sessions with a social worker.	Chi-square tests for categorical data. Independent t-tests for quantitative data between groups. Paired t-test for pre- and postscores within each group.	The Georgia Court Competency Test (GCCT). The Brief Psychiatric Rating Scale (BPRS)- Expanded Version 4.0 Global Assessment of Functioning (GAF) with clinical interview.	43 Competent and 15 deemed incompetent. No demographic differences, intellectual capacity, type of offense, clinical diagnosis, substance use, or psychotic somatology. GAF scores were significantly higher in the competent group, psychotic symptoms decrease, and were discharged sooner. Treatment for CST 7.7(+/- 8.6 months) and IST (17.9 +/- 7.0 months)

Table 1: Continued

Author	Purpose	Sample Characteristics	Study Design	Treatment	Analytic Methods	Competency Attainment Measure	Findings
Rice & Jennings Year: 2014	To describe an accelerated restoration program in a jail setting.	168 forensic patients at the West Valley Detention Center in Rancho Cucamonga, California.	Quantitative Method	Intake psychological assessment, cognitive abilities testing, social and psychological functioning test, psychiatric symptoms, and malingering test. An interdisclinpary treatment team provides medication, rehabilitative activities, multimodal cognitive, social, and physical activities. Competency rehabilitation occurs twice- daily for one-on-one and up to 5.5 hours per weekday in group restoration.	Descriptive Statistics including n and percentages	The Competency-related Abilities Rating Scale.	92 defendants (55%) were restored in an average of 57.4 days. 78 were transferred to a state hospital and were not restored after an average of 86.9 days in treatment.

Table 1: Continued

Author	Purpose	Sample Characteristics	Study Design	Treatment	Analytic Methods	Competency Attainment Measure	Findings
Johnson & Candilis Year: 2015	To describe a model of outpatient competence restoration program (OCRP) and provide data on time to restoration of adjudicative competence.	170 participants from the Washington DC Outpatient Competency Restoration Program.	Retrospective quantitative study. Archival aggregate data pulled.	Group treatment twice a week for 1.25 hours. Defendants read the Florida State Hospital Comp Kit, to assess factual understanding, and are used in each session. Treatment also includes visual aids for the classroom and case vignettes from the media. Groups engage in role-play and word association with defendants. Quarterly, groups watch the movie, My Cousin Vinnie" to discuss the relevance to a court room.	Descriptive Statistics including n and percentages. Poisson regression modeling on individuals attaining competency	Evaluation for competency conducted by a forensic psychiatrist.	55 (32%) restored. 42 of the 55 participants were competent after 45 days. Most had misdemeanor charges, were African-American males, and the mean age was 42.

Table 1: Continued

Author	Purpose	Sample Characteristics	Study Design	Treatment	Analytic Methods	Competency Attainment Measure	Findings
Mikolajewski, Manguno-Mire, Coffiman, Deland, & Thompson Year: 2017	To present data from an outpatient forensic clinic serving individuals conditionally released to receive competency restoration in the community.	Individuals admitted to the New Orleans-Forensic Aftercare Program (FAC) between October 2002-December 2012. 80 included in the analysis.	Retrospective quantitative study. Archival data pulled from hospital and medical charts.	Treatment mirrors and follows guidelines of the Eastern Louisiana Mental Health System (ELMHS) and supplemented with Assertative Community Treatment (ACT) services. The clinical team provides: integrated evaluative, clinical and rehabilitative services; including, risk assessments, nursing services, home visits, monitoring, substance use treatment, and intensive case management.	Chi-square tests for categorical data. Exploratory analysis with backward stepwise logistic regression	Follows guidelines of the Eastern Louisiana Mental Health System (ELMHS)	43 found competent (54%) and 37 were found incompetent (46%). Majority male, African-American, and single. No difference in clinical variables Results conclude, being single, having IDD or comorbid MI, and having conditional released revoked were negatively related to competency attainment.

Study Design and Analytic Methods

The study designs for the four articles meetings the criteria were quantitative and used archival data from medical and psychiatric records (retrospective). The analytic methods included simple descriptive statistics and t-tests, including chi-square and paired t-tests. For instance, Advokat, Guidry, Burnett, Manguno-Mire, & Thompson (2012); Rice & Jennings (2014); and Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson, (2017) collected data and compared incompetent and competent groups on age, sex, ethnicity, marital status, education, employment, benefits, diagnosis, and education. Two studies ran advanced quantitative data analyses. Johnson and Candilis (2015) conducted a Poisson regression to model the number of individuals attaining competency during four distinct time periods. One outpatient competency restoration program (Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson, 2017), ran an exploratory analysis with backward stepwise logistic regression to predict competency attainment based on marital status, co-occurring diagnosis of a mental illness and an intellectual disability and disorder, revocation of release, and hospitalization.

Measuring Competency Attainment

Competency to stand trial (CST) was not standardized across the studies, as many state laws do not outline the requirements for measuring restoration nor indicate the reporting elements of the psychological evaluation. One study judged competency based on performance on The Competency-related Abilities Rating Scale (Rice & Jennings, 2014), yet the authors did not describe any additional assessments or evaluations. The outpatient competency restoration program in Washington DC

determined adjudicative competency from psychological evaluations conducted by a forensic psychiatrist.

The inpatient and outpatient competency restoration programs in Georgia (Advokat, Guidry, Burnett, Manguno-Mire, & Thompson, 2012; Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson, 2017) utilized multiple assessments to determine competency attainment. Each participant underwent three evaluations: The Georgia Court Competency Test (GCCT), The Brief Psychiatric Rating Scale (BPRS)-Expanded Version 4.0, and a clinical evaluation with a Global Assessment of Functioning Score (Advokat, Guidry, Burnett, Manguno-Mire, & Thompson, 2012; Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson, 2017). The Georgia Court Competency Test (GCCT) contains twenty-one questions regarding the visual representation of a courtroom, the roles and responsibilities of court personnel, ability to assist counsel, charges, and questions assessing malingering (Advokat, Guidry, Burnett, Manguno-Mire, & Thompson, 2012). The Brief Psychiatric Rating Scale (BPRS)-Expanded Version 4.0, evaluates the severity of psychiatric symptoms in four domains including: positive symptoms (unusual thought content, conceptual disorganization, visual/ auditory/tactical hallucinations, disorientation, and paranoia); negative symptoms (flat affect, lack of social cues, emotionally withdrawn, and motor delays); resistance to treatment (hostility, excitement, grandiosity, and uncooperative); and psychological discomfort (anxiety, somatic concern, depression, tension, guilt, distress, and hopelessness) (Advokat, Guidry, Burnett, Manguno-Mire, & Thompson, 2012). The final measure of attainment was a clinical assessment from a forensic expert and a

Global Assessment of Functioning (GAF) score (Advokat, Guidry, Burnett, Manguno-Mire, & Thompson, 2012).

Treatment and Findings

All studies utilized an interdisciplinary treatment team to deliver individual psychiatric treatment; individual and group restoration rehabilitation services; psychotropic medication; and routine psychological, cognitive, social, and malingering assessments. The frequency and duration of treatment varied from nearly thirty hours of weekly restoration therapy (twice daily for one-on-one treatment plus 5.5 hours of group treatment per weekday) to three hours of group treatment (Rice & Jennings, 2014; Johnson & Candilis, 2015). One study required defendants to review the Florida State Hospital Comp Kit at their homes and treatment was tailored based on participant's factual understanding of each chapter (Johnson & Candilis, 2015). The studies did not discuss in detail the restoration education curriculum. On the other hand, other studies used a variety of teaching tools. For example, Johnson and Candilis (2015) employed visual aids along with case vignettes from criminal justice dramas; in addition, groups watched "My Cousin Vinnie" and applied lessons to their cases.

Holistic treatment and person-centered care were explicit in one study. Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson (2017) mirrored inpatient competency services from the Eastern Louisiana Mental Health System (ELMHS) and supplemented care with an evidence-based outpatient intervention, Assertive Community Treatment (ACT). A multi-disciplinary team (a psychiatrist, a nurse, a substance abuse treatment specialist, and other clinicians) provided intensive

clinical and psychosocial treatment including: cognitive behavioral therapy, risk assessments, medication adherence, symptom management, nursing services, monitoring, home visits, assistance with housing, skills training, case management, psychosocial rehabilitation, employment, substance use treatment, and activities of daily life (McHugo, Drake, Teague & Xie, 1999).

Restoration rates ranged from 32 to 72% across the four studies. Half of the studies identified characteristics associated with competency attainment. Advokat, Guidry, Burnett, Manguno-Mire, & Thompson (2012) concluded competent defendant had higher GAF scores, decreased psychotic symptoms, and had lower length of stays for treatment compared to unrestored defendants. Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson (2017) found participants who were single, had a co-morbid diagnosis of a mental illness and intellectual disability, and were not compliant with treatment were less likely to restore.

Discussion

Summary of Evidence

The aim of this study was to examine the current literature to identify competency restoration studies, characterize intervention strategies, and report restoration outcomes of defendants on court-ordered commitments. The four studies provide evidence supporting competency restoration treatment in inpatient, outpatient, and jail settings. However the studies did not indicate which treatment environment is optimal for defendants based on current psycho-social presentation, history, and offense.

Defining competency and measuring attainment was difficult. Assessments and psychological evaluations were the common mechanism to objectively determine a defendant's ability to stand trial. The assessments varied and the studies failed to discuss the elements of the evaluation. Two studies presented to the court the results of each defendant's ability to pass a state-level competency exam, a rating scale of psychiatric symptoms, a clinical evaluation by a forensic expert, and a Global Assessment of Functioning score. It is important for clinicians to standardize competency reporting because judges, defense attorneys, prosecuting attorneys, and courts rely heavy on the findings and recommendations to pursue trial, sentence an individual, or drop charges.

Studies providing ongoing assessments, tailored treatment, and clinical and social rehabilitative services reported higher rates of competency attainment. This finding is important and suggests that individuals involved in the criminal justice system and found incompetent to stand trial have complex needs and require stabilization prior to receiving education. To illustrate, justice involved individuals with SMI who reoffend are more likely to be homeless, unemployed, of low socio-economic status, high school drop outs, hospitalized in a psychiatric hospital, single and never married, have poor family ties, have increase substance use, trauma, physical deterioration, shorter lifespans, and poor treatment outcomes (Epstein, Barker, Vorburger, & Murtha, 2004; Koegel et al., 1988; Venez et al., 1988; Breakey et al., 1989; Teplin, 1990; Swanson et al., 2013).

To date, current research does not clearly define competency restoration, lacks standardize measures for evaluation attainment, and does not have a uniform curriculum

for education. There are no evidence-based education models, and most programs follow inpatient-care curriculums.

Limitations

There are limitations to the current review. Several databases were searched and a variety of phrases/key terms were utilized, however, some articles may have been excluded because the search was constrained to only peer-reviewed journals. Due to the legality of the subject and implications for court-ordered treatment, it was important to restrict findings to articles that have undergone extensive evaluation from experts in the field of forensics and psychiatric law. The literature review yielded a small number of studies (4) because the criteria for inclusion were rigorous. This study focused on competency restoration outcomes of adults with a mental illness committed to treatment and studies had to test or describe the competency intervention. Multiple studies tested competency attainment in special populations including individuals with intellectual disabilities and disorders, dementia, traumatic brain injury, and youth.

Many of the articles were retrospective and pulled archival data from medical and psychiatric records. These methods provide researchers with rich information and detail regarding the progress and management of individuals in treatment, nonetheless archival data have their limitations. Jones (2010) noted retrospective data may be influenced by time, records may or may not be valid, and inferences regarding the data may be limited.

Conclusions and Implications for Research

This study was unique by examining the core components of competency interventions (treatment) and how restoration was defined and measured, which adds to the growing body of literature. Unfortunately, many competency restoration studies focus on assessment measures and evaluations. Little to no importance is given to the development of standardized curriculum or evidence-based education. It is important to identify theoretical frameworks driving treatment and understand the mechanisms essential for competency restoration. Future competency restoration research needs to focus on operationalization the treatment, describing the settings, and detailing the process in which participants enter and engage in competency restoration.

CHAPTER III

AN ANALYSIS OF STATE-WIDE COMMUNITY-BASED OUTPATIENT COMPETENCY RESTORATION PROGRAMS (OCR): THE CASE OF TEXAS

Introduction

The number of individuals with a serious and persistent mental illness entering the criminal justice system has grown exponentially in the past five decades (Glaze, 2009; James & Glaze, 2006; Steadman, Osher, Robbins, et. al., 2009; Abram & Teplin, 1991; Abram, Teplin, &McClelland, 2003; West & Sobal, 2008). At the same time there is a dramatic increase in forensic patients (individuals found incompetent to stand trial [IST] or not guilty by reason of insanity [NGRI]) court-ordered to state psychiatric hospitals for inpatient treatment, competency evaluations, and/ or restoration services (Wik, Hollen, & Fisher, 2017). From 1999-2014, U.S. state-operated psychiatric hospitals (public) reported an increase census of 76% forensic patients (Wik, Hollen, & Fisher, 2017).

In Texas, patients on forensic commitments account for over half of the state hospital admissions (Texas Council of Community Centers, December 2016). This is a dramatic shift within a fifteen-year span. In 2001, inpatient state hospitals census data reported less than 20% forensic (Texas Council of Community Centers, December 2016) and more than eighty percent civil admissions (voluntary commitments, court-ordered extended mental health services, court-ordered temporary mental health services, orders

of protective custody, and emergency detentions) (Texas Council of Community Centers, December 2016).

State hospitals are not equipped to meet the growing demands of the criminal justice system. Limited inpatient bed capacity coupled with increased court-ordered referrals and prolonged restoration treatment time have triggered waitlists at local/ county jails (Gowensmith, Frost, Speelman, & Therson, 2016; Colwell & Gianesini, 2011; Mossman et al., 2007). The Legislative Budget Board's (LBB) State Hospitals: Mental Health Facilities in Texas Legislative Primer Report (2016) illustrates this trend. According to State Hospital data, individuals on civil commitments had an mean length of stay of 42 days compared to 118 days for forensic types. Forensic waitlist data from 2015 reported 1,668 individuals awaiting inpatient admissions with mean wait times ranging from 32 to 102 days (Legislative Budget Board's (LBB) Legislative Primer Report on Mental health Facilities in Texas, 2016). Prior to 2015, the mean wait time was over 180 days, which was nine times longer than the wait time of 21 days required by law (Legislative Budget Board's (LBB) Legislative Primer Report on Mental health Facilities in Texas, 2016). The increased forensic (court-ordered and mandated individuals found IST or NGRI) admissions have limited civil (voluntary) admittance (Gowensmith, Frost, Speelman, & Therson, 2016; Colwell & Gianesini, 2011; Mossman et al., 2007). The dramatic shift in the hospitalization of criminal defendants for competency services has ignited a legal and clinical dilemma. Miller (2003) expressed the following concerns: unlawful detainment and being held for an unreasonable period of time (*Jackson v. Indiana*, 1972); receiving treatment in a restrictive setting

(*DeAngelas v. Plaut*, 1980); the right to obtain bail and be released (*Wear v. United States*, 1954); the right to equal protection (*Jones v. United States*, 1983); unlawful automatic commitments to inpatient settings regardless of no findings of dangerousness of grave disability (*DeAngelas v. Plaut*, 1980); and delayed trials (*Pollard v. United States*, 1957). To address these problems, Miller (2013) recommended the expansion of outpatient competency restoration programs to alleviate the ongoing pressures faced by inpatient state hospitals and to abide by the legal requirements governing individuals found incompetent to stand trial. Unlike state-hospitals (Inpatient), Outpatient Competency Restoration Programs are community-based services that provide competency education to defendants who are found Incompetent to Stand Trial a least restrictive setting.

Thirty-seven states have statutes and laws allowing competency treatment in an outpatient/ community setting; however, few programs exist (Miller, 2003). Gowensmith, Frost, Speelman, and Therson's (2016) national review identified sixteen states operating an outpatient program. They surveyed state forensic and outpatient competency program directors and discovered qualified mid-level professionals in mental health centers, day hospitals, and group homes provided treatment (Gowensmith, Frost, Speelman, & Therson, 2016). Furthermore, several programs offered supplemental services to competency restoration including: housing, case management, substance use treatment, and medication (Gowensmith, Frost, Speelman, & Therson, 2016). Most importantly, outpatient programs yielded positive outcomes –70 % restoration rates and no recidivism (Gowensmith, Frost, Speelman, & Therson, 2016).

A limited number of articles have described evaluations of outpatient treatment; however, two recent studies shed light on the efficacy of community-based interventions. Johnson and Candilis' (2015) retrospective evaluation of the Washington DC outpatient competency restoration program (DC-OCRP) found within four years 32% of participants were restored to competency, of which 76% those of participants were restored within 45 days. The DC-OCRP combined group and individual competency education; groups met twice a week for 1.25 hours each session and defendants studied at-home competency curricula (Johnson & Candilis, 2015). Mikolajewski, Manguno-Mire, Coffman, Deland, and Thompson's (2017) evaluated the New Orleans Forensic Aftercare Clinic (FAC), an outpatient, intensive mental health service provider for defendants found IST. More than half of participants regained competency with the mean of length of stay of 207 days (Mikolajewski, Manguno-Mire, Coffman, Deland, & Thompson, 2017). Participants received both group and individual competency restoration, in addition to Assertive Community Treatment (ACT) services.

Outpatient Competency Restoration Programs in Texas

Texas statute allows for competency restoration treatment to occur in inpatient, jail, and outpatient settings (Incompetent to Stand Trial, Texas Code of Criminal Procedure § 46B, 2003). However, prior to 2004 individuals found incompetent to stand trial were committed to inpatient treatment at a state hospital (Graziani, Guzman, Mahometa, & Shafer, 2015). In 2007 during the 80th Texas Legislative Session, Senate Bill 867 (2007) (Appendix A) was passed and amended Chapter 46B of the Code of Criminal Procedure: Incompetency to Stand Trial (Incompetent to Stand Trial, Texas

Code of Criminal Procedure § 46B, 2003) (Appendix B). The statute explicitly permitted outpatient restoration for defendants who are not a danger to others and not requiring an inpatient level of care (Graziani, Guzman, Mahometa, & Shafer, 2015).

The statute further mandated that the Department of State Health Services (DSHS), now under the auspices of the Health and Human Services Commission (HHSC), launch four Outpatient Competency Restoration (OCR) pilot programs in Travis, Bexar, Dallas, and Tarrant counties (SB 867, 2007; Graziani, Guzman, Mahometa, & Shafer, 2015). By 2011, the outpatient competency restoration projects expanded to eight local mental health authorities (LMHAs) programs including Starcare Specialty Health System, Emergence Health Network, Andrews Center Behavioral Healthcare System, Tri-County Services, Behavioral Health Center of Nueces County, Spindle top Center, Community Healthcare, and Heart of Texas Region Mental Health and Mental Retardation Center (Graziani, Guzman, Mahometa, & Shafer, 2015). Table 2 represents the state funded programs and catchment county service area.

Table 2: Outpatient Competency Restoration Programs in Texas (Adapted from Graziani, Guzman, Mahometa, &Shafer, 2015)

Local Mental Health Authority	County Service Area	Date
Andrews Center- Behavioral Healthcare Systems	Henderson, Rains, Smith, Van Zandt, and Wood	2012
Austin Travis County Integral Care (ATCIC)	Travis	2008
Behavioral Health Center of Nueces County	Nueces	2012
Center for Health Care Services (CHCS)	Bexar	2008
Community Healthcore	Bowie, Cass, Gregg, Harrison, Marion, Panola, Red River, Rusk, and Upshur	2012
Emergence Health Network	El Paso	2012
Heart of Texas (HOT) Region MHMR Center	Bosque, Hill, Mclennan, Falls, Limestone, and Freestone	2013
MHMR Tarrant County	Tarrant	2008
NorthSTAR	Dallas, Rockwall, Ellis, Navarro, Collin, Hunt, and Kaufman	2008
Spindletop Center	Chambers, Hardin, Jefferson, and Orange.	2012
Starcare Speciality Health System	Cochran, Crosby, Hockley, Lubbock, and Lynn	2012
Tri-County Services	Liberty, Montgomery, and Walker	2012

Eligibility Criteria

The eligibility criteria for the pilot varied by site; nonetheless, each program abided by the minimum statutory participant criteria. All participants committed to outpatient competency restoration were 1) charged with a felony or misdemeanor punishable by confinement; 2) evaluated by a forensic expert; 3) found incompetent to stand trial but likely to be restored with treatment; 4) determined not dangerous to self or others; 5) not charged with an offense requiring treatment in a Maximum-Security facility; and 6) not requiring treatment in an inpatient state hospital (Incompetent to Stand Trial, Texas Code of Criminal Procedure § 46B, 2003) (Appendix C).

Treatment

A comprehensive treatment team consisting of a psychologist, psychiatrist, Licensed Practitioners of the Healing Arts (LPHAs-masters-level counselors or psychologists), Qualified Mental Health Professionals (QMPHs- bachelor-level case managers in social sciences), and a forensic peer provided restoration services (Texas Health and Human Services Commission Competency Restoration, 2019). Upon admission, clinicians screened participants and administered an intake assessment, psychosocial evaluation, substance use screening, and a risk assessment for violence (Texas Health and Human Services Commission Competency Restoration, 2019). The clinicians, case managers, presiding court (judge and attorneys), and the defendant developed the treatment plan (Texas Health and Human Services Commission Competency Restoration, 2019). Each plan addressed goals and objectives for competency attainment as well as, physical health concerns, medication and medication management, community and peer support, co-occurring substance use, housing, transportation, employment, and benefits (Texas Health and Human Services Commission Competency Restoration, 2019). OCR program staff enrolled and then authorized all participants into a clinically-appropriate level of care (LOC) for behavioral health treatment and crisis services (Texas Health and Human Services Commission Competency Restoration, 2019).

At a minimum, the treatment team provided competency restoration education individually twice a week and once a week for group classes (Texas Health and Human Services Commission Competency Restoration, 2019). The curriculum for the

outpatient program is based on the state hospital's five core modules: (1) an overview and introduction; (2) discussion of the pending charges and an overview of the police report; (3) discussion on consequences; (3) disclosing information and implications; (4) choices; (5) overview of the legal process and roles and responsibilities of essential court staff (Texas Health and Human Services Commission Competency Restoration, 2019). Participants were administered pre-and post-assessments and tests to examine progress (Texas Health and Human Services Commission Competency Restoration, 2019). Lastly, defendants were tested in a mock trial (Texas Health and Human Services Commission Competency Restoration, 2019). The treatment team reported regularly to the court on the progress of the individual. Fifteen days prior to the expiration of the commitment, an LPHA, psychiatrist, or program director conducted the final competency evaluation to inform the court of the individual's status (Texas Health and Human Services Commission Competency Restoration, 2019). Defendants charged with a felony offense are committed to 120 days of treatment and 60 days for misdemeanor offenses.

Purpose

The objective of this study was to examine the association between community-based (outpatient) restoration treatment and attainment of competency for individuals found incompetent to stand trial and committed to competency restoration in an outpatient setting. Although a limited number of studies have reported outcomes of outpatient competency restoration programs, this study builds upon the evaluation conducted by the Hogg Foundation (Graziani, Guzman, Mahometa, & Shafer, 2015) by

including all the outpatient programs in Texas. This study aims to investigate the components of the intervention, duration, and intensity impact of treatment.

Methods

Participants

Two Intuitional Review Boards (Texas A&M University and the Texas Health and Human Services Commission (HHSC)) approved the current study. The sample included individuals admitted to OCR between September 1, 2010 (Fiscal Year (FY 2011) and December 1, 2018 (FY 2018). Participants receiving treatment prior to FY 2011 were excluded because no electronic records were available, previous records were collected at each center. A total of 1,143 records were pulled of which 63 participants absconded from the program, 180 defendants had their charges dismissed, 332 where pending restoration status, 85 noted other status (e.g. death), and 37 participants reoffended and were incarcerated awaiting trial. The analysis included 446 defendants.

Measures and Procedures

The outcome (dependent) variable was restoration attainment. Programs defined "restored" as defendants who completed their competency education, deemed competent by a secondary evaluation, and were in the process of awaiting their court hearing. The indicator was dichotomized, where zero was not restored and one was restored.

Independent Variables

Defendants were matched by their unique CareID to secondary de-identified state-level data collected from records entered in the WebCare system. Basic

demographic and charges were compiled including sex (factor variable, 0=male, 1=female), age of admission (noted in years), race/ethnicity (White was the reference group), and pending charges (factor variable, 0=misdemeanor, 1=felony). Psychological assessments and evaluations furnished the clinical data . Diagnoses were categorized by Non-Serious and Persistent Mental Illness (reference group; including Post Traumatic Stress Disorder, Depression, and Anxiety), Bipolar Disorder, Intellectual Disability and Disorders, Major Depressive Disorder, and Schizophrenia. The individual's authorized level of care (LOC) included basic treatment (LOC-1 and LOC-2), intensive services with counseling (LOC-3), and Assertive Community Treatment (LOC-4). Forced medications was a factor variable (0=not forced, 1=court-order for psychotropic medications). The number of prior hospitalizations is a continuous count variable and length of stay (LOS) in treatment in calculated in days. Facility data were also compiled including the local mental health authority or local behavioral health authority were services were provided. This variable was added in order to control of facility effects.

Missing Data

Missing data were analyzed during the data cleaning. The sample did not have any missing data because state auditors reviewed the assessments, evaluations, and batched data. All local mental health authorities who reported defendant's competency status were included.

The initial sample size included a total 1,143 participants. After removing cases that did not include competency data (n= 697 defendants), only 446 remained.

Statistical Analysis

The study conducted four types of analysis 1) descriptive, 2) bivariate, 3) multicollinearity, and 4) regression. The descriptive statistics provided demographic data of all the participants (Thompson, 2006). Bivariate tests compared the relationship between the covariates and the restoration outcome (Thompson, 2006). Examination of the correlation between the variables provided evidence of the lack of collinearity (Thompson, 2006). The regression analysis allowed for the testing of multiple independent and the outcome variables (Thompson, 2006).

Binomial logistic regression, or logit analysis, was used to predict the effectiveness of outpatient restoration. Logistic regression is the appropriate statistical method as the variable of interest is a dichotomous dependent indicator (Treiman, 2009; Thompson, 2006). The value of the dependent variable assumes two forms: zero, which represents unsuccessful restoration and one, which represents restored. Treiman (2009) noted other forms of regression, explicitly, linear regression (also referred to as Ordinary Least Squares (OLS)) are not suited for dichotomies and often yields misleading results by predicting values outside of the probable range (p.302). Five models were tested. Model one included demographic controls. Model two added the offense. Model three included the psychological assessment variables. The fourth model added and controlled for the treatment facility. Lastly, the fifth model contained tenure data (prior number of hospitalizations and length of stay in the program).

Results

Table 3 displays the Socio-demographic characteristics of all defendants' court-ordered to outpatient competency restoration treatment. Out of 446 participants, 331 (74%) were restored and 115 (26%) did not attain competency. Nearly 70% of participants were males. The youngest defendant was seventeen years of age (charged as an adult) and the oldest was 82 (M=36.5; SD=13.6). Individuals were more likely to be white (40%). Felony and misdemeanor criminal charges were evenly distributed. Eighty-five percent of participants were diagnosed with a persistent and severe mental illness or an intellectual disability and disorder (IDD). Common diagnoses included Schizophrenia (42%), Bipolar Disorder (20%), IDD (9%), and Major Depressive Disorder (14%). Over 70% (N=326) of defendants were authorized into a LOC-3 and only 4 individuals received forced medications through a court-order. Treatment facilities were located throughout the state and one in five clients were served in central Texas (San Antonio metro area). The mean number of prior inpatient state hospitalizations was 1.3 (range= 0-17; SD 2.4). Participants received almost five months of competency restoration and services (LOS) (M =149 days; SD =177).

Clients from both groups were similar in sex ratios, mean age, racial composition, offense type, and length of stay. The two groups did have differences in the mental health diagnosis category (χ^2= 18.65; df = 4; p =0.001), level of care (χ^2= 10.79; df= 2, p =0.005); treatment facility location (χ^2= 26.61; df= 11, p =0.005), and hospital tenure (t = 1.93; df= 444; p =0.05).

Table 3: Characteristics of the Entire Sample

Variable	N	%	Mean	SD	Minimum	Maximum
Sex						
Male	299	67				
Female	147	33				
Age	446		36.5	13.6	17	82
Race						
White	180	40				
Black	154	35				
Hispanic	99	22				
Other	13	3				
Charge						
Misdemeanor	226	51				
Felony	220	49				
SMI						
Non-SMI	67	15				
Bipolar Dis.	88	20				
IDD	42	9				
MDD	61	14				
Schizophrenia	188	42				
LOC						
1-2 Basic	71	16				
3- Intensive	326	73				
4-ACT	49	11				
Medication						
No Forced	428	96				
Court-Ordered	18	4				
LMHA						
Andrew	78	17				
ATCIC	38	9				
Nueces	23	5				
CHC	8	2				
Emergence	31	7				
HOT	23	5				
Tarrant	33	7				
NorthStar	30	7				
Spindletop	20	4				
StarCare	39	9				
CHCS	85	19				
Tri-County	38	9				
Hospital	446		1.3	2.4	0	17
LOS	446		149	177	2	2025

Table 4: Demographic Characteristics of Defendants Referred to Outpatient Treatment by Attainment Status

Variable	Not Restored (*n*= 115)	Restored (*n*= 331)	Test Statistic	p
Sex				
Male	79 (69)	220 (66)	χ^2= 0.19 (*df*= 1)	0.661
Female	36 (31)	111 (34)		
Age				
Mean ±SD	37.6 ±13.80	36.07 ± 13.48	t = 1.04 (*df*= 444)	0.298
Range	18-72	17-82		
Race				
White	47 (40)	133 (40)	χ^2= 1.04 (*df*= 3)	0.790
Black	42 (37)	112 (34)		
Hispanic	24 (21)	75 (23)		
Other	2 (2)	11 (3)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 5: Charge Characteristics of Defendants Referred to Outpatient Treatment by Attainment Status

Variable	Not Restored (*n*= 115)	Restored (*n*= 331)	Test Statistic	p
Charge				
Misdemeanor	59 (51)	167 (50)	χ^2= 0.02 (*df*= 1)	0.875
Felony	56 (49)	164 (50)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 6: Psychological/ Clinical Characteristics of Defendants Referred to Outpatient Treatment by Attainment Status

Variable	Not Restored (*n*= 115)	Restored (*n*= 331)	Test Statistic	p
SMI				
Non-SMI	15 (13)	52 (15)	χ^2= 18.65 (*df*= 4)	0.001
Bipolar Dis.	15 (13)	73 (22)		
IDD	10 (9)	32 (10)		
MDD	8 (7)	53 (16)		
Schizophrenia	67 (58)	121 (37)		
LOC				
Basic	22 (19)	49 (15)	χ^2= 10.79 (*df*= 2)	0.005
Intensive	72 (63)	254 (77)		
ACT	21 (18)	28 (8)		
Medication				
No Forced	107 (93)	321 (97)	χ^2= 3.41 (*df*= 1)	0.006
Court-Ordered	8 (7)	10 (3)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 7: Treatment Facility Characteristics of Defendants Referred to Outpatient Treatment by Attainment Status

Variable	Not Restored (*n*= 115)	Restored (*n*= 331)	Test Statistic	p
LMHA				
Andrew	29 (25)	49 (19)	χ^2= 26.61 (*df*= 11)	0.005
ATCIC	8 (7)	30 (9)		
Nueces	2 (2)	21 (6)		
CHC	0 (0)	8 (2)		
Emergence	3 (3)	28 (8)		
HOT	6 (5)	17 (5)		
Tarrant	8 (7)	25 (8)		
NorthStar	14 (12)	16 (5)		
Spindletop	4 (3)	16 (5)		
StarCare	9 (8)	30 (9)		
CHCS	26 (23)	59 (18)		
Tri-County	6 (5)	32 (10)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 8:Tenure Characteristics of Defendants Referred to Outpatient Treatment by Attainment Status

Variable	Not Restored (*n*= 115)	Restored (*n*= 331)	Test Statistic	p
Hospital				
Mean ± SD	1.72 ±3.09	1.21 ± 2.11	t = 1.93 (df= 444)	0.05
Range	0-17	0-15		
LOS				
Mean ±SD	149 ± 273.44	148 ± 128.27	t = 0.02 (df= 444)	0.98
Range	2-2025	8-1023		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 9: Logistic Regressions (Odds Ratio) of Restoration Attainment Among Defendants

Model	1	2	3	4	5
n	446	446	446	446	446
Sex (Male)					
Female	1.12	1.1	.89	.89	.89
Age	.99	.99	.99	.99	.98
Race (White)					
Black	.94	.94	1.20	1.20	1.21
Hispanic	1.06	1.0	1.12	1.13	1.16
Other	1.89	1.8	1.85	1.84	1.83
Charge (Misdemeanor)					
Felony		1.0	.94	.94	.94
SMI (Non-SMI)					
Bipolar Dis.			1.32	1.31	1.34
IDD			.66	.65	.65
MDD			2.13	2.12	2.09
Schizophrenia			.44*	.44*	.46*
LOC (Basic)					
Intensive			2.02*	2.05*	2.05*
ACT			.71	.72	.72
Medication (Not Forced)					
Court-Ordered			.60	.60	.59
LMHA				.99	.99
Hospital					.95
LOS					.99

Note: Model 1 included demographic controls. Model 2 added offense. Model 3 added psychological assessment variables. Model 4 added the treatment facility. Model 4 added tenure data. The parenthesis next to the variable indicates the reference group.
*p<.05

Logistic Regression Results

Table 9 shows the results from the statistical analysis. The column header indicates the model. The table contains the sample size of each model tested and the odds ratio. All models control for sex, age, and race.

The first model (demographic characteristics) and second model (demographic plus criminal charges) did not yield statistically significant results. Model three controlled for demographic indicators and criminal charges, and included the psychological assessment variables (SMI, LOC, and Medication).

The third model yielded two statistically significant results, SMI and LOC indicators. When controlled for age, sex, race, charge, and LOC, defendants with a diagnosis of schizophrenia were significantly less likely to be restored to competency ($p<0.05$). The odds of attaining competency are .44 compared to individuals with a Non-SMI, meaning individuals with Schizophrenia are 56 percent less likely to complete treatment and be restored (95% CI: .22, 88). The level of care was another statistically significant indicator ($p<0.05$). Intensive treatment services combined with counseling (LOC-3) provided the optimal level of care and competency education to successfully restore clients. Controlling for age, sex, race, charge, and diagnosis, participants in LOC-3 were twice as likely to attain competency compared to individuals in basic and routine care (OR=2.05; 95% CI 1.03, 4.06).

The fourth model (controlled for demographic, criminal, SMI, LOC, Medication, and tested the facility and number of prior hospitalizations) and fifth model (added LOS

to the Model 4) did not add statistically significant value. Models 4 and 5 slightly changed the odds ratio of individuals with schizophrenia being restored to competency (Model 3 OR=.44; Model 5 OR= .46) and LOC (Model 3 OR=2.02; Model 4 OR= 2.05; Model 5 OR= 2.05)

Discussion

The aim of this study was to examine the effectiveness of an outpatient competency restoration program in restoring individuals with pending charges to competency. This study build upon the theoretical and analytical infrastructure developed by The Hogg Foundation for Mental Health's Evaluation Report on the Texas Outpatient Competency Restoration Programs (Graziani, Guzman, Mahometa, & Shafer, 2015). Analyzing additional variables including sex, age, level of care, forced medications, and new pilot sites further expanded the Hogg Foundations framework. Unlike previous research, this study had a large sample size (n=446) and was representative of the entire state of Texas. Furthermore, this is the first study to account for psychological treatment and services outside of the competency training.

Restoration Rates and Indicators

In contrast to other published studies, this study found higher restoration rates and differences in predictor variables of competency attainment. Three out of four people regained competency. Restoration rates in the current study ranked high compared to national means of 32-70 percent (John & Candillis , 2015; Gowensmith et al., 2016). Sex, age, race, criminal charge, court ordered forced medication, treatment

facility (LMHA), prior number of hospitalizations, and length of stay were not significant predictors of successful program completion, which is contrary to findings in competency restoration literature. Mossman's (2007) backward stepwise logistic regression analysis determined that severity of the charge, increased age, previous hospitalizations, and length of stays were associated with reduced likelihood of competency attainment. Gillis, Holoyda, Newman, Wilson, and Xiong's (2016) study also concurred with Mossman (2017) and found length of stay as the sole predictor of restoration. Graziani, Guzman, Mahometa, & Shafer's (2015) analysis found a statistically significant effect for previous hospitalizations and the treatment facility. The results of this study were surprising because restoration rates were higher than the national mean and the predictors varied in significance. In fact, OCR restoration rates in Texas were close to 2.5 times higher than the conservative national average of 32%. The Evaluation Report on the Texas Outpatient Competency Restoration Programs (Graziani, Guzman, Mahometa, & Shafer, 2015) from the Hogg Foundation for Mental Health's found previous hospitalizations of 2 or more instances and program site to be statically significant while in the present study, hospitalization history was not significant.

Level of Care

Two factors were significant–one positive indicator and the other negative. Controlling for all model variables, individuals receiving an intense level of care (LOC-3) were positively associated with competency attainment and were more likely to be restored compared to other levels of care. Tailored wrap-around treatment may have

contributed to positive outcomes. Individuals in this service provision obtained six to twenty-one hours of clinical services per month, on-going crisis services, and weekly competency restoration education (Texas Department of State Health Services Texas Resilience and Recovery, 2016). Pharmacological management, psychosocial rehabilitative services (individual and group), supported housing, psychiatric examinations, medication training and support (individual and group), engagement activities, support employment, Cognitive Processing Therapy, acute day programs, residential treatment, flexible funding, community supports, screenings, and peer services were available for clients in LOC-3 (Texas Department of State Health Services Texas Resilience and Recovery, 2016). Intensive psychosocial interventions supplemented with pharmacological care (e.g. long-lasting antipsychotic injections) helped psychiatrically stabilize the client and increase engagement in their education (competency).

Serious Mental Illness and Diagnosis

The participant's psychological diagnosis influenced restoration status. Bipolar disorder, Intellectual Disability and Disorders, and Major Depressive Disorder were not statistically significant variables. Individuals with schizophrenia, however, were less likely to be restored when controlling the other model predictors. Mossman (2007), Colwell, and Gianesini (2011) found schizophrenia as a predictor of unsuccessful attainment. Poor competency education outcomes may be a result of the symptoms linked with schizophrenia. Mossman (2007) suggested the struggle of restoring

defendants with schizophrenia is, in part, due to underlying cognitive impairments associated with this mental illness. Extensive medical research supports the relationship between schizophrenia and various neurocognitive deficits; particularly, attention, working memory, processing speed, visual and verbal learning, reasoning, planning, abstract thinking, problem solving, and executive functioning (Aleman, Hijman, De Haan, & Kahn, 1999; Heinrichs & Zakzanis, 1998). More recent studies have found fluctuations in hippocampal functioning for patients with schizophrenia. These changes impaired memory and participants were "selectively impaired in their ability to generalize knowledge" (Shohamy, Mihalakos, Chin, Thomas, Wagner, & Tamminga, 2010). Limited memory combined with decreased functioning incapacitate the individual's ability to learn (Aleman, Hijman, De Haan, & Kahn, 1999; Heinrichs & Zakzanis, 1998; Shohamy, Mihalakos, Chin, Thomas, Wagner, & Tamminga, 2010). Clients with Schizophrenia in the OCR program had difficulty learning the curriculum, applying skills needed for court-order presentation, recalling information, comprehending the pending charges and sentencing consequences, passing the assessment exams, engaging in mock-trial role playing, and consulting with their attorney.

Limitations

A number of study limitations must be noted. First, there lack was a lack of accessible and reliable competency datasets to test the effectiveness of competency restoration. Given the confidential nature of the data (demographic information,

psychiatric diagnosis, and criminal charges), it is difficult to access and test large data sets. Second, the data presented in this study are from a secondary source, the Health and Human Services Commission at the state of Texas. As with any secondary dataset, there are possible errors in entry and data collection that may result in missing data. However, the study assumes data completeness. The third limitation is the sample size. This may have had a direct impact on the analysis, which only found two statistically significant variables out of ten. If the sample size was greater we might have been able to find additional significant variables. The last and greatest limitation is the lack of research focused on restoration interventions. The vast number of articles published focus on forensic evaluations and the legal context of restoration. Due to study constraints, the results of this study should be interpreted with caution.

Conclusion and Implications for Research

Compared to other OCR participants, individuals with a diagnosis of Schizophrenia were less likely to be restored and more likely to continue to be found incompetent to stand trial when controlling for all other indicators. On the other hand, defendants authorized for and receiving intensive (LOC 3) clinical services progressed through and completed the program, and consequently were more likely to return to the court as competent. Other factors were not significant in predicating adjudicative competency. Future studies need to focus on OCR programs and evaluate efficacy. To

expand these interventions nationally, prospective studies need to collect comprehensive data elements, operationalize treatment, and provide restoration outcomes.

Community-based restoration initiatives are effective in restoring individuals found incompetent to stand trial. Outpatient programs provide rehabilitation and instruction in the least restrictive setting (compared to an inpatient/ state hospitals). Participants can reside in their community, build strong social ties, and access other services. These elements are important in decreasing the chances of decompensation and ensuring that affected individuals remain competent until they proceed with their court hearing.

CHAPTER IV

AN ANALYSIS OF COMMUNITY-BASED OUTPATIENT COMPETENCY RESTORATION PROGRAMS (OCR) IN RURAL TEXAS

Introduction

There is well-established literature showing that persons residing in rural communities differ from urban areas in mental health outcomes (Hartley, 2004). Specifically, those in rural areas have poorer health, more health risk behaviors, and restricted access to resources (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014). Gamm, Stone, and Pittman's (2003) literature review of mental health and disorders in rural areas found four major themes. First, compared to their urban counterparts' persons in rural areas identified mental health and mental disorders as a greater health concern (Gamm, Stone, & Pittmans, 2003). Second, individuals in rural areas were less likely to identify themselves as having a mental illness (Gamm, Stone, & Pittmans, 2003). Third, rural residents' under-utilized outpatient mental health services (Gamm, Stone, & Pittmans, 2003). Lastly, individuals with a mental illness had higher morbidity and mortality rates compared to urban dwellers (Gamm, Stone, & Pittmans, 2003).

Barriers to Mental Health Services in Rural Areas

These findings are a direct result of barriers to both mental health and substance use disorder treatment. A national survey conducted with over 200 National Association

of Rural Mental Health (NARMH) members and thirty in-depth interviews with rural mental health service providers to identify barrier to mental health treatment Sawyer, Gale, and Lambert's (2006). The report highlighted three general obstacles: acceptability, accessibility, and availability (Sawyer, Gale, & Lambert, 2006). Respondents identified stigma and cultural issues as acceptability barriers; specifically, the social stigma of mental illness, mistrust of providers and health professionals, and lack of cultural competence (Sawyer, Gale, & Lambert, 2006). Accessibility and availability barriers described by participants included financing and reimbursement woes, structural and organizational issues, and limited access and workforce options (Sawyer, Gale, & Lambert, 2006). Rural mental health providers detailed the complex financial burden including the following: lack of flexible funding, limited revenue streams, restrictive reimbursement requirements, poor refund rates for services, and high delivery costs for services (Sawyer, Gale, & Lambert, 2006). Furthermore, the service providers and NARNH affiliates specifically noted ineffective communication among providers, incompatible medical software/hardware to support telehealth connections, limited specialists, no transportation, limited physical and mental health integration, inadequate community supports, scare continuing education and training for specialist, and an under developed workforce as contributors to the systemic rural crisis (Sawyer, Gale, & Lambert, 2006).

Gamm and associates (2003) unearthed similar fundamental barriers. First, rural areas have limited access to specialty mental health providers, for example licensed

professional counselors, licensed clinical social workers, psychiatrist, child/adolescent psychiatrists, forensic psychologists, and peers (Gamm, Stone, and Pittman, 2003). As a result, nontraditional care providers such as primary care physicians, rural hospitals, nursing home staff, school counselors, religious organizations, law enforcement, jails, and self-help groups are de-facto agents of mental health services (Fox, Merwin, Blank, 1995). Second, care providers in rural settings lack enough mental health training, expertise, and coordination between health care providers (Gamm, Stone, and Pittman, 2003). Third, individuals residing in rural area have lower rates of utilization due to due to stigma and limited knowledge of mental health disorders (Gamm, Stone, and Pittman, 2003).

Rural Jails as Mental Health Facilities

As stated by Fox, Merwin, and Blank (1995), jails have unwillingly become a mental health service provider in rural areas. Though arrest and incarceration rates have generally increased over time, rural areas have experienced much more rapid growth than in urban areas (Kang-Brown & Subramanian, 2017). From 1970 to 2013, arrests in rural areas (1,936 U.S counties) increased approximately 450% (from 49 per 100,000 people to 265 per 100,000 people) (Kang-Brown & Subramanian, 2017). The increase in arrests has also been tied to the increased criminal system interaction of individuals with a serious mental illness (Glaze, 2009; James & Glaze, 2006; Steadman, Osher, Robbins, et. al., 2009; Abram & Teplin, 1991; Abram, Teplin, &McClelland, 2003; West & Sobal, 2008).

Maine's Rural Health Research Center investigated the role of rural county jails as mental health providers (Race, Yousefian, Lambert, & Hartley, 2010), focusing on the management of behavioral health disorders among inmates and barriers to the provision of psychiatric services (Race, Yousefian, Lambert, & Hartley, 2010). Race, Yousefian, Lambert, and Hartley (2010) interviewed rural jail county correctional staff, sheriffs, mental health administrators, clinicians, and officers in Minnesota, Texas and Vermont. Respondents noted individuals with a mental illness enter their jails because there are no reachable services to help and they are required to house an individual who commits a crime (Race, Yousefian, Lambert, & Hartley, 2010). Another key finding was the basic provision of mental health services. All rural jails offered mental health screenings, medication, and crisis services; on the other hand, no rural jails offered counseling services (Race, Yousefian, Lambert, & Hartley, 2010). Finally, interviewees expressed a lack of mental health training and felt unequipped to handle offenders with a mental illness (Race, Yousefian, Lambert, & Hartley, 2010).

These impediments push mental health providers and jails in rural areas to rely heavily on state hospitals for psychiatric and inpatient care. This is especially true for specialized services like psychiatric evaluations and intensive behavioral therapies. Moreover, defendants found incompetent to stand trial (IST) are court-ordered to treatment and require competency evaluations by a forensic specialist and restoration education (Incompetent to Stand Trial, Texas Code of Criminal Procedure § 46B, 2003).

Purpose

The objectives of this study were to 1) examine the difference between rural and urban competency restoration treatment programs and 2) examine the association between outpatient competency restoration programs in rural and urban areas and restoration of individuals deemed incompetent to stand trial. To date, no studies have researched the differences in rural and urban competency restoration programs or evaluated a rural outpatient competency restoration.

Methods

Participants

The Texas Health and Human Services Commission (HHSC) and Texas A&M University's (TAMU) Intuitional Review Boards (IRB) approved the study. The Health and Human Services Commission granted access to secondary de-identified state-level data. The sample contained defendants' court-ordered and admitted to an outpatient competency restoration program (OCR) between September 1, 2010 (Fiscal Year 2011) and December 1, 2018 (Fiscal Year 2018) and whose records indicated a restored or not restored status. A total of 446 records were obtained. Figure 2 contains a flowchart of the study population and sample size for analysis.

Measures and Procedures

The dichotomous dependent variable was restoration attainment. For the purposes of this study "restored" was operationalized by three concepts, which all had to

be met. First, a participant completed competency education. Second, an individual was deemed competent to stand trial by a secondary clinical assessment and evaluation conducted by OCR program staff. And third, OCR program staff informed the court and judge of the participant's restoration status, court proceedings continued, and the participants were awaiting trial. The indicator was dichotomized, where zero was not restored and one was restored.

Independent Variables

WebCare and Care (state data systems) matched defendants based on their unique CAREID number and pulled basic demographic information and pending criminal charges. Sex was coded as 0=male, 1=female. Age of admission was a continuous variable recorded by years. Race/ethnicity had four groups, White (reference group), Black, Hispanic, and Other. Pending charges was a factor variable, 0=misdemeanor, 1=felony. Clinical data were drawn from the assessments and evaluations. Diagnoses were categorized by Non-Serious and Persistent Mental Illness (reference group), Bipolar Disorder, Intellectual Disability and Disorders, Major Depressive Disorder, and Schizophrenia. The individual's authorized level of care (LOC) included basic treatment (LOC-1 and LOC-2), intensive services with counseling (LOC-3), and Assertive Community Treatment (LOC-4). The number of prior hospitalizations is a continuous count variable and length of stay (LOS) in treatment by days.

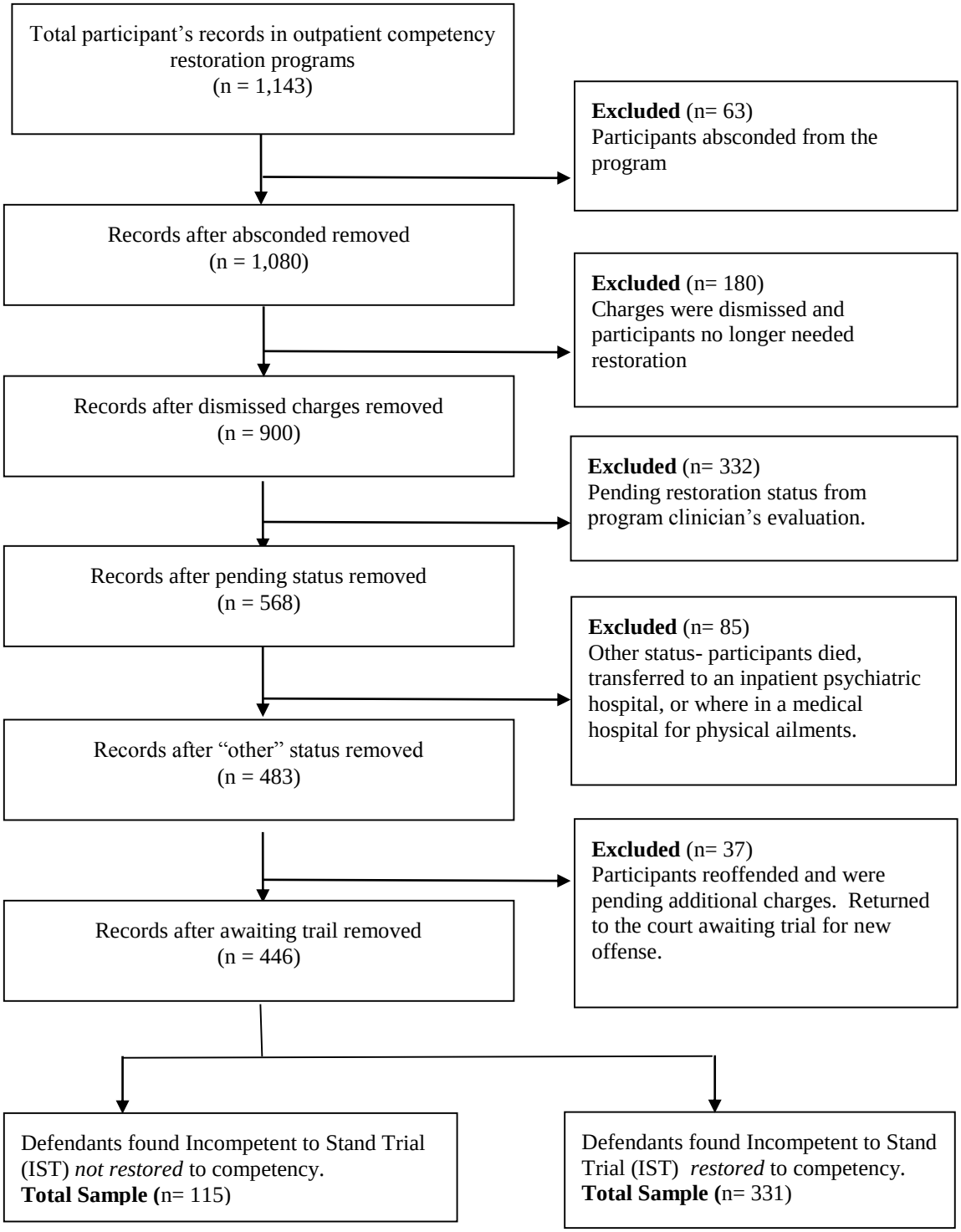

Figure 3: Flowchart of study population and sample size

Rural and Urban Variable

US Census and the Rural-Urban Chartbook categorizes populations density into five levels; with three urban 1) large central, 2) large finge, and 3)small metro and two rural 1) micropolitan and 2) non-core (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014). The levels are on a continuum from most urban to rural. Large central (inner cities) have counties in metropolitan statistical areas (MSA) of 1 million or more population. Large central regions contain the entire population of the largest principal city of the MSA; are completely contained in the largest principal city of the MSA; or contain at least 250,000 residents of any principal city of the MSA (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014). Large fringe (suburban) areas are defined as remaining counties in MSAs with a population of at least 1 million residents (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014). Small metro includes counties in MSAs with a population of less than 1 million residents (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014). Nonmetropolitan (rural) comprises of Micropolitan (large rural) and Non-Core (small rural) (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014). Micropolitan encompass counties in MSAs with a population of 10,000 to 49,999 and non-core are the remaining nonmetropolitan counties that are not in a micropolitan statistical area (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014).

The dataset restricted identifiable information including the defendant's home address and zip code; and did not incorporate rural nor urban designations although, the dataset contained the OCR program where the defendant obtained treatment. Identifying the LMHA, allowed one to define county catchment areas as either rural or urban. The Census Bureau (2017) definition and the standard in the Rural-Urban Chartbook (Eberhardt, Ingram, Makuc, et al., 2001; Meit, Knudson, Gilbert, et al., 2014) were used to classify the defendant's residence as either rural or urban . Rural was coded as factor variable where as a score of a zero signified urban and 1 denoted rural.

Missing Data

Missing data were analyzed during the data cleaning. State auditors and quality management teams compiled data from assessments, evaluations, and batched data to fill each record. In addition, state program area staff reviewed record submissions and contacted all local mental health authorities with records containing missing data.

Statistical Analysis

Four statistical analyses were conducted: 1) descriptive, 2) bivariate, 3) collinearity and 4) regression. The descriptive statistics provided demographic data of participants based on rural versus urban. Bivariate tests compared the association between the covariates and the restoration outcome (Thompson, 2006) while collinearity examined the correlation between the variables (Thompson, 2006). The logistic regression analysis tested multiple independent and the binary outcome variables (Thompson, 2006). Five models were tested. Model one included demographic controls.

Model two added offense and controlled for age, sex, and race. Model three controlled for variables in model one and two, and included the psychological assessment variables. The fourth controlled for the independent indicators in models one to three, and added tenure data (prior number of hospitalizations and length of stay in the program). The fifth model controlled model one through four variables, and included the rural variable.

Results

Descriptive and Bivariate

Tables 10 through 13 show the characteristics of defendants referred to OCR by urban and rural areas. Two hundred and forty-seven defendants resided in urban and 167 in rural communities. Urban and rural areas had similar restoration rates, 75% (n=209) and 73% (n=122) respectively (χ^2= 0.18; df= 1; p =0.664). Close of 70% of men were mandated to OCR programs in both groups (χ^2= 0.70; df= 1; p =0.400). The mean age for both groups was between 35-36 years of age (Urban M=36.83; SD=13.98 Rural M=35.84; SD= 12.86). Rural OCR programs were predominantly white (49%) and black (44%) with few Hispanic participants (4%). Although urban OCR programs were a third white (35%) and black (29%), they had a higher representation of Hispanic clients (33%). Race had a significant difference between urban and rural areas (χ^2= 53.92; df= 3; p =0.000). Individuals in urban areas were more likely charged for misdemeanor offenses (n=156; 56%) while, rural defendants were more likely to face

felony charges (n= 97; 58%). Program offense referrals were significantly different among both areas (χ^2= 8.18; df= 1; p =0.004).

The clinical and tenure characteristics of urban and rural clients were similar for diagnosis (χ^2= 2.85; df= 4; p =0.582) and number of previous hospitalizations (t = .73; df= 444; p =0.46). There were, however, significant differences for level of care (χ^2= 100.60; df= 2; p =0.000) and length of stay (t = 2.28; df= 444; p =0.02). Schizophrenia was the highest reported diagnosis (urban= 42%; rural 41%) followed by bipolar disorder (urban= 18%; rural 23%).

Urban dwellers had a mean of 1.14 previous hospital visits (SD=2.55; range= 0-17) and rural had 1.23 visits (SD=2.16; range= 0-15). Eighty percent of urban programs enrolled clients in intensive services (n=228) and less than sixty percent of rural areas offered LOC-3 (n=59). The range of the length of stay for urban participants was 10-2025 days (M= 164; SD=198.40) compared to 2-1058 days for rural (M= 124; SD=130.99). No collinearity existed between the covariates. All variables yielded a value less than 0.8. The range of values were 0.02 to 0.19.

Logistic Regression Results

Table 14 displays the sample size and odds ratios for all five models. All models control for demographic characteristics including sex, age, and race. Models one and two did not yield statistically significant results. There were two statistically significant results in model 3, Mental Health diagnosis (negative direction) and LOC indicators (positive direction). When controlling for demographic variables, individuals with a

diagnosis of schizophrenia were significantly less likely to be restored to competency ($p<0.05$). Defendants with a diagnosis of schizophrenia were 54 percent less likely to complete treatment leading to restoration (95% CI: .23, .91) compared to individuals with a non-serious mental illness diagnosis. The Level of Care (LOC) was another statistically significant indicator ($p<0.05$). Controlling for age, sex, race, charge, and diagnosis, participants in LOC-3 were twice as likely to attain competency compared to individuals in basic and routine care (OR=2.02; 95% CI 1.08, 3.76). Models four and five did not add statistically significant value and rural was not a statistically significant variable in model five.

Table 10: Demographic Characteristics of Defendants Referred to Outpatient Treatment by Rural versus Urban Areas

Variable	Urban (n= 279)	Rural (n= 167)	Test Statistic	p
Restoration Status				
Not Restored	70 (25)	45 (27)	χ^2= 0.18 (df= 1)	0.664
Restored	209 (75)	122 (73)		
Sex				
Male	183 (66)	116 (69)	χ^2= 0.70 (df= 1)	0.400
Female	96 (34)	51 (31)		
Age				
Mean ±SD	36.83 ±13.98	35.84 ± 12.86	t = .74 (df= 444)	0.4544
Range	18-82	17-72		
Race				
White	97 (35)	83 (49)	χ^2= 53.92 (df= 3)	0.000
Black	81 (29)	73 (44)		
Hispanic	93 (33)	6 (4)		
Other	8 (3)	5 (3)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 11:Charge Characteristics of Defendants Referred to Outpatient Treatment by Rural versus Urban Areas

Variable	Urban (*n*= 279)	Rural (*n*= 167)	Test Statistic	p
Charge				
Misdemeanor	156 (56)	70 (42)	χ^2= 8.18 (*df*= 1)	0.004
Felony	123 (44)	97 (58)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 12: Psychological/ Clinical Characteristics of Defendants Referred to Outpatient Treatment by Rural versus Urban Areas

Variable	Urban (*n*= 279)	Rural (*n*= 167)	Test Statistic	p
SMI				
Non-SMI	44 (16)	23 (14)	χ^2= 2.85 (*df*= 4)	0.582
Bipolar Dis.	49 (18)	39 (23)		
IDD	29 (10)	13 (8)		
MDD	38 (14)	23 (14)		
Schizophrenia	119 (42)	69 (41)		
LOC				
Basic	8 (3)	63 (38)	χ^2= 100.60 (*df*= 2)	0.000
Intensive	228 (82)	98 (59)		
ACT	43 (15)	6 (3)		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 13: Tenure Characteristics of Defendants Referred to Outpatient Treatment by Rural versus Urban Areas

Variable	Urban (*n*= 279)	Rural (*n*= 167)	Test Statistic	p
Hospital				
Mean ± SD	1.41 ±2.55	1.23 ± 2.16	t = .73 (df= 444)	0.46
Range	0-17	0-15		
LOS				
Mean ±SD	164 ± 198.40	124 ± 130.99	t = 2.28 (df= 444)	0.02
Range	10-2025	2-1058		

Note: Data expressed within the parenthesis (#) are the percentages for the group. Test statistics were based on the appropriate analysis and type of variable.

Table 14: Odds Ratio of Restoration Attainment Among Defendants

Model	1	2	3	4	5
n	446	446	446	446	446
Sex (Male)					
Female	1.11	1.1	.90	.90	.90
Age	.99	.99	.98	.98	.98
Race (White)					
Black	.94	.94	1.18	1.19	1.21
Hispanic	1.06	1.0	1.10	1.13	1.10
Other	1.89	1.8	1.94	1.92	1.93
Charge (Misdemeanor)					
Felony		1.0	.94	.94	.96
SMI (Non-SMI)					
Bipolar Dis.			1.32	1.35	1.36
IDD			.65	.65	.65
MDD			2.12	2.09	2.07
Schizophrenia			.44*	.46*	.46*
LOC (Basic)					
Intensive			2.02*	2.01*	2.05*
ACT			.64	.64	.72
Hospital				.95	.95
LOS				.99	.99
Rural					.90

Note: Model 1 included demographic controls. Model 2 added offense. Model 3 added psychological assessment variables. Model 4 added LOC. Model 4 added tenure data. Model 5 added rural. The parenthesis next to the variable indicates the reference group.
*p<.05

Discussion

The present study examined the characteristics of urban and rural competency restoration programs and the effectiveness of rural OCR interventions in trial restoration. Urban and rural OCR programs matched the client's characteristics in previous studies. Pirelli, Gottdiener, and Zapf's (2011) meta-analytic review of 68 competency to stand trial studies, published between 1967 through 2008, found the following similar sample characteristics: thirty percent not restored, mean defendant age 33.4 years old, predominantly white males, and psychotic disorders accounted for 44% of the participant's diagnosis. Schizophrenia was a significant predictor in restoration attainment. Pirelli, Gottdiener, and Zapf's (2011) meta-analysis determined participants diagnosed with a Psychotic Disorder were eight times more likely to be found incompetent compared to defendants without a Psychotic Disorder diagnosis. Although the present study's findings were not as strongly associated as Pirelli and colleagues, the odds of participants with schizophrenia successfully being restored were 56% less likely compared to individuals without a SMI. The LOC was a positive indicator in predicting outcomes. Controlling other variables, individuals receiving an intense level of care (LOC-3) were two times more likely to be restored compared to clients in other levels of care.

Urban versus Rural Restoration Outcomes

The rural variable was not a statistically significant predictor. Readers, however, should not interpret this finding as irrelevant. It certainly has clinical significance. The

study hypothesized that rural areas would have lower competency restoration rates compared to urban areas due to the limited availability of mental health resources, decreases specialty training, and increased rates of arrests. This assumption was incorrect. Over 70% of rural participants were deemed competent compared to 75% of their urban counterparts. This suggests OCR programs in rural areas are restoring participants at a level equivalent urban OCR units in Texas, and at rates higher than the national mean of 32% to70%.

High competency rates in rural areas may be the result of court/ criminal justice relationships (Graziani, Guzman, Mahometa, & Shafer, 2015), who surveyed OCR programs in both urban and rural sites and asked each facility to report the "most important elements impacting success of the overall program." Close to 60% of all OCR staff reported three vital factors 1) identifying and fostering champion judges; 2) obtaining buy-in from the district attorney (DA); and 3) building strong relationships with law enforcement and jails (Graziani, Guzman, Mahometa, & Shafer, 2015).

State-level policies structuring the operation of all OCR programs may have contributed to higher restoration rates in rural areas. Currently, the Health and Human Services Commission provides ongoing state-level funding for OCR programs on a biennial basis (Texas Health and Human Services Commission Competency Restoration, 2019). These dedicated funds are "non-restrictive". In other words, the local mental health authorities have the flexibility to expend their allocations and are not bound to the contractual or budgetary constraints of mental health programs funded by HHSC (Texas

Health and Human Services Commission Competency Restoration, 2019). Dedicated "non-restrictive" funding allows OCR programs the opportunity to recruit and maintain qualified full-time staff by offering higher wages and opportunities for training as well as hire individuals with lived experience (forensic peer specialists) (Texas Health and Human Services Commission Competency Restoration, 2019). Additionally, OCR funds can be used to support defendants by providing co-occurring psychiatric and substance use treatment; specialized and tailored competency restoration education materials, rent and utility subsidies; transportation, specialized therapies, food, clothing, and household items; continuity of care post restoration (Texas Health and Human Services Commission Competency Restoration, 2019).

Limitations

This study has several limitations and results should be interpreted with caution. First, the dataset is from a secondary source. Data were limited by what the state was able to provide; furthermore, errors in data enter and collection may have occurred. Second, the sample size was small and, as such, limited the ability to detect additional significant predictors due to reduced power. The greatest limitation was the inadequate research focusing on rural competency restoration interventions.

Conclusion and Implications for Research

Rural OCR programs were similar to urban, and compared equally to other programs studied in the literature. Defendants with schizophrenia were more likely to

continue to be found incompetent to stand trial (IST) after receiving treatment in an outpatient setting. Intensive (LOC-3) treatment was the optimal setting, and was a positive predicator of adjudicative competency. Future studies need to evaluate OCR programs further and account for unique characteristics like rural areas.

The findings of this study support community-based restoration interventions. Despite no statistically significant contribution of the rural variable, the clinical impact should not be overlooked. Rural areas had successful restoration outcomes and benefited from having these services available within their community. Moreover, rural OCR sites build strong relationships and collaborated with law enforcement, jails, judges, district attorneys, and the courts. These strong relationships ensured appropriate referrals and helped both judges and jails divert individuals from awaiting competency restoration at inpatient state hospitals. State funding furnished rural OCR programs with the capital to hire dedicated staff, provide specialized treatment, and funnel money back into the community.

CHAPTER V

CONCLUSIONS

Introduction

The escalating rates of individuals with a serious mental illness (SMI) entering the criminal justice system and being found IST are straining jails, courts, inpatient state hospitals, and mental health systems (Swanson et al., 2013; Pirelli, Gottdiener, & Zapf , 2011; James & Glaze, 2006). This is a concern for public health and legal researchers due to the psychosocial, legal, and economic impact (Epstein, Barker, Vorburger, & Murtha, 2004; Pirelli, Gottdiener, & Zapf, 2011; Koegel et al., 1988; Venez et al., 1988; Breakey et al., 1989; Teplin, 1990; Swanson et al., 2013; Insel, 2008). Competency restoration is influenced at all levels and by many determinants: intrapersonal, interpersonal, institutional, community, and public policy (McLeroy, Bibeau, Steckler, & Glanz, 1988). Competency research largely focuses on forensic evaluations and the legal interpretation of federal and state laws, while a small number of studies address factors influencing attainment and competency treatment.

The goal of this dissertation was to understand the effectiveness of competency restoration interventions, specifically what current treatment options are available for competency restoration? Additional questions include whether the interventions are effective in restoring a rational and factual understanding of the legal proceedings and what differences exist in treatment between rural and urban settings? In order to answer

these questions, three separate manuscripts concentrated on the following: 1) a systematic literature review of competency restoration interventions of defendants with SMI (Chapter II); 2) an examination of the effectiveness of a statewide outpatient competency restoration program (Chapter III); and 3) an examination of the association of restoration in rural locations (Chapter IV).

Summary of Chapter II

In the first manuscript, the literature review concentrated on elements of restoration education/intervention and attainment of competency. Searching for peer-reviewed articles was challenging; because few studies focused on interventions. Furthermore, few studies had participants with a primary mental health diagnosis. Out of 445 articles, four studies met the inclusion criteria and were analyzed for the purpose, sample characteristics, study design, treatment, analytic methods, competency attainment, and findings.

As a whole, the four studies provided evidence supporting successful competency restoration treatment in inpatient, outpatient, and jail settings; and found programs offering ongoing assessments, tailored treatment, and clinical and social rehabilitative services reported higher rates of competency attainment. On the other hand, the literature review showed the lack of consistency in operationalizing "restored"; defining program standards in forensic evaluations and in the intensity and duration of treatment; and measuring restored.

Summary of Chapter III

In the second manuscript, an outpatient competency restoration program (aimed at restoring individuals with SMI found incompetent to stand trial and ordered to treatment) was assessed. The Health and Human Services Commission (HHSC) provided secondary de-identified records for 1,143 defendants ordered to OCR treatment, of which 446 met the inclusionary criteria for statistical testing.

The analysis found two predictors of competency attainment. One, a negative association existed between individuals diagnosed with schizophrenia and being restored. Two, intensive treatments increased the likelihood of restoration. Other factors including, age, sex, race, charge, medication, facility, number of prior hospitalizations, and length of stay were not significant predictors.

Summary of Chapter IV

In the final manuscript, outpatient competency restoration programs (aimed at restoring individuals with SMI found incompetent to stand trial and ordered to treatment) in urban and rural regions were compared. A rural or urban variable was created for each record based on secondary data obtained from HHSC. Rural and urban OCR programs were similar in competency restoration rate and in predictors associated with attainment outcomes. There was not a statically significant relationship between rural districts and restoration. These findings are positive as it indicates rural communities and mental health service providers' benefit from OCR programs.

Discussion

Limitations of the Study

A large issue is how competency is operationalized. Although the concept is defined in law, how judges interpret an individual's ability to stand trial may differ. For example, some judges will require assessments on malingering, competency, and the psychological evaluation while others simply require a report from the provider. These variances lead to differences in outcome. To mitigate these risks, the American Bar Association (ABA) created the Criminal Justice Mental Health Standards (CJMHS) (2016) and several state court of criminal appeals have held trainings and educational seminars on the federal and statutory requirements and treatment options for judges, district attorneys, attorneys, forensic experts, and providers. This is currently being done in the state of Texas. Nevertheless, difference in definition may be present in these data.

Limitations in the literature review and Texas OCR dataset must be acknowledged. In the first study, only one percent of all the articles researched were used. This was a result of the restrictive PICOS criteria and only selecting peer-reviewed journals. Close to eighty percent of articles were excluded because the studies lacked "competency treatment", were published outside of the timeframe, failed to report restoration outcomes, or treated juveniles. All four studies were quantitative. Three were retrospective studies that used archival data from medical and psychiatric records. As Jones (2010) noted, retrospective data may be influenced by time, records may or may

not be valid, and inferences regarding the data may be limited. Another limitation was the use of a single-reviewer, which may have caused selection bias and overlooked articles.

In the second and third study, limitations are centered on the OCR data. There are several benefits to using the Texas OCR dataset. First, it contains a large sample of participants and collects rich variables. HHSC collects all OCR data from state funded programs; specifically, the local mental health authorities in the community. OCR program staff batch participant's demographic information, levels of care, length of stay, assessment data, and program outcomes. In spite of these benefits, there are limitations to the data set that need to be considered when interpreting the results.

There is a lack of public competency datasets and most studies use archival records. Since the study obtained the dataset from secondary source it is limited in the type of records obtained; is subject to possible errors in entry and data collection; and the sample size is limited. It is important to note that OCR data are solely based on defendants' who were court ordered to outpatient treatment. Data from individuals receiving inpatient treatment at any state hospital in Texas and from defendants ordered to jail-based competency restoration were not contained in this dataset. Additionally, this study does not have data from a control group or similar comparison group.

Case managers and program directors enter all participant data into the Webcare system. Demographic data are recorded upon entry, however restoration data are entered at the end of the program. Some participants' restoration data are not entered, causing a

missing data concern. The state conducts quarterly quality management reviews to detect missing data and errors in the system. While these ongoing evaluations decrease missing data some data remains missing. As a result, limited records had a direct impact on the sample size, restricting the power and effect of the analysis in Chapter III and IV. Only two statistically significant variables were identified out of ten.

Contributions to the Field

This dissertation contributed to the literature by focusing on two understudied areas: evaluations of competency restoration interventions and rural outpatient competency programs. Chapter II, a literature review, examined the treatment components of several competency restoration programs and how each program defined competency restoration and tested restoration attainment. There are limited studies that focus on competency interventions/ treatment and this literature review was important in identifying published studies treatment modalities and outcomes.

Chapter III, an evaluation of outpatient competency restoration programs in Texas, found schizophrenia and level of care (LOC) were statistically significant predictors in competency restoration outcomes. This study was unique because it evaluated the level of care and quantified the psychosocial treatments that defendants received in OCR. Chapter IV, was the first study examine rural OCR programs. Results demonstrated no statistically significant relationships between the outcome and predictors; restoration rates for rural areas mirrored urban. This finding was important and indicated that rural areas benefit from specialized programs and ongoing funding.

Implications for Public Health and Recommendations

Competency restoration is not a public health priority; in fact most research is conducted by legal scholars and psychologists. Public health researchers, though, can play a role in looking at IST from a systemic lens. Specifically, public health can help identify factors influencing restoration, help establish guidelines and standards for treatment, and provide policy recommendations to improve OCR programs.

The results of this dissertation provide directions for future research. First, researchers should thoroughly evaluate competency restoration programs. Data must be collected and programs assessed for the following factors: program characteristics, characteristics of clients' enrolled, initial assessments for competency, individualized treatment plans, competency education modules, the reassessment of competency, medication and psychosocial rehabilitation services, program length of stay, and steps in returning the defendant to court. This is important in identifying and standardizing competency restoration programs, for study replication, and for policy development.

Second, researchers need to establish relationships with courts and other important stakeholders to correctly identify defendants who could meet the criteria for IST. As concluded by the Hogg Foundation (2015), these relationships were vital in the success of the OCR programs, furthermore, the OCR program staff built trust with the courts and were able to defer individuals to outpatient treatment settings, even in rural areas.

The lack of standards and the legal complexity make competency restoration difficult. Future research should utilize theory to focus on all elements of restoration and identity which factors contribute to positive outcomes.

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APPENDIX A

SENATE BILL 867

S.B. No. 867: AN ACT relating to procedures regarding criminal defendants who are or may be persons with mental illness or mental retardation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 16.22, Code of Criminal Procedure, is amended to read as follows: Art. 16.22. EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Not later than 72 hours after receiving evidence or a statement that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, the sheriff shall notify a magistrate of that fact. A defendant's behavior or the result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment must be considered in determining whether reasonable cause exists to believe the defendant has a mental illness or is a person with mental retardation. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with mental retardation, the magistrate, except as provided by Subdivision (2), shall order an examination of the defendant by the local mental health or mental retardation authority or another [disinterested expert experienced and] qualified [in] mental health or mental retardation expert to determine whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with mental retardation as defined by Section 591.003, Health and Safety Code. (2) The magistrate is not required to order an examination described by Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been evaluated and determined to have a mental illness or to be a person with mental retardation by the local mental health or mental retardation authority or another mental health or mental retardation expert described by Subdivision (1). A court that elects to use the results of that evaluation may proceed under Subsection (c). (3) If the defendant fails or refuses to submit to an examination required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the [Texas] Department of State [Mental] Health Services or the Department of Aging and Disability Services [and Mental Retardation] for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the [Texas] Department of State [Mental] Health Services or the Department of Aging and Disability Services [and Mental Retardation] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the [Texas Department of Mental Health and Mental Retardation] facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time. (b) A written report of the examination shall be submitted to the magistrate not later than the 30th day after the date of any [within 30 days of the] order of examination issued in a felony case and not later than the 10th day after the date of any order of examination issued in a misdemeanor case, and the magistrate shall provide [furnish] copies of the report to the defense counsel and the prosecuting attorney. The report must [shall] include a description of the procedures used in the examination and the examiner's observations and findings pertaining to: (1) whether the defendant is a person who has a mental illness or is a person with

mental retardation; (2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and (3) recommended treatment. (c) After the court receives the examining expert's report relating to the defendant under Subsection (b) or elects to use the results of an evaluation described by Subsection (a)(2), the court may, as applicable [resume]: (1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032; or (2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or mental retardation services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code. (d) Nothing in this article prevents the court from, pending an evaluation of the defendant as described by this article: (1) releasing a mentally ill or mentally retarded defendant from custody on personal or surety bond; or (2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2. Subchapter A, Chapter 46B, Code of Criminal Procedure, is amended by amending Articles 46B.009 and 46B.010 and by adding Article 46B.0095 to read as follows: Art. 46B.009. TIME CREDITS. [(a)] A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence the time the person is confined in a mental health facility, residential care facility, or jail pending trial under Subchapter C. [(b) A defendant may not be committed to a mental hospital or other in-patient or residential facility under 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. On expiration of that maximum term, the defendant may be confined for an additional period in a mental hospital or other in-patient or residential facility only pursuant to civil commitment proceedings.] Art. 46B.0095. MAXIMUM PERIOD OF FACILITY COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A defendant may not, under this chapter, be 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 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 beginning on the date of the initial order for outpatient treatment program participation was entered. (b) On expiration of the maximum restoration period under Subsection (a), the defendant may 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 commitment proceedings. Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. f a court orders the commitment of or participation in an outpatient treatment program by [commits] a defendant who is charged with a misdemeanor punishable by confinement and the defendant is not tried before the date of expiration of the maximum period of restoration under this chapter as described by Article 46B.0095 [second anniversary of the date on which the order of commitment was entered], the court on the motion of the attorney representing the state shall dismiss the charge.

SECTION 3. Article 46B.072, Code of Criminal Procedure, is amended to read as follows: Art. 46B.072. RELEASE ON BAIL. (a) Subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment, if [If] the court determines that a defendant found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with [for] the specific objective [purpose] of attaining competency to stand trial and if an appropriate outpatient treatment program is available for the defendant, the court: (1) may release [the defendant] on bail a defendant found incompetent to stand trial with respect to a felony or may continue the defendant's release on bail; and (2) shall release on bail a defendant found incompetent to stand trial with respect to a

misdemeanor or shall continue the defendant's release on bail[, subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment]. (b) The court shall order a defendant released on bail under Subsection (a) to participate in an outpatient treatment program for a period not to exceed 120 days. (c) Notwithstanding Subsection (a), the court may order a defendant to participate in an outpatient treatment program under this article only if: (1) the court receives and approves a comprehensive plan that: (A) provides for the treatment of the defendant for purposes of competency restoration; and (B) identifies the person who will be responsible for providing that treatment to the defendant; and (2) the court finds that the treatment proposed by the plan will be available to and will be provided to the defendant. (d) An order issued under this article may require the defendant to participate in: (1) as appropriate, an outpatient treatment program administered by a community center or an outpatient treatment program administered by any other entity that provides outpatient competency restoration services; and (2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication, including those required under Article 46B.086.

SECTION 4. Subsections (c) and (d), Article 46B.073, Code of Criminal Procedure, are amended to read as follows: (c) If the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6), or the indictment alleges an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to the maximum security unit of any facility designated by the department, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital. (d) If the defendant is not charged with an offense described by Subsection (c) [listed in Article 17.032(a)] and the indictment does not allege an affirmative finding under Section 3g (a)(2), Article 42.12, the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local mental retardation authority.

SECTION 5. Articles 46B.075 and 46B.076, Code of Criminal Procedure, are amended to read as follows: Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR OUTPATIENT TREATMENT PROGRAM. An [A commitment] order issued under Article 46B.072 or 46B.073 [this subchapter] must place the defendant in the custody of the sheriff for transportation to the facility or outpatient treatment program, as applicable, in which the defendant is to receive treatment for purposes of competency restoration [be confined]. Art. 46B.076. COURT'S ORDER. (a) 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, the court shall 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 [not later than the date the defendant is committed to the facility]. The court shall also provide to the facility or outpatient treatment program copies of the following made available to the court during the incompetency trial: (1) reports of each expert; (2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant; (3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition; (4) copies of the indictment or information and any supporting documents used to establish probable cause in the case; (5) the defendant's criminal history record; and (6) the addresses of the attorney representing the state and the attorney representing the defendant. (b) The court shall order that the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the proper facility or outpatient treatment program.

SECTION 6. Subsection (a), Article 46B.077, Code of Criminal Procedure, is amended to read as follows: (a) The facility to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail shall: (1) develop an individual program of treatment; (2) assess and evaluate whether the defendant will obtain competency in the foreseeable future; and (3) report to the

court and to the local mental health authority or to the local mental retardation authority on the defendant's progress toward achieving competency.

SECTION 7. Articles 46B.078 through 46B.083, Code of Criminal Procedure, are amended to read as follows: Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the charges pending against a defendant are dismissed, the [committing]court that issued the order under Article 46B.072 or 46B.073 shall send a copy of the order of dismissal to the sheriff of the county in which the [committing] court is located and to the head of the facility or the provider of the outpatient treatment program, as appropriate [in which the defendant is held]. On receipt of the copy of the order, the facility or outpatient treatment program shall discharge the defendant into the care of the sheriff for transportation in the manner described by Article 46B.082. Art. 46B.079. NOTICE AND REPORT TO COURT. (a) 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 a restoration period is to expire, shall notify the applicable court that the restoration period is about to expire. (b) The head of the facility or outpatient treatment program provider shall promptly notify the court when the head of the facility or outpatient treatment program provider believes that: (1) the defendant has attained competency to stand trial; or (2) the defendant will not attain competency in the foreseeable future. (c) When the head of the facility or outpatient treatment program provider gives notice to the court under Subsection (a) or (b), the head of the facility or outpatient treatment program provider also shall 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 for mental illness while in the facility or participating in the outpatient treatment program. To enable any objection to the findings of the report to be made in a timely manner under Article 46B.084(a), the court shall provide copies of the report to the attorney representing the defendant and the attorney representing the state. (d) If the head of the facility or outpatient treatment program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request [RETURN TO COMMITTING COURT. (a) A defendant committed under this subchapter shall be returned to the committing court as soon as practicable after the date on which the defendant's term of commitment expires]. [(b) A defendant committed under this subchapter whose term of commitment has not yet expired shall be returned to the committing court as soon as practicable after the 15th day following the date on which the parties received service on any report filed under Article 46B.080(b) regarding the defendant's ability to attain competency, except that, if a party objects to the findings of the report and the issue is set for a hearing under Article 46B.084, the defendant may not be returned to the committing court earlier than 72 hours before the date the hearing is scheduled.] Art. 46B.080. EXTENSION OF ORDER. (a) On a request of the head of a facility or a treatment 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, on the basis of information provided by the head of the facility or the treatment program provider: (1) the defendant has not attained competency; and (2) an extension of the restoration period will likely enable the facility or program to restore the defendant to competency. (c) The court may grant only one extension under this article for a period of restoration ordered under this subchapter [NOTICE TO COMMITTING COURT. (a) The head of a facility to which a defendant has been committed under this subchapter, not later than the 14th day before the date on which a commitment order is to expire, shall notify the committing court that the term of the commitment is about to expire. [(b) The head of the facility to which a defendant has been committed under this subchapter shall promptly notify the committing court when the head of the facility is of the opinion that: [(1) the defendant has attained competency to stand trial; or [(2) the defendant will not attain competency in the foreseeable future. [(c) When the head of the facility gives notice to the court under Subsection (a) or (b), the head of the facility also shall 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 for mental illness while in the facility. The court shall provide copies of the report to the attorney representing the defendant and the attorney representing the state. [(d) If the head of the facility to which the defendant has been committed notifies the court that the commitment order is about to expire, the notice may contain a request for an extension of the commitment order for a period of 60 days and an explanation for the basis of the request]. Art. 46B.081. RETURN TO COURT. Subject to Article 46B.082(b), a defendant committed or released on bail under this subchapter shall be returned to the applicable court as soon as practicable after notice to the court is provided under Article 46B.079, but not later than the date of expiration of the period for restoration specified by the court under Article 46B.072 or 46B.073 [EXTENSION OF COMMITMENT ORDER. (a) On the request of the head of a facility made under Article 46B.080(d), the court may enter an order extending the term of the commitment order for a period of 60 days.[(b) The court may enter an order under Subsection (a) only if the court determines that, on the basis of information provided by the head of the facility: [(1) the defendant has not attained competency; and [(2) an extension of the term of the commitment order will likely enable the facility to restore the defendant to competency. [(c) The court may grant only one extension under this article for the term of a defendant's commitment order]. Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) On notification from the [committing] court under Article 46B.078, the sheriff of the county in which the [committing] court is located or the sheriff's designee shall transport the defendant to the [committing] court. (b) If before the 15th day after the date on which the court received notification under Article 46B.079 a defendant committed to a [maximum security unit of a] facility of the department or ordered to participate in an outpatient treatment program has not been transported to the court that issued the order under Article 46B.072 or 46B.073, as applicable [from the unit before the 15th day after the date on which the court received notification under Article 46B.080(a)], the head of the [that] facility to which the defendant is committed or the provider of the outpatient treatment program in which the defendant is participating shall cause the defendant to be promptly transported to the [committing] court and placed in the custody of the sheriff of the county in which the [committing] court is located. The county in which the committing] court is located shall reimburse the department for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees. Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY HEAD OR OUTPATIENT TREATMENT PROGRAM PROVIDER. (a) If the head of the facility or outpatient treatment program provider believes that the defendant is a person with mental illness and meets the criteria for court-ordered [inpatient] mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility or the outpatient treatment program provider shall have submitted to the court a certificate of medical examination for mental illness. (b) If the head of the facility or the outpatient treatment program provider believes [is of the opinion] that the defendant is a person with mental retardation, the head of the facility or the outpatient treatment program provider shall have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

SECTION 8. Subsections (a) and (b-1), Article 46B.084, Code of Criminal Procedure, are amended to read as follows: (a) On the return of a defendant to the [committing] court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based solely on the report filed under Article 46B.079(c) [46B.080(c)], 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 [report is served on the parties]. The court shall make the determination not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b). (b-1) If the hearing is before the court, the hearing may be conducted by means of an electronic broadcast system as provided by Article 46B.013. Notwithstanding any other provision of this chapter, the defendant is not required to be returned to the

[committing] court with respect to any hearing that is conducted under this article in the manner described by this subsection.

SECTION 9. Articles 46B.085 and 46B.086, Code of Criminal Procedure, are amended to read as follows: Art. 46B.085. SUBSEQUENT RESTORATION PERIODS [COMMITMENTS] AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may order only one initial period of restoration [commitment] and one extension under this subchapter in connection with the same offense. (b) After an initial restoration period [a commitment] and an extension are ordered as described by Subsection (a), any subsequent court orders for treatment must be issued under Subchapter E or F. Art. 46B.086. COURT-ORDERED MEDICATIONS. (a) This article applies only to a defendant: (1) who is determined under this chapter to be incompetent to stand trial; (2) for whom an inpatient mental health facility, residential care facility, or outpatient treatment program provider has prepared a continuity of care plan [has been prepared by a facility] that requires the defendant to take psychoactive medications; and (3) who, after a hearing held under Section 574.106, Health and Safety Code, has been found not to meet the criteria prescribed by Sections 574.106(a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications; or (4) who is subject to Article 46B.072. (b) If a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, the director of the correctional facility or outpatient treatment provider shall notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal. The court shall promptly notify the attorney representing the state and the attorney representing the defendant of the defendant's refusal. The attorney representing the state may file a written motion to compel medication. The motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106, Health and Safety Code. The motion to compel medication for a defendant in an outpatient treatment program may be filed at any time. (c) The court, after notice and after a hearing held not later than the fifth day after the defendant is returned to the committing court, may authorize the director of a correctional facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. (d) [(c)] The court may issue an order under this article only if the order is supported by the testimony of two physicians, one of whom is the physician at or with the applicable correctional facility or outpatient treatment program who is prescribing the medication as a component of the defendant's continuity of care plan and another who is not otherwise involved in proceedings against the defendant. The court may require either or both physicians to examine the defendant and report on the examination to the court. (e) [(d)] The court may issue an order under this article if the court finds by clear and convincing evidence that: (1) the prescribed medication is medically appropriate, is in the best medical interest of the defendant, and does not present side effects that cause harm to the defendant that is greater than the medical benefit to the defendant; (2) the state has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial; (3) no other less invasive means of obtaining and maintaining the defendant's competency exists; and (4) the prescribed medication will not unduly prejudice the defendant's rights or use of defensive theories at trial. (f) [(e)] A statement made by a defendant to a physician during an examination under Subsection (d) [(c)] may not be admitted against the defendant in any criminal proceeding, other than at: (1) a hearing on the defendant's incompetency; or (2) any proceeding at which the defendant first introduces into evidence the contents of the statement.

SECTION 10. Article 46B.102, Code of Criminal Procedure, is amended to read as follows: Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS. (a) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety

Code [committed to a mental health facility]. (b) Proceedings for commitment of the defendant to court-ordered mental health services [a mental heath
extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court. (c) If the court enters an order committing the defendant to a mental health facility, the defendant shall be: (1) treated in conformity with Subtitle C, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and (2) released in conformity with Article 46B.107. (d) In proceedings conducted under this subchapter for a defendant described by Subsection (a): (1) an application for court-ordered temporary or extended mental health services may not be required; (2) the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and (3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

SECTION 11. Subsection (d), Article 46B.103, Code of Criminal Procedure, is amended to read as follows: (d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a): (1) an application [for court-ordered temporary or extended mental health services or] to have the defendant declared a person with mental retardation may not be required; (2) the provisions of Subtitle [Subtitles C and] D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and (3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for [court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code, or for] commitment to a residential care facility under Subtitle D, Title 7, Health and Safety Code.

SECTION 12. Article 46B.104, Code of Criminal Procedure, is amended to read as follows: Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the security unit of any facility designated by the department if: (1) the defendant is charged with an offense listed in 17.032(a), other than an offense listed in Article 17.032(a)(6); or (2) the indictment charging the offense alleges an affirmative finding under Section 3g(a)(2), Article 42.12.

SECTION 13. Article 46B.106, Code of Criminal Procedure, is amended to read as follows: Art. 46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE. (a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to: (1) a facility designated by the department; or (2) an outpatient treatment program [local mental health authority or local mental retardation authority to serve the catchment area in which the committing court is located]. (b) A facility or 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.

SECTION 14. Article 46B.107, Code of Criminal Procedure, is amended to read as follows: Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT. (a) The release from the department, an outpatient treatment program, or a facility of a defendant committed under this chapter is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant. (b) If the head of the facility or outpatient treatment provider to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, the head of the facility or outpatient treatment provider shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility or outpatient treatment provider intends to release the defendant. (c) The head of the facility or outpatient treatment provider shall provide with the notice a written statement that states an opinion as to

whether the defendant to be released has attained competency to stand trial. (d) The court may, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may conduct the hearing: (1) at the facility; or (2) by means of an electronic broadcast system as provided by Article 46B.013. (e) If the court determines that release is not appropriate, the court shall enter an order directing the head of the facility or the outpatient treatment provider to not release the defendant. (f) If an order is entered under Subsection (e), any subsequent proceeding to release the defendant is subject to this article.

SECTION 15. Article 46B.108, Code of Criminal Procedure, is amended to read as follows: Art. 46B.108. REDETERMINATION OF COMPETENCY. (a) If criminal charges against a defendant found incompetent to stand trial have not been dismissed, the trial court at any time may determine whether the defendant has been restored to competency. (b) An inquiry into restoration of competency under this subchapter may be made at the request of the head of the mental health facility, outpatient treatment provider, or residential care facility to which the defendant has been committed, the defendant, the attorney representing the defendant, or the attorney representing the state, or may be made on the court's own motion.

SECTION 16. Article 46B.109, Code of Criminal Procedure, is amended to read as follows: Art. 46B.109. REQUEST BY HEAD OF FACILITY OR OUTPATIENT TREATMENT PROVIDER. (a) The head of a facility or outpatient treatment provider to which a defendant has been committed as a of a finding of incompetency to stand trial may request the court to determine that the defendant has been restored to competency. (b) The head of the facility or outpatient treatment provider shall provide with the request a written statement that in their [the] opinion [of the head of the facility] the defendant is competent to stand trial.

SECTION 17. Article 46B.113, Code of Criminal Procedure, is amended to read as follows: Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT AGREEMENT. (a) The court shall hold a hearing on a request by the head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial to determine whether the defendant has been restored to competency. (b) The court may hold a hearing on a motion to determine whether the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, and shall hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency. (c) If a court holds a hearing under this article, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. If the competency determination will be made by the court rather than a jury, the court may conduct the hearing: (1) at the facility; or (2) by means of an electronic broadcast system as provided by Article 46B.013. (d) If the head of a facility or outpatient treatment provider to which the defendant was committed as a result of a finding of incompetency to stand trial has provided an opinion that the defendant has regained competency, competency is presumed at a hearing under this subchapter and continuing incompetency must be proved by a preponderance of the evidence. (e) If the head of a facility or outpatient treatment provider has not provided an opinion described by Subsection (d), incompetency is presumed at a hearing under this subchapter and the defendant's competency must be proved by a preponderance of the evidence.

SECTION 18. Article 46B.117, Code of Criminal Procedure, is amended to read as follows: Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY. [(a)] If a defendant under order of commitment to a facility or outpatient treatment program is found to not have been restored to competency to stand trial, the court shall remand the defendant pursuant to that order of commitment, and, if applicable, order the defendant placed in the custody of the sheriff or the sheriff's designee for

transportation back to the facility or outpatient treatment program. [(b) If a defendant not under order of commitment is found to not have been restored to competency to stand trial, the court shall order the defendant's custody status to remain unchanged.]

SECTION 19. Article 46B.171, Code of Criminal Procedure, is amended to read as follows: Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS. (a) The court shall order that: (1) a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings under Subchapter E or F be prepared as soon as possible by the court reporters; and (2) copies of documents listed in Article 46B.076 accompany the defendant to the mental health facility, outpatient treatment program, or residential care facility. (b) On the request of the defendant or the attorney representing the defendant, a mental health facility, an outpatient treatment program, or a residential care facility shall provide to the defendant or the attorney copies of the facility's records regarding the defendant.

SECTION 20. Section 574.107, Health and Safety Code, is amended to read as follows:
Sec. 574.107. COSTS. (a) The costs for a hearing [hearings] under this subchapter shall be paid in accordance with Sections 571.017 and 571.018. (b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to: (1) a patient ordered to receive inpatient mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or (2) a patient who: (A) is awaiting trial after having been determined to be competent to stand trial; and (B) was ordered to receive inpatient mental health services as described by Section 574.106(a)(2).

SECTION 21. Subsection (c), Article 46B.084, Code of Criminal Procedure, is repealed.

SECTION 22. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to a defendant with respect to which any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.
(b) The change in law made by this Act in amending Section 574.107, Health and Safety Code, applies only to a hearing under Section 574.106, Health and Safety Code, that commences on or after the effective date of this Act. A hearing under Section 574.106, Health and Safety Code, that commences before the effective date of this Act is covered by the law in effect when the hearing commenced, and the former law is continued in effect for this purpose.

SECTION 23. This Act takes effect September 1, 2007.

APPENDIX B

CODE OF CRIMINAL PROCEDURE CHAPTER 46B

SUBCHAPTER A. GENERAL PROVISIONS

Art. 46B.001. DEFINITIONS. In this chapter:

(1) "Inpatient mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(2) "Intellectual disability" has the meaning assigned by Section 591.003, Health and Safety Code.

(3) "Local mental health authority" has the meaning assigned by Section 571.003, Health and Safety Code.

(4) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(5) "Mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(6) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.

(7) "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

(8) "Electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.

(9) "Competency restoration" means the treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.006, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 5, eff. September 1, 2017.

Art. 46B.002. APPLICABILITY. This chapter applies to a defendant charged with a felony or with a misdemeanor punishable by confinement.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.003. INCOMPETENCY; PRESUMPTIONS. (a) A person is incompetent to stand trial if the person does not have:

(1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against the person.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.004. RAISING ISSUE OF INCOMPETENCY TO STAND TRIAL. (a) Either party may suggest by motion, or the trial court may suggest on its own motion, that the defendant may be incompetent to stand trial. A motion suggesting that the defendant may be incompetent to stand trial may be supported by affidavits setting out the facts on which the suggestion is made.

(b) If evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial.

(c) On suggestion that the defendant may be incompetent to stand trial, the court shall determine by informal inquiry whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial.

(c-1) A suggestion of incompetency is the threshold requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a bona fide doubt about the competency of the defendant. Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors

described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003.

(d) If the court determines there is evidence to support a finding of incompetency, the court, except as provided by Subsection (e) and Article 46B.005(d), shall stay all other proceedings in the case.

(e) At any time during the proceedings under this chapter after the issue of the defendant's incompetency to stand trial is first raised, the court on the motion of the attorney representing the state may dismiss all charges pending against the defendant, regardless of whether there is any evidence to support a finding of the defendant's incompetency under Subsection (d) or whether the court has made a finding of incompetency under this chapter. If the court dismisses the charges against the defendant, the court may not continue the proceedings under this chapter, except that, if there is evidence to support a finding of the defendant's incompetency under Subsection (d), the court may proceed under Subchapter F. If the court does not elect to proceed under Subchapter F, the court shall discharge the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 2, eff. September 1, 2011.

Art. 46B.005. DETERMINING INCOMPETENCY TO STAND TRIAL. (a) If after an informal inquiry the court determines that evidence exists to support a finding of incompetency, the court shall order an examination under Subchapter B to determine whether the defendant is incompetent to stand trial in a criminal case.

(b) Except as provided by Subsection (c), the court shall hold a trial under Subchapter C before determining whether the defendant is incompetent to stand trial on the merits.

(c) A trial under this chapter is not required if:

(1) neither party's counsel requests a trial on the issue of incompetency;

(2) neither party's counsel opposes a finding of incompetency; and

(3) the court does not, on its own motion, determine that a trial is necessary to determine incompetency.

(d) If the issue of the defendant's incompetency to stand trial is raised after the trial on the merits begins, the court may determine the issue at any time before the sentence is pronounced. If the determination is delayed until after the return of a verdict, the court shall make the determination as soon

as reasonably possible after the return. If a verdict of not guilty is returned, the court may not determine the issue of incompetency.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.006. APPOINTMENT OF AND REPRESENTATION BY COUNSEL. (a) A defendant is entitled to representation by counsel before any court-ordered competency evaluation and during any proceeding at which it is suggested that the defendant may be incompetent to stand trial.

(b) If the defendant is indigent and the court has not appointed counsel to represent the defendant, the court shall appoint counsel as necessary to comply with Subsection (a).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.007. ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER EVIDENCE. A statement made by a defendant during an examination or trial on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:

(1) a trial on the defendant's incompetency; or

(2) any proceeding at which the defendant first introduces into evidence a statement, testimony, or evidence described by this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.008. RULES OF EVIDENCE. Notwithstanding Rule 101, Texas Rules of Evidence, the Texas Rules of Evidence apply to a trial under Subchapter C or other proceeding under this chapter whether the proceeding is before a jury or before the court.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.009. TIME CREDITS. A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence each of the following periods for which the person may be confined in a mental health facility, residential care facility, or jail:

(1) any period of confinement that occurs pending a determination under Subchapter C as to the defendant's competency to stand trial; and

(2) any period of confinement that occurs between the date of any initial determination of the defendant's incompetency under that subchapter and the date the person is transported to jail following a final judicial determination that the person has been restored to competency.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 3, eff. September 1, 2011.

Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, ordered to participate in an outpatient competency restoration or treatment program, or subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under 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 competency restoration or treatment program under Subchapter D or E, the maximum period of restoration is two years.

(b) On expiration of the maximum restoration period under Subsection (a), the mental hospital, facility, or program provider identified in the most recent order of commitment or order of outpatient competency restoration or treatment program participation under this chapter shall assess the defendant to determine if civil proceedings under Subtitle C or D, Title 7, Health and Safety Code, are appropriate. The

defendant may be confined for an additional period in a mental hospital or other facility or may be ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil proceedings conducted under Subtitle C or D, Title 7, Health and Safety Code, by a court with probate jurisdiction.

(c) The cumulative period described by Subsection (a):

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

(2) in addition to any inpatient or outpatient competency restoration periods or program participation periods described by Subsection (a), 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, Penal Code, or is otherwise in the custody of the sheriff during or while awaiting, as applicable:

(A) the defendant's transfer to:

(i) a mental hospital or other inpatient or residential facility; or

(ii) a jail-based competency restoration program;

(B) the defendant's release on bail to participate in an outpatient competency restoration or treatment program; or

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

(d) The court shall credit to the cumulative period described by Subsection (a) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for outpatient competency restoration or treatment program participation is entered under this chapter.

(e) In addition to the time credit awarded under Subsection (d), the court may credit to the cumulative period described by Subsection (a) any good conduct time the defendant may have been granted under Article 42.032 in relation to the defendant's confinement as described by Subsection (d).

Added by Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.010(b), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.010(c), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.010(d), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 627 (S.B. 1326), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 627 (S.B. 1326), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 6, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 7, eff. September 1, 2017.

Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, that the defendant participate in an outpatient competency restoration or treatment program, or that the defendant be subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter, and the defendant is not tried before the expiration of the maximum period of restoration described by Article 46B.0095:

(1) on the motion of the attorney representing the state, the court shall dismiss the charge; or

(2) on the motion of the attorney representing the defendant and notice to the attorney representing the state, the court:

(A) shall set the matter to be heard not later than the 10th day after the date of filing of the motion; and

(B) may dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 5, eff. September 1, 2011.

Reenacted by Acts 2015, 84th Leg., R.S., Ch. 627 (S.B. 1326), Sec. 2, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 8, eff. September 1, 2017.

Art. 46B.011. APPEALS. Neither the state nor the defendant is entitled to make an interlocutory appeal relating to a determination or ruling under Article 46B.005.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.012. COMPLIANCE WITH CHAPTER. The failure of a person to comply with this chapter does not provide a defendant with a right to dismissal of charges.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.013. USE OF ELECTRONIC BROADCAST SYSTEM IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted using an electronic broadcast system as permitted by this chapter and in accordance with the other provisions of this code if:

(1) written consent to the use of an electronic broadcast system is filed with the court by:

(A) the defendant or the attorney representing the defendant; and

(B) the attorney representing the state;

(2) the electronic broadcast system provides for a simultaneous, compressed full motion video, and interactive communication of image and sound between the judge, the attorney representing the state, the attorney representing the defendant, and the defendant; and

(3) on request of the defendant or the attorney representing the defendant, the defendant and the attorney representing the defendant are able to communicate privately without being recorded or heard by the judge or the attorney representing the state.

(b) On the motion of the defendant, the attorney representing the defendant, or the attorney representing the state or on the court's own motion, the court may terminate an appearance made through an electronic broadcast system at any time during the appearance and require an appearance by the defendant in open court.

(c) A recording of the communication shall be made and preserved until any appellate proceedings have been concluded. The defendant may obtain a copy of the recording on payment of a

reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

Added by Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 4, eff. September 1, 2005.

SUBCHAPTER B. EXAMINATION

Art. 46B.021. APPOINTMENT OF EXPERTS. (a) On a suggestion that the defendant may be incompetent to stand trial, the court may appoint one or more disinterested experts to:

(1) examine the defendant and report to the court on the competency or incompetency of the defendant; and

(2) testify as to the issue of competency or incompetency of the defendant at any trial or hearing involving that issue.

(b) On a determination that evidence exists to support a finding of incompetency to stand trial, the court shall appoint one or more experts to perform the duties described by Subsection (a).

(c) An expert involved in the treatment of the defendant may not be appointed to examine the defendant under this article.

(d) The movant or other party as directed by the court shall provide to experts appointed under this article information relevant to a determination of the defendant's competency, including copies of the indictment or information, any supporting documents used to establish probable cause in the case, and previous mental health evaluation and treatment records.

(e) The court may appoint as experts under this chapter qualified psychiatrists or psychologists employed by the local mental health authority or local intellectual and developmental disability authority. The local mental health authority or local intellectual and developmental disability authority is entitled to compensation and reimbursement as provided by Article 46B.027.

(f) If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the expert with reasonable opportunity to examine the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.007, eff. April 2, 2015.

Art. 46B.022. EXPERTS: QUALIFICATIONS. (a) To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

(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:

(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:

(i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; and

(ii) at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment.

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in either of the reporting periods in the 24 months preceding the appointment.

(c) A court may appoint as an expert a psychiatrist or psychologist who does not meet the requirements of Subsections (a) and (b) only if exigent circumstances require the court to base the appointment on professional training or experience of the expert that directly provides the expert with a specialized expertise to examine the defendant that would not ordinarily be possessed by a psychiatrist or psychologist who meets the requirements of Subsections (a) and (b).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 6, eff. September 1, 2011.

Art. 46B.023. CUSTODY STATUS. During an examination under this subchapter, except as otherwise ordered by the court, the defendant shall be maintained under the same custody or status as the defendant was maintained under immediately before the examination began.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

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

(1) the capacity of the defendant during criminal proceedings to:

(A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

(2) as supported by current indications and the defendant's personal history, whether the defendant:

(A) is a person with mental illness; or

(B) is a person with an intellectual disability;

(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 the mental illness or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(5) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 7, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.008, eff. April 2, 2015.

Art. 46B.025. EXPERT'S REPORT. (a) An expert's report to the court must 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 must also:

(1) identify and address specific issues referred to the expert for evaluation;

(2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;

(3) in specific 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.

(a-1) The expert's opinion on the defendant's competency or incompetency may not be based solely on the defendant's refusal to communicate during the examination.

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

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or intellectual disability, if any, and the impact of the identified condition on the factors listed in Article 46B.024;

(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, if any, appropriate for the defendant.

(c) An expert's report may not state the expert's opinion on the defendant's sanity at the time of the alleged offense, if in the opinion of the expert the defendant is incompetent to proceed.

(d) The court shall direct an expert to provide the expert's report to the court and the appropriate parties in the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(b), Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1269 (H.B. 2194), Sec. 1, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.009, eff. April 2, 2015.

Art. 46B.026. REPORT DEADLINE. (a) Except as provided by Subsection (b), an expert examining the defendant shall provide the report on the defendant' s competency or incompetency to stand trial to the court, the attorney representing the state, and the attorney representing the defendant not later than the 30th day after the date on which the expert was ordered to examine the defendant and prepare the report.

(b) For good cause shown, the court may permit an expert to complete the examination and report and provide the report to the court and attorneys at a date later than the date required by Subsection (a).

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 35(1), eff. September 1, 2017.

(d) The court shall submit to the Office of Court Administration of the Texas Judicial System on a monthly basis the number of reports provided to the court under this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1269 (H.B. 2194), Sec. 2, eff. June 18, 2005.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 9, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 35(1), eff. September 1, 2017.

Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF FACILITIES. (a) For any appointment under this chapter, the county in which the indictment was returned or information was filed shall pay for services described by Articles 46B.021(a)(1) and (2). If those services are provided by an expert who is an employee of the local mental health authority or local intellectual and developmental disability authority, the county shall pay the authority for the services.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are reasonably necessary and incidental to the proper examination of the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.010, eff. April 2, 2015.

SUBCHAPTER C. INCOMPETENCY TRIAL

Art. 46B.051. TRIAL BEFORE JUDGE OR JURY. (a) If a court holds a trial to determine whether the defendant is incompetent to stand trial, on the request of either party or the motion of the court, a jury shall make the determination.

(b) The court shall make the determination of incompetency if a jury determination is not required by Subsection (a).

(c) If a jury determination is required by Subsection (a), a jury that has not been selected to determine the guilt or innocence of the defendant must determine the issue of incompetency.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 6, eff. September 1, 2005.

Art. 46B.052. JURY VERDICT. (a) If a jury determination of the issue of incompetency to stand trial is required by Article 46B.051(a), the court shall require the jury to state in its verdict whether the defendant is incompetent to stand trial.

(b) The verdict must be concurred in by each juror.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.053. PROCEDURE AFTER FINDING OF COMPETENCY. If the court or jury determines that the defendant is competent to stand trial, the court shall continue the trial on the merits. If a jury determines that the defendant is competent and the trial on the merits is to be held before a jury, the court shall continue the trial with another jury selected for that purpose.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 7, eff. September 1, 2005.

Art. 46B.054. UNCONTESTED INCOMPETENCY. If the court finds that evidence exists to support a finding of incompetency to stand trial and the court and the counsel for each party agree that the defendant is incompetent to stand trial, the court shall proceed in the same manner as if a jury had been impaneled and had found the defendant incompetent to stand trial.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 7, eff. September 1, 2005.

Art. 46B.055. PROCEDURE AFTER FINDING OF INCOMPETENCY. If the defendant is found incompetent to stand trial, the court shall proceed under Subchapter D.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER D. PROCEDURES AFTER DETERMINATION OF INCOMPETENCY

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

(1) if the defendant is charged with an offense punishable as a Class B misdemeanor:

(A) release the defendant on bail under Article 46B.0711; or

(B) commit the defendant to:

(i) a jail-based competency restoration program under Article 46B.073(e); or

(ii) a mental health facility or residential care facility under Article 46B.073(f); or

(2) if the defendant is charged with an offense punishable as a Class A misdemeanor or any higher category of offense:

(A) release the defendant on bail under Article 46B.072; or

(B) commit the defendant to a facility or a jail-based competency restoration program under Article 46B.073(c) or (d).

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

(1) proceed under Subchapter E or F; or

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

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 9, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 10, eff. September 1, 2017.

Art. 46B.0711. RELEASE ON BAIL FOR CLASS B MISDEMEANOR. (a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(b) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a Class B misdemeanor and found incompetent to stand trial 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 an appropriate outpatient competency restoration program is available for the defendant, the court shall:

(1) release the defendant on bail or continue the defendant's release on bail; and

(2) order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days.

(c) Notwithstanding Subsection (b), the court may order a defendant to participate in an outpatient competency restoration program under this article only if:

(1) the court receives and approves a comprehensive plan that:

(A) provides for the treatment of the defendant for purposes of competency restoration; and

(B) identifies the person who will be responsible for providing that treatment to the defendant; and

(2) the court finds that the treatment proposed by the plan will be available to and will be provided to the defendant.

(d) An order issued under this article may require the defendant to participate in:

(1) as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment.

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 11, eff. September 1, 2017.

Art. 46B.072. RELEASE ON BAIL FOR FELONY OR CLASS A MISDEMEANOR. (a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(a-1) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a felony or a Class A misdemeanor and found incompetent to stand trial 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 an appropriate outpatient competency restoration program is available for the defendant, the court:

(1) may release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a felony or may continue the defendant's release on bail; and

(2) shall release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a Class A misdemeanor or shall continue the defendant's release on bail.

(b) The court shall order a defendant released on bail under Subsection (a-1) to participate in an outpatient competency restoration program for a period not to exceed 120 days.

(c) Notwithstanding Subsection (a-1), the court may order a defendant to participate in an outpatient competency restoration program under this article only if:

(1) the court receives and approves a comprehensive plan that:

(A) provides for the treatment of the defendant for purposes of competency restoration; and

(B) identifies the person who will be responsible for providing that treatment to the defendant; and

(2) the court finds that the treatment proposed by the plan will be available to and will be provided to the defendant.

(d) An order issued under this article may require the defendant to participate in:

(1) as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides outpatient competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication, including those required under Article 46B.086.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 10, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 13, eff. September 1, 2017.

Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY. (a) 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) For purposes of further examination and competency restoration services with the specific objective of the defendant attaining competency to stand trial, the court shall commit a defendant described by Subsection (a) to a mental health facility, residential care facility, or jail-based competency restoration program for the applicable period as follows:

(1) a period of not more than 60 days, if the defendant is charged with an offense punishable as a misdemeanor; or

(2) a period of not more than 120 days, if the defendant is charged with an offense punishable as a felony.

(c) If the defendant is charged with an offense listed in Article 17.032(a), other than an offense under Section 22.01(a)(1), Penal Code, or the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services to the maximum security unit of any facility designated by the Department of State Health Services, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority or to a jail-based competency restoration program. A defendant may be committed to a jail-based competency restoration program only if the program provider determines the defendant will begin to receive competency restoration services within 72 hours of arriving at the program.

(e) Except as provided by Subsection (f), a defendant charged with an offense punishable as a Class B misdemeanor may be committed under this subchapter only to a jail-based competency restoration program.

(f) A defendant charged with an offense punishable as a Class B misdemeanor may be committed to a mental health facility or residential care facility described by Subsection (d) only if a jail-based competency restoration program is not available or a licensed or qualified mental health professional determines that a jail-based competency restoration program is not appropriate.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 797 (S.B. 1475), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.011, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.20, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.15(b), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 14, eff. September 1, 2017.

Art. 46B.074. COMPETENT TESTIMONY REQUIRED. (a) A defendant may be committed to a jail-based competency restoration program, mental health facility, or residential care facility under this subchapter only on competent medical or psychiatric testimony provided by an expert qualified under Article 46B.022.

(b) The court may allow an expert to substitute the expert's report under Article 46B.025 for any testimony by the expert that may be required under this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 10, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 15, eff. September 1, 2017.

Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR PROGRAM. An order issued under Article 46B.0711, 46B.072, or 46B.073 must place the defendant in the custody of the sheriff or sheriff's deputy for transportation to the facility or program, as applicable, in which the defendant is to receive competency restoration services.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 5, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 16, eff. September 1, 2017.

Art. 46B.0755. PROCEDURES ON CREDIBLE EVIDENCE OF IMMEDIATE RESTORATION. (a) Notwithstanding any other provision of this subchapter, if the court receives credible evidence indicating that the defendant has been restored to competency at any time after the defendant's incompetency trial under Subchapter C but before the defendant is transported under Article 46B.075 to the facility or program, as applicable, the court may appoint disinterested experts to reexamine the defendant in accordance with Subchapter B. The court is not required to appoint the same expert or experts who performed the initial examination of the defendant under that subchapter.

(b) If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant remains incompetent, the court's order under Article 46B.0711, 46B.072, or 46B.073 remains in effect, and the defendant shall be transported to the facility or program as required by Article 46B.075. If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant has been restored to competency, the court shall withdraw its order under Article 46B.0711, 46B.072, or 46B.073 and proceed under Subsection (c) or (d).

(c) The court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

(1) both parties agree that the defendant is competent to stand trial; and

(2) the court concurs.

(d) The court shall hold a hearing to determine whether the defendant has been restored to competency if any party fails to agree or if the court fails to concur that the defendant is competent to stand trial. If a court holds a hearing under this subsection, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. For purposes of the hearing, incompetency is presumed, and the defendant's competency must be proved by a preponderance of the evidence. If after the hearing the defendant is again found to be incompetent to stand trial, the court shall issue a new order under Article 46B.0711, 46B.072, or 46B.073, as appropriate based on the defendant's current condition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 12, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 17, eff. September 1, 2017.

Art. 46B.076. COURT'S ORDER. (a) 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, the court shall send a copy of the order to the applicable facility or program. The court shall also provide to the facility or program copies of the following made available to the court during the incompetency trial:

(1) reports of each expert;

(2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;

(3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;

(4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;

(5) the defendant's criminal history record; and

(6) the addresses of the attorney representing the state and the attorney representing the defendant.

(b) The court shall order that the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the applicable facility or program.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.012, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 18, eff. September 1, 2017.

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The facility or jail-based competency restoration program to which the defendant is committed or the outpatient competency restoration program to which the defendant is released on bail shall:

(1) develop an individual program of treatment;

(2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) report to the court and to the local mental health authority or to the local intellectual and developmental disability authority on the defendant's progress toward achieving competency.

(b) If the defendant is committed to an inpatient mental health facility, residential care facility, or jail-based competency restoration program, the facility or program shall report to the court at least once during the commitment period.

(c) If the defendant is released to an outpatient competency restoration program, the program shall report to the court:

(1) not later than the 14th day after the date on which the defendant's competency restoration services begin; and

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

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.013, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 19, eff. September 1, 2017.

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the charges pending against a defendant are dismissed, the court that issued the order under Article 46B.0711, 46B.072, or 46B.073 shall send a copy of the order of dismissal to the sheriff of the county in which the court is located and to the head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate. On receipt of the copy of the order, the facility or program shall discharge the defendant into the care of the sheriff or sheriff's deputy for transportation in the manner described by Article 46B.082.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 20, eff. September 1, 2017.

Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate, not later than the 15th day before the date on which the initial restoration period is to expire according to the terms of the order or under Article 46B.0095 or other applicable provisions of this chapter, shall notify the applicable court that the period is about to expire.

(b) The head of the facility or jail-based competency restoration program provider shall promptly notify the court when the head of the facility or program provider believes that:

(1) the defendant is clinically ready and can be safely transferred to a competency restoration program for education services but has not yet attained competency to stand trial;

(2) the defendant has attained competency to stand trial; or

(3) the defendant is not likely to attain competency in the foreseeable future.

(b-1) The outpatient competency restoration program provider shall promptly notify the court when the program provider believes that:

(1) the defendant has attained competency to stand trial; or

(2) the defendant is not likely to attain competency in the foreseeable future.

(c) When the head of the facility or program provider gives notice to the court under Subsection (a), (b), or (b-1), the head of the facility or program provider also shall file a final report with the court stating the reason for the proposed discharge or transfer under this chapter and including a list of the types and dosages of medications prescribed for the defendant while the defendant was receiving competency

restoration services in the facility or through the program. The court shall provide to the attorney representing the defendant and the attorney representing the state copies of a report based on notice under this article, other than notice under Subsection (b)(1), to enable any objection to the findings of the report to be made in a timely manner as required under Article 46B.084(a-1).

(d) If the head of the facility or program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request. An explanation provided under this subsection must include a description of any evidence indicating a reduction in the severity of the defendant's symptoms or impairment.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 994 (H.B. 211), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 21, eff. September 1, 2017.

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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 15, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 22, eff. September 1, 2017.

Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES. (a) On notification from the head of a facility or a jail-based competency restoration program provider under Article 46B.079(b)(1), the court shall order the defendant to receive competency restoration education services in a jail-based competency restoration program or an outpatient competency restoration program, as appropriate and if available.

(b) If a defendant for whom an order is entered under Subsection (a) was committed for competency restoration to a facility other than a jail-based competency restoration program, the court shall send a copy of that order to:

(1) the sheriff of the county in which the court is located;

(2) the head of the facility to which the defendant was committed for competency restoration; and

(3) the local mental health authority or local intellectual and developmental disability authority, as appropriate.

(c) As soon as practicable but not later than the 10th day after the date of receipt of a copy of an order under Subsection (b)(2), the applicable facility shall discharge the defendant into the care of the sheriff of the county in which the court is located or into the care of the sheriff's deputy. The sheriff or sheriff's deputy shall transport the defendant to the jail-based competency restoration program or outpatient competency restoration program, as appropriate.

(d) A jail-based competency restoration program or outpatient competency restoration program that receives a defendant under this article shall give to the court:

(1) notice regarding the defendant's entry into the program for purposes of receiving competency restoration education services; and

(2) subsequent notice as otherwise required under Article 46B.079.

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 23, eff. September 1, 2017.

Art. 46B.081. RETURN TO COURT. Subject to Article 46B.082(b), a defendant committed or released on bail under this subchapter shall be returned to the applicable court as soon as practicable after

notice to the court is provided under Article 46B.079(a), (b)(2), (b)(3), or (b-1), but not later than the date of expiration of the period for restoration specified by the court under Article 46B.0711, 46B.072, or 46B.073.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 24, eff. September 1, 2017.

Art. 46B.082. TRANSPORTATION OF DEFENDANT TO COURT. (a) On notification from the court under Article 46B.078, the sheriff of the county in which the court is located or the sheriff's deputy shall transport the defendant to the court.

(b) If before the 15th day after the date on which the court received notification under Article 46B.079(a), (b)(2), (b)(3), or (b-1) a defendant committed to a facility or jail-based competency restoration program or ordered to participate in an outpatient competency restoration program has not been transported to the court that issued the order under Article 46B.0711, 46B.072, or 46B.073, as applicable, the head of the facility or provider of the jail-based competency restoration program to which the defendant is committed or the provider of the outpatient competency restoration program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse the Health and Human Services Commission or program provider, as appropriate, for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.014, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 25, eff. September 1, 2017.

Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN CUSTODY OF SHERIFF. (a) A sheriff or sheriff's deputy having custody of a defendant for transportation as required by Article 46B.0805 or 46B.082 or during proceedings described by Article 46B.084 shall, according to information available at the time and unless directed otherwise by a physician treating the defendant, ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant.

(b) To the extent funds are appropriated for that purpose, a sheriff is entitled to reimbursement from the state for providing the medication required by Subsection (a).

(c) If the sheriff determines that funds are not available from the state to reimburse the sheriff as provided by Subsection (b), the sheriff is not required to comply with Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 23, eff. September 1, 2017.

Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY OR PROGRAM. (a) If the head of the facility, the jail-based competency restoration program provider, or the outpatient competency restoration program provider believes that the defendant is a person with mental illness and meets the criteria for court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility or the program provider shall have submitted to the court a certificate of medical examination for mental illness.

(b) If the head of the facility, the jail-based competency restoration program provider, or the outpatient competency restoration program provider believes that the defendant is a person with an intellectual disability, the head of the facility or the program provider shall have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.015, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 26, eff. September 1, 2017.

Art. 46B.084. PROCEEDINGS ON RETURN OF DEFENDANT TO COURT. (a)(1) Not later than the next business day following the return of a defendant to the court, the court shall notify the attorney representing the state and the attorney for the defendant regarding the return. Within three business days of the date that notice is received under this subsection or, on a showing of good cause, a later date specified by the court, the attorney for the defendant shall meet and confer with the defendant to evaluate whether there is any suggestion that the defendant has not yet regained competency.

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, as soon as practicable following the date of the defendant's return to the court, the court shall provide the notice required by that subdivision to the attorney representing the state and the attorney for the defendant, and the attorney for the defendant shall meet and confer with the defendant as soon as practicable after the date of receipt of that notice.

(a-1)(1) Following the defendant's return to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based only on the most recent report that is filed under Article 46B.079(c) and based on notice under that article, other than notice under Subsection (b)(1) of that article, and on other medical information or personal history information relating to the defendant. A party may object in writing or in open court to the findings of the most recent report not later than the 15th day after the date on which the court received the applicable notice under Article 46B.079. The court shall make the determination not later than the 20th day after the date on which the court received the applicable notice under Article 46B.079, or not later than the fifth day after the date of the defendant's return to court, whichever occurs first, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, the court shall make the determination described by that subdivision not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by that subdivision and the issue is set for a hearing under Subsection (b).

(b) If a party objects under Subsection (a-1), the issue shall be set for a hearing. The hearing is before the court, except that on motion by the defendant, the defense counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury.

(b-1) If the hearing is before the court, the hearing may be conducted by means of an electronic broadcast system as provided by Article 46B.013. Notwithstanding any other provision of this chapter, the

defendant is not required to be returned to the court with respect to any hearing that is conducted under this article in the manner described by this subsection.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1307, Sec. 21, eff. September 1, 2007.

(d)(1) If the defendant is found competent to stand trial, on the court's own motion criminal proceedings in the case against the defendant shall be resumed not later than the 14th day after the date of the court's determination under this article that the defendant's competency has been restored.

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, on the court's own motion criminal proceedings in the case against the defendant shall be resumed as soon as practicable after the date of the court's determination under this article that the defendant's competency has been restored.

(d-1) This article does not require the criminal case to be finally resolved within any specific period.

(e) If the defendant is found incompetent to stand trial and if all charges pending against the defendant are not dismissed, the court shall proceed under Subchapter E.

(f) If the defendant is found incompetent to stand trial and if all charges pending against the defendant are dismissed, the court shall proceed under Subchapter F.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 21, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 994 (H.B. 211), Sec. 2, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 27, eff. September 1, 2017.

Art. 46B.085. SUBSEQUENT RESTORATION PERIODS AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may order only one initial period of restoration and one extension under this subchapter in connection with the same offense.

(b) After an initial restoration period and an extension are ordered as described by Subsection (a), any subsequent court orders for treatment must be issued under Subchapter E or F.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 16, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 9, eff. September 1, 2007.

Art. 46B.086. COURT-ORDERED MEDICATIONS. (a) This article applies only to a defendant:

(1) who is determined under this chapter to be incompetent to stand trial;

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient competency restoration program;

(B) is committed to an inpatient mental health facility, a residential care facility, or a jail-based competency restoration program for the purpose of competency restoration;

(C) is confined in a correctional facility while awaiting further criminal proceedings following competency restoration; or

(D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) of that article;

(3) for whom a correctional facility or jail-based competency restoration program that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient competency restoration program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

(4) who, after a hearing held under Section 574.106 or 592.156, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1) or 592.156(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) If a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, the director of the facility or the program provider, as applicable, shall notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal. The court shall promptly notify the attorney representing the state and the attorney representing the defendant of the defendant's refusal. The attorney representing the state may file a written motion to compel medication. The motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant

does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106 or 592.156, Health and Safety Code, except that, for a defendant in an outpatient competency restoration program, the motion may be filed at any time.

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed, may authorize the director of the facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be conducted using an electronic broadcast system as provided by Article 46B.013.

(d) The court may issue an order under this article only if the order is supported by the testimony of two physicians, one of whom is the physician at or with the applicable facility or program who is prescribing the medication as a component of the defendant's continuity of care plan and another who is not otherwise involved in proceedings against the defendant. The court may require either or both physicians to examine the defendant and report on the examination to the court.

(e) The court may issue an order under this article if the court finds by clear and convincing evidence that:

(1) the prescribed medication is medically appropriate, is in the best medical interest of the defendant, and does not present side effects that cause harm to the defendant that is greater than the medical benefit to the defendant;

(2) the state has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial;

(3) no other less invasive means of obtaining and maintaining the defendant's competency exists; and

(4) the prescribed medication will not unduly prejudice the defendant's rights or use of defensive theories at trial.

(f) A statement made by a defendant to a physician during an examination under Subsection (d) may not be admitted against the defendant in any criminal proceeding, other than at:

(1) a hearing on the defendant's incompetency; or

(2) any proceeding at which the defendant first introduces into evidence the contents of the statement.

(g) For a defendant described by Subsection (a)(2)(A), an order issued under this article:

(1) authorizes the initiation of any appropriate mental health treatment for the defendant awaiting transfer; and

(2) does not constitute authorization to retain the defendant in a correctional facility for competency restoration treatment.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 8, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 9, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 17, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 28, eff. September 1, 2017.

Art. 46B.090. JAIL-BASED RESTORATION OF COMPETENCY PILOT PROGRAM. (a) In this article, "department" means the Department of State Health Services.

(a-1) If the legislature appropriates to the department the funding necessary for the department to operate a jail-based restoration of competency pilot program as described by this article, the department 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 shall coordinate and allow for input from each participating county.

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

(c) Not later than November 1, 2013, the commissioner of the department 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) Repealed by Acts 2015, 84th Leg., R.S., Ch. 946 , Sec. 1.15(d), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 946 , Sec. 1.15(d), eff. September 1, 2015.

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

(1) the provider:

(A) has previously provided jail-based competency restoration services for one or more years; or

(B) is a local mental health authority that has previously provided competency restoration services;

(2) the provider's jail-based competency restoration program:

(A) uses a multidisciplinary treatment team to provide clinical treatment that is:

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

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

(B) employs or contracts for the services of at least one psychiatrist; and

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

(3) the 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 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) 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 for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist 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 for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist 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 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:

(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 misdemeanor, the court may:

(A) order a single extension under Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by Article 46B.073(d) for the remainder of the period under the extension;

(B) proceed under Subchapter E or F;

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 797 (S.B. 1475), Sec. 2, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.016, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.15(c), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.15(d), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 29, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 35(2), eff. September 1, 2017.

Art. 46B.091. JAIL-BASED COMPETENCY RESTORATION PROGRAM IMPLEMENTED BY COUNTY. (a) In this article:

(1) "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.

(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:

(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 misdemeanor, the court may:

(A) order a single extension under Article 46B.080 and, notwithstanding Articles 46B.073(e) and (f), the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by Article 46B.073(d) for the remainder of the period under the extension;

(B) proceed under Subchapter E or F;

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

(D) 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 30, eff. September 1, 2017.

SUBCHAPTER E. CIVIL COMMITMENT: CHARGES PENDING

Art. 46B.101. APPLICABILITY. This subchapter applies to a defendant against whom a court is required to proceed according to Article 46B.084(e) or according to the court's appropriate determination under Article 46B.071.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 18, eff. September 1, 2011.

Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS. (a) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety Code.

(b) Proceedings for commitment of the defendant to court-ordered mental health services 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 whether or not the criminal court is also the county court.

(c) If the court enters an order committing the defendant to a mental health facility, the defendant shall be:

(1) treated in conformity with Subtitle C, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application for court-ordered temporary or extended mental health services may not be required;

(2) the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 10, eff. September 1, 2007.

Art. 46B.103. CIVIL COMMITMENT HEARING: INTELLECTUAL DISABILITY. (a) If it appears to the court that the defendant may be a person with an intellectual disability, the court shall hold a hearing to determine whether the defendant is a person with an intellectual disability.

(b) Proceedings for commitment of the defendant to a residential care facility are governed by Subtitle D, Title 7, Health and Safety Code, to the extent that Subtitle D applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(c) If the court enters an order committing the defendant to a residential care facility, the defendant shall be:

(1) treated and released in accordance with Subtitle D, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application to have the defendant declared a person with an intellectual disability may not be required;

(2) the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a residential care facility under Subtitle D, Title 7, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 11, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.017, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.018, eff. April 2, 2015.

Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the maximum security unit of any facility designated by the Department of State Health Services if:

(1) the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6); or

(2) the indictment charging the offense alleges an affirmative finding under Article 42A.054(c) or (d).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 20, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.019, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.21, eff. January 1, 2017.

Art. 46B.105. TRANSFER FOLLOWING CIVIL COMMITMENT PLACEMENT. (a) Unless a defendant is determined to be manifestly dangerous by a review board established under Subsection (b), not later than the 60th day after the date the defendant arrives at the maximum security unit, the defendant shall be transferred to:

(1) a unit of an inpatient mental health facility other than a maximum security unit;

(2) a residential care facility; or

(3) a program designated by a local mental health authority or a local intellectual and developmental disability authority.

(b) The commissioner of state health services shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or an intellectual disability, to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(c) The review board may not make a determination as to the defendant's need for treatment.

(d) A finding that the defendant is not manifestly dangerous is not a medical determination that the defendant no longer meets the criteria for involuntary civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(e) If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, the matter shall be referred to the commissioner of state health services. The commissioner shall decide whether the defendant is manifestly dangerous.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 21, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.020, eff. April 2, 2015.

Art. 46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE. (a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to:

(1) a facility designated by the Department of State Health Services or the Department of Aging and Disability Services, as appropriate; or

(2) an outpatient treatment program.

(b) A facility or 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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 13, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.021, eff. April 2, 2015.

Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT. (a) The release of a defendant committed under this chapter from the Department of State Health Services, the Department of Aging and Disability Services, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(b) If the head of the facility or outpatient treatment provider to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, the head of the facility or outpatient treatment provider shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility or outpatient treatment provider intends to release the defendant.

(c) The head of the facility or outpatient treatment provider shall provide with the notice a written statement that states an opinion as to whether the defendant to be released has attained competency to stand trial.

(d) The court may, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as provided by Article 46B.013.

(e) If the court determines that release is not appropriate, the court shall enter an order directing the head of the facility or the outpatient treatment provider to not release the defendant.

(f) If an order is entered under Subsection (e), any subsequent proceeding to release the defendant is subject to this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 24, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.022, eff. April 2, 2015.

Art. 46B.108. REDETERMINATION OF COMPETENCY. (a) If criminal charges against a defendant found incompetent to stand trial have not been dismissed, the trial court at any time may determine whether the defendant has been restored to competency.

(b) An inquiry into restoration of competency under this subchapter may be made at the request of the head of the mental health facility, outpatient treatment provider, or residential care facility to which the defendant has been committed, the defendant, the attorney representing the defendant, or the attorney representing the state, or may be made on the court's own motion.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 25, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 15, eff. September 1, 2007.

Art. 46B.109. REQUEST BY HEAD OF FACILITY OR OUTPATIENT TREATMENT PROVIDER. (a) The head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial may request the court to determine that the defendant has been restored to competency.

(b) The head of the facility or outpatient treatment provider shall provide with the request a written statement that in their opinion the defendant is competent to stand trial.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 16, eff. September 1, 2007.

Art. 46B.110. MOTION BY DEFENDANT, ATTORNEY REPRESENTING DEFENDANT, OR ATTORNEY REPRESENTING STATE. (a) The defendant, the attorney representing the defendant,

or the attorney representing the state may move that the court determine that the defendant has been restored to competency.

(b) A motion for a determination of competency may be accompanied by affidavits supporting the moving party's assertion that the defendant is competent.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 26, eff. September 1, 2005.

Art. 46B.111. APPOINTMENT OF EXAMINERS. On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, the court may appoint disinterested experts to examine the defendant in accordance with Subchapter B.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.112. DETERMINATION OF RESTORATION WITH AGREEMENT. On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, the court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

(1) both parties agree that the defendant is competent to stand trial; and

(2) the court concurs.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT AGREEMENT. (a) The court shall hold a hearing on a request by the head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial to determine whether the defendant has been restored to competency.

(b) The court may hold a hearing on a motion to determine whether the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of

competency, and shall hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency.

(c) If a court holds a hearing under this article, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. If the competency determination will be made by the court rather than a jury, the court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as provided by Article 46B.013.

(d) If the head of a facility or outpatient treatment provider to which the defendant was committed as a result of a finding of incompetency to stand trial has provided an opinion that the defendant has regained competency, competency is presumed at a hearing under this subchapter and continuing incompetency must be proved by a preponderance of the evidence.

(e) If the head of a facility or outpatient treatment provider has not provided an opinion described by Subsection (d), incompetency is presumed at a hearing under this subchapter and the defendant's competency must be proved by a preponderance of the evidence.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 27, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 17, eff. September 1, 2007.

Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the hearing is not conducted at the facility to which the defendant has been committed under this chapter or conducted by means of an electronic broadcast system as described by this subchapter, an order setting a hearing to determine whether the defendant has been restored to competency shall direct that, as soon as practicable but not earlier than 72 hours before the date the hearing is scheduled, the defendant be placed in the custody of the sheriff of the county in which the committing court is located or the sheriff's designee for transportation to the court. The sheriff or the sheriff's designee may not take custody of the defendant under this article until 72 hours before the date the hearing is scheduled.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 28, eff. September 1, 2005.

Art. 46B.115. SUBSEQUENT REDETERMINATIONS OF COMPETENCY. (a) If the court has made a determination that a defendant has not been restored to competency under this subchapter, a subsequent request or motion for a redetermination of competency filed before the 91st day after the date of that determination must:

(1) explain why the person making the request or motion believes another inquiry into restoration is appropriate; and

(2) provide support for the belief.

(b) The court may hold a hearing on a request or motion under this article only if the court first finds reason to believe the defendant's condition has materially changed since the prior determination that the defendant was not restored to competency.

(c) If the competency determination will be made by the court, the court may conduct the hearing at the facility to which the defendant has been committed under this chapter or may conduct the hearing by means of an electronic broadcast system as provided by Article 46B.013.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 29, eff. September 1, 2005.

Art. 46B.116. DISPOSITION ON DETERMINATION OF COMPETENCY. If the defendant is found competent to stand trial, the proceedings on the criminal charge may proceed.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY. If a defendant under order of commitment to a facility or outpatient treatment program is found to not have been restored to competency to stand trial, the court shall remand the defendant pursuant to that order of commitment, and, if applicable, order the defendant placed in the custody of the sheriff or the sheriff's designee for transportation back to the facility or outpatient treatment program.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 30, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 18, eff. September 1, 2007.

SUBCHAPTER F. CIVIL COMMITMENT: CHARGES DISMISSED

Art. 46B.151. COURT DETERMINATION RELATED TO CIVIL COMMITMENT. (a) If a court is required by Article 46B.084(f) 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) to proceed under this subchapter, the court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with an intellectual disability.

(b) If it appears to the court that there is evidence to support a finding of mental illness or an intellectual disability, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. The court may order the defendant:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or

(2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.

(c) Notwithstanding Subsection (b), a defendant placed in a facility of the Department of State Health Services or the Department of Aging and Disability Services pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

(d) If the court does not detain or place the defendant under Subsection (b), the court shall release the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 32, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 33, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 19, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.023, eff. April 2, 2015.

SUBCHAPTER G. PROVISIONS APPLICABLE TO SUBCHAPTERS E AND F

Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS. (a) The court shall order that:

(1) a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings under Subchapter E or F be prepared as soon as possible by the court reporters; and

(2) copies of documents listed in Article 46B.076 accompany the defendant to the mental health facility, outpatient treatment program, or residential care facility.

(b) On the request of the defendant or the attorney representing the defendant, a mental health facility, an outpatient treatment program, or a residential care facility shall provide to the defendant or the attorney copies of the facility's records regarding the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 34, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 19, eff. September 1, 2007.

APPENDIX C

CODE OF CRIMINAL PROCEDURE CHAPTER 17

Art. 17.01. DEFINITION OF "BAIL". "Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.02. DEFINITION OF "BAIL BOND". A "bail bond" is a written undertaking entered into by the defendant and the defendant's sureties for the appearance of the principal therein before a court or magistrate to answer a criminal accusation; provided, however, that the defendant on execution of the bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this article shall be receipted for by the officer receiving the funds and, on order of the court, be refunded in the amount shown on the face of the receipt less the administrative fee authorized by Section 117.055, Local Government Code, after the defendant complies with the conditions of the defendant's bond, to:

(1) any person in the name of whom a receipt was issued, including the defendant if a receipt was issued to the defendant; or

(2) the defendant, if no other person is able to produce a receipt for the funds.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 978 (H.B. 1658), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 654 (H.B. 2182), Sec. 1, eff. September 1, 2015.

Art. 17.025. OFFICERS TAKING BAIL BOND. A jailer licensed under Chapter 1701, Occupations Code, is considered to be an officer for the purposes of taking a bail bond and discharging any other related powers and duties under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 736 (H.B. 1070), Sec. 1, eff. June 17, 2011.

Art. 17.026. ELECTRONIC FILING OF BAIL BOND. In any manner permitted by the county in which the bond is written, a bail bond may be filed electronically with the court, judge, magistrate, or other officer taking the bond.

Added by Acts 2015, 84th Leg., R.S., Ch. 779 (H.B. 2499), Sec. 1, eff. September 1, 2015.

Art. 17.03. PERSONAL BOND. (a) Except as provided by Subsection (b) or (b-1), a magistrate may, in the magistrate's discretion, release the defendant on personal bond without sureties or other security.

(b) Only the court before whom the case is pending may release on personal bond a defendant who:

(1) is charged with an offense under the following sections of the Penal Code:

(A) Section 19.03 (Capital Murder);

(B) Section 20.04 (Aggravated Kidnapping);

(C) Section 22.021 (Aggravated Sexual Assault);

(D) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);

(E) Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);

(F) Section 29.03 (Aggravated Robbery);

(G) Section 30.02 (Burglary);

(H) Section 71.02 (Engaging in Organized Criminal Activity);

(I) Section 21.02 (Continuous Sexual Abuse of Young Child or Children); or

(J) Section 20A.03 (Continuous Trafficking of Persons);

(2) is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(b-1) A magistrate may not release on personal bond a defendant who, at the time of the commission of the charged offense, is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

(c) When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate shall require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

(d) The state may not use the results of any test conducted under this chapter in any criminal proceeding arising out of the offense for which the defendant is charged.

(e) Costs of testing may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

(f) In this article, "controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(g) The court may order that a personal bond fee assessed under Section 17.42 be:

(1) paid before the defendant is released;

(2) paid as a condition of bond;

(3) paid as court costs;

(4) reduced as otherwise provided for by statute; or

(5) waived.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1989, 71st Leg., ch. 374, Sec. 1, eff. Sept. 1, 1989; Sec. (b)(2) amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(57), eff. Sept. 1, 1991; Subsec. (f) amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(45), eff. Sept. 1, 1991; Subsec. (b) amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.19, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.08, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 3, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 4, eff. September 1, 2017.

Art. 17.031. RELEASE ON PERSONAL BOND. (a) Any magistrate in this state may release a defendant eligible for release on personal bond under Article 17.03 of this code on his personal bond where the complaint and warrant for arrest does not originate in the county wherein the accused is arrested if the magistrate would have had jurisdiction over the matter had the complaint arisen within the county wherein the magistrate presides. The personal bond may not be revoked by the judge of the court issuing the warrant for arrest except for good cause shown.

(b) If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his personal bond will forward a copy of the personal bond to the personal bond office in that county.

Added by Acts 1971, 62nd Leg., p. 2445, ch. 787, Sec. 1, eff. June 8, 1971.

Amended by Acts 1989, 71st Leg., ch. 374, Sec. 2, eff. Sept. 1, 1989.

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.03 (kidnapping);

(4) Section 20.04 (aggravated kidnapping);

(5) Section 21.11 (indecency with a child);

(6) Section 22.01(a)(1) (assault), if the offense involved family violence as defined by Section 71.004, Family Code;

(7) Section 22.011 (sexual assault);

(8) Section 22.02 (aggravated assault);

(9) Section 22.021 (aggravated sexual assault);

(10) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(11) Section 29.03 (aggravated robbery);

(12) Section 21.02 (continuous sexual abuse of young child or children); or

(13) Section 20A.03 (continuous trafficking of persons).

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 3

(b) Notwithstanding Article 17.03(b), or a bond schedule adopted or a standing order entered by a judge, a magistrate shall release a defendant on personal bond unless good cause is shown otherwise if:

(1) the defendant is not charged with and has not been previously convicted of a violent offense;

(2) the defendant is examined by the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert under Article 16.22;

(3) the applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability services for the defendant, as applicable;

(4) the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual disability services for the defendant are available in accordance with Section 534.053 or 534.103, Health and Safety Code, or through another mental health or intellectual disability services provider; and

(5) the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 3.02

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability authority or another mental health expert under Article 16.22;

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability authority, that appropriate community-based mental health or intellectual disability services for the defendant are available through the Department of State Health Services under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability services provider.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 3

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment or intellectual disability services as recommended by the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert if the defendant's:

(1) mental illness or intellectual disability is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 3.02

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability treatment as recommended by the local mental health or intellectual and developmental disability authority if the defendant's:

(1) mental illness or intellectual disability is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

(d) In addition to a condition of release imposed under Subsection (c), the magistrate may require the defendant to comply with other conditions that are reasonably necessary to ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

(e) In this article, a person is considered to have been convicted of an offense if:

(1) a sentence is imposed;

(2) the person is placed on community supervision or receives deferred adjudication; or

(3) the court defers final disposition of the case.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 3.06, eff. Sept. 1, 1994. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.20, eff. Sept. 1, 1995; Subsecs. (b), (c) amended by Acts 1997, 75th Leg., ch. 312, Sec. 2, eff. Sept. 1, 1997; Subsecs. (b), (c) amended by Acts 2001, 77th Leg., ch. 828, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.09, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1228 (S.B. 1557), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 4, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 3.01, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 3.02, eff. September 1, 2017.

Art. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED WITHOUT A WARRANT. (a) Except as provided by Subsection (c), a person who is arrested without a warrant and

who is detained in jail must be released on bond, in an amount not to exceed $5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(d) The time limits imposed by Subsections (a) and (b) do not apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17. For a person described by this subsection, the time limits imposed by Subsections (a) and (b) begin to run at the time, as documented in the records of the hospital, clinic, or other medical facility, that a physician or other medical professional releases the person from the hospital, clinic, or other medical facility.

Added by Acts 2001, 77th Leg., ch. 906, Sec. 5(a), eff. Jan. 1, 2002. Subsec. (d) added by Acts 2003, 78th Leg., ch. 298, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1350 (H.B. 1173), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 5.001, eff. September 1, 2017.

Art. 17.04. REQUISITES OF A PERSONAL BOND. A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain:

(1) the defendant's name, address, and place of employment;

(2) identification information, including the defendant's:

(A) date and place of birth;

(B) height, weight, and color of hair and eyes;

(C) driver's license number and state of issuance, if any; and

(D) nearest relative's name and address, if any; and

(3) the following oath sworn and signed by the defendant:

"I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 623, Sec. 1, eff. Sept. 1, 1987.

Art. 17.045. BAIL BOND CERTIFICATES. A bail bond certificate with respect to which a fidelity and surety company has become surety as provided in the Automobile Club Services Act, or for any truck and bus association incorporated in this state, when posted by the person whose signature appears thereon, shall be accepted as bail bond in an amount not to exceed $200 to guarantee the appearance of such person in any court in this state when the person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state, except for the offense of driving while intoxicated or for any felony, and the alleged violation was committed prior to the date of expiration shown on such bail bond certificate.

Added by Acts 1969, 61st Leg., p. 2033, ch. 697, Sec. 2, eff. Sept. 1, 1969.

Art. 17.05. WHEN A BAIL BOND IS GIVEN. A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer or jailer if authorized by Article 17.20, 17.21, or 17.22.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 3045, ch. 1006, Sec. 1, eff. Aug. 30, 1971.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 736 (H.B. 1070), Sec. 2, eff. June 17, 2011.

Art. 17.06. CORPORATION AS SURETY. Wherever in this Chapter, any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety, subject to all the provisions of this Chapter regulating and governing the giving of bail bonds by personal surety insofar as the same is applicable.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.07. CORPORATION TO FILE WITH COUNTY CLERK POWER OF ATTORNEY DESIGNATING AGENT. (a) Any corporation authorized by the law of this State to act as a surety, shall before executing any bail bond as authorized in the preceding Article, first file in the office of the county clerk of the county where such bail bond is given, a power of attorney designating and authorizing the named agent, agents or attorney of such corporation to execute such bail bonds and thereafter the execution of such bail bonds by such agent, agents or attorney, shall be a valid and binding obligation of such corporation.

(b) A corporation may limit the authority of an agent designated under Subsection (a) by specifying the limitation in the power of attorney that is filed with the county clerk.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 769 (H.B. 1823), Sec. 1, eff. September 1, 2011.

Art. 17.08. REQUISITES OF A BAIL BOND. A bail bond must contain the following requisites:

1. That it be made payable to "The State of Texas";

2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him;

3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor;

4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address;

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate, but in no event shall the sureties be bound after such time as the defendant receives an order of deferred adjudication or is acquitted, sentenced, placed on community supervision, or dismissed from the charge;

6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection with the rearresting of an accused who has violated the conditions of his bond.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1999, 76th Leg., ch. 1506, Sec. 1, eff. Sept. 1, 1999.

Art. 17.085. NOTICE OF APPEARANCE DATE. The clerk of a court that does not provide online Internet access to that court's criminal case records shall post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the court notifies the clerk of the setting.

Added by Acts 2007, 80th Leg., R.S., Ch. 1038 (H.B. 1801), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 278 (H.B. 1573), Sec. 1, eff. September 1, 2011.

Art. 17.09. DURATION; ORIGINAL AND SUBSEQUENT PROCEEDINGS; NEW BAIL

Sec. 1. Where a defendant, in the course of a criminal action, gives bail before any court or person authorized by law to take same, for his personal appearance before a court or magistrate, to answer a charge against him, the said bond shall be valid and binding upon the defendant and his sureties, if any, thereon, for the defendant's personal appearance before the court or magistrate designated therein, as well as before any other court to which same may be transferred, and for any and all subsequent proceedings had relative to the charge, and each such bond shall be so conditioned except as hereinafter provided.

Sec. 2. When a defendant has once given bail for his appearance in answer to a criminal charge, he shall not be required to give another bond in the course of the same criminal action except as herein provided.

Sec. 3. Provided that whenever, during the course of the action, the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper. When such bond is so given and approved, the defendant shall be released from custody.

Sec. 4. Notwithstanding any other provision of this article, the judge or magistrate in whose court a criminal action is pending may not order the accused to be rearrested or require the accused to give another bond in a higher amount because the accused:

(1) withdraws a waiver of the right to counsel; or

(2) requests the assistance of counsel, appointed or retained.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 463 (H.B. 1178), Sec. 2, eff. September 1, 2007.

Art. 17.091. NOTICE OF CERTAIN BAIL REDUCTIONS REQUIRED. Before a judge or magistrate reduces the amount of bail set for a defendant charged with an offense listed in Article 42A.054, an offense described by Article 62.001(5), or an offense under Section 20A.03, Penal Code, the judge or magistrate shall provide:

(1) to the attorney representing the state, reasonable notice of the proposed bail reduction; and

(2) on request of the attorney representing the state or the defendant or the defendant's counsel, an opportunity for a hearing concerning the proposed bail reduction.

Added by Acts 2005, 79th Leg., Ch. 671 (S.B. 56), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.10, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.05, eff. January 1, 2017.

Art. 17.10. DISQUALIFIED SURETIES. (a) A minor may not be surety on a bail bond, but the accused party may sign as principal.

(b) A person, for compensation, may not be a surety on a bail bond written in a county in which a county bail bond board regulated under Chapter 1704, Occupations Code, does not exist unless the person, within two years before the bail bond is given, completed in person at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are:

(1) approved by the State Bar of Texas; and

(2) offered by an accredited institution of higher education in this state.

(c) A person, for compensation, may not act as a surety on a bail bond if the person has been finally convicted of:

(1) a misdemeanor involving moral turpitude; or

(2) a felony.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.
Amended by:

Acts 2005, 79th Leg., Ch. 743 (H.B. 2767), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 769 (H.B. 1823), Sec. 2, eff. September 1, 2011.

Art. 17.11. HOW BAIL BOND IS TAKEN.

Sec. 1. Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to

appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances; and that he is a resident of this state, and has property therein liable to execution worth the sum for which he is bound.

Sec. 2. Provided, however, any person who has signed as a surety on a bail bond and is in default thereon shall thereafter be disqualified to sign as a surety so long as the person is in default on the bond. It shall be the duty of the clerk of the court where the surety is in default on a bail bond to notify in writing the sheriff, chief of police, or other peace officer of the default. If a bail bond is taken for an offense other than a Class C misdemeanor, the clerk of the court where the surety is in default on the bond shall send notice of the default by certified mail to the last known address of the surety.

Sec. 3. A surety is considered to be in default from the time execution may be issued on a final judgment in a bond forfeiture proceeding under the Texas Rules of Civil Procedure, unless the final judgment is superseded by the posting of a supersedeas bond.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1736, ch. 659, Sec. 14, eff. Aug. 28, 1967.

Sec. 2 amended by Acts 1999, 76th Leg., ch. 1506, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 930 (H.B. 1562), Sec. 1, eff. September 1, 2013.

Art. 17.12. EXEMPT PROPERTY. The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.13. SUFFICIENCY OF SURETIES ASCERTAINED. To test the sufficiency of the security offered to any bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties: "I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and Laws of the State from

forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all encumbrances upon my property which are known to me; that I reside in ..... County, and have property in this State liable to execution worth said amount or more.

(Dated ....., and attested by the judge of the court, clerk, magistrate or sheriff.)"

Such affidavit shall be filed with the papers of the proceedings.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.14. AFFIDAVIT NOT CONCLUSIVE. Such affidavit shall not be conclusive as to the sufficiency of the security; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.141. ELIGIBLE BAIL BOND SURETIES IN CERTAIN COUNTIES. In a county in which a county bail bond board regulated under Chapter 1704, Occupations Code, does not exist, the sheriff may post a list of eligible bail bond sureties whose security has been determined to be sufficient. Each surety listed under this article must file annually a sworn financial statement with the sheriff.

Added by Acts 2005, 79th Leg., Ch. 743 (H.B. 2767), Sec. 2, eff. September 1, 2005.

Art. 17.15. RULES FOR FIXING AMOUNT OF BAIL. The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be so used as to make it an instrument of oppression.

3. The nature of the offense and the circumstances under which it was committed are to be considered.

4. The ability to make bail is to be regarded, and proof may be taken upon this point.

5. The future safety of a victim of the alleged offense and the community shall be considered.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1985, 69th Leg., ch. 588, Sec. 2, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 396, Sec. 1, eff. Sept. 1, 1993.

Art. 17.151. RELEASE BECAUSE OF DELAY.

Sec. 1. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

(1) 90 days from the commencement of his detention if he is accused of a felony;

(2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;

(3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

Sec. 2. The provisions of this article do not apply to a defendant who is:

(1) serving a sentence of imprisonment for another offense while the defendant is serving that sentence;

(2) being detained pending trial of another accusation against the defendant as to which the applicable period has not yet elapsed;

(3) incompetent to stand trial, during the period of the defendant's incompetence; or

(4) being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community under this article.

Sec. 3. Repealed by Acts 2005, 79th Leg., Ch. 110, Sec. 2, eff. September 1, 2005.

Added by Acts 1977, 65th Leg., p. 1972, ch. 787, Sec. 2, eff. July 1, 1978.

Amended by:

Acts 2005, 79th Leg., Ch. 110 (S.B. 599), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 110 (S.B. 599), Sec. 2, eff. September 1, 2005.

Art. 17.152. DENIAL OF BAIL FOR VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE. (a) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

(b) Except as otherwise provided by Subsection (d), a person who commits an offense under Section 25.07, Penal Code, related to a violation of a condition of bond set in a family violence case and whose bail in the case under Section 25.07, Penal Code, or in the family violence case is revoked or forfeited for a violation of a condition of bond may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person violated a condition of bond related to:

(1) the safety of the victim of the offense under Section 25.07, Penal Code, or the family violence case, as applicable; or

(2) the safety of the community.

(c) Except as otherwise provided by Subsection (d), a person who commits an offense under Section 25.07, Penal Code, other than an offense related to a violation of a condition of bond set in a family violence case, may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person committed the offense.

(d) A person who commits an offense under Section 25.07(a)(3), Penal Code, may be held without bail under Subsection (b) or (c), as applicable, only if following a hearing the judge or magistrate determines by a preponderance of the evidence that the person went to or near the place described in the order or condition of bond with the intent to commit or threaten to commit:

(1) family violence; or

(2) an act in furtherance of an offense under Section 42.072, Penal Code.

(e) In determining whether to deny release on bail under this article, the judge or magistrate may consider:

(1) the order or condition of bond;

(2) the nature and circumstances of the alleged offense;

(3) the relationship between the accused and the victim, including the history of that relationship;

(4) any criminal history of the accused; and

(5) any other facts or circumstances relevant to a determination of whether the accused poses an imminent threat of future family violence.

(f) A person arrested for committing an offense under Section 25.07, Penal Code, shall without unnecessary delay and after reasonable notice is given to the attorney representing the state, but not later than 48 hours after the person is arrested, be taken before a magistrate in accordance with Article 15.17. At that time, the magistrate shall conduct the hearing and make the determination required by this article.

Added by Acts 2007, 80th Leg., R.S., Ch. 1113 (H.B. 3692), Sec. 3, eff. January 1, 2008.

Art. 17.153. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF BOND WHERE CHILD ALLEGED VICTIM. (a) This article applies to a defendant charged with a felony offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age:

(1) Chapter 21 (Sexual Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct);

(3) Section 43.25 (Sexual Performance by a Child);

(4) Section 20A.02 (Trafficking of Persons), if the defendant is alleged to have:

(A) trafficked the child with the intent or knowledge that the child would engage in sexual conduct, as defined by Section 43.25, Penal Code; or

(B) benefited from participating in a venture that involved a trafficked child engaging in sexual conduct, as defined by Section 43.25, Penal Code; or

(5) Section 43.05(a)(2) (Compelling Prostitution).

(b) A defendant described by Subsection (a) who violates a condition of bond set under Article 17.41 and whose bail in the case is revoked for the violation may be taken into custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the defendant violated a condition of bond related to the safety of the victim of the offense or the safety of the community. If the magistrate finds that the violation occurred, the magistrate may revoke the defendant's bond and order that the defendant be immediately returned to custody. Once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. A discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.

Added by Acts 2009, 81st Leg., R.S., Ch. 982 (H.B. 3751), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 2.01, eff. September 1, 2011.

Art. 17.16. DISCHARGE OF LIABILITY; SURRENDER OR INCARCERATION OF PRINCIPAL BEFORE FORFEITURE; VERIFICATION OF INCARCERATION. (a) A surety may before forfeiture relieve the surety of the surety's undertaking by:

(1) surrendering the accused into the custody of the sheriff of the county where the prosecution is pending; or

(2) delivering to the sheriff of the county in which the prosecution is pending and to the office of the prosecuting attorney an affidavit stating that the accused is incarcerated in:

(A) federal custody, subject to Subsection (a-1);

(B) the custody of any state; or

(C) any county of this state.

(a-1) For purposes of Subsection (a)(2), the surety may not be relieved of the surety's undertaking if the accused is in federal custody to determine whether the accused is lawfully present in the United States.

(b) On receipt of an affidavit described by Subsection (a)(2), the sheriff of the county in which the prosecution is pending shall verify whether the accused is incarcerated as stated in the affidavit. If the sheriff verifies the statement in the affidavit, the sheriff shall notify the magistrate before which the prosecution is pending of the verification.

(c) On a verification described by this article, the sheriff shall place a detainer against the accused with the appropriate officials in the jurisdiction in which the accused is incarcerated. On receipt of notice of a verification described by this article, the magistrate before which the prosecution is pending shall direct the clerk of the court to issue a capias for the arrest of the accused, except as provided by Subsection (d).

(d) A capias for the arrest of the accused is not required if:

(1) a warrant has been issued for the accused's arrest and remains outstanding; or

(2) the issuance of a capias would otherwise be unnecessary for the purpose of taking the accused into custody.

(e) For the purposes of Subsection (a)(2) of this article, the bond is discharged and the surety is absolved of liability on the bond on the verification of the incarceration of the accused.

(f) An affidavit described by Subsection (a)(2) and the documentation of any verification obtained under Subsection (b) must be:

(1) filed in the court record of the underlying criminal case in the court in which the prosecution is pending or, if the court record does not exist, in a general file maintained by the clerk of the court; and

(2) delivered to the office of the prosecuting attorney.

(g) A surety is liable for all reasonable and necessary expenses incurred in returning the accused into the custody of the sheriff of the county in which the prosecution is pending.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 1047, Sec. 1, eff. June 20, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 87 (S.B. 877), Sec. 1, eff. May 19, 2011.

Acts 2017, 85th Leg., R.S., Ch. 4 (S.B. 4), Sec. 4.01, eff. September 1, 2017.

Art. 17.17. WHEN SURRENDER IS MADE DURING TERM. If a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and if he is willing to give other bail, the court shall forthwith require him to do so. If he fails or refuses to give bail, the court shall make an order that he be committed to jail until the bail is given, and this shall be a sufficient commitment without any written order to the sheriff.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.18. SURRENDER IN VACATION. When the surrender is made at any other time than during the session of the court, the sheriff may take the necessary bail bond, but if the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.19. SURETY MAY OBTAIN A WARRANT. (a) Any surety, desiring to surrender his principal and after notifying the principal's attorney, if the principal is represented by an attorney, in a manner provided by Rule 21a, Texas Rules of Civil Procedure, of the surety's intention to surrender the principal, may file an affidavit of such intention before the court or magistrate before which the prosecution is pending. The affidavit must state:

(1) the court and cause number of the case;

(2) the name of the defendant;

(3) the offense with which the defendant is charged;

(4) the date of the bond;

(5) the cause for the surrender; and

(6) that notice of the surety's intention to surrender the principal has been given as required by this subsection.

(b) In a prosecution pending before a court, if the court finds that there is cause for the surety to surrender the surety's principal, the court shall issue a capias for the principal. In a prosecution pending before a magistrate, if the magistrate finds that there is cause for the surety to surrender the surety's principal, the magistrate shall issue a warrant of arrest for the principal. It is an affirmative defense to any liability on the bond that:

(1) the court or magistrate refused to issue a capias or warrant of arrest for the principal; and

(2) after the refusal to issue the capias or warrant of arrest, the principal failed to appear.

(c) If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county and that magistrate, on a finding of cause for the surety to surrender the surety's principal, shall issue a warrant of arrest for the principal.

(d) An arrest warrant or capias issued under this article shall be issued to the sheriff of the county in which the case is pending, and a copy of the warrant or capias shall be issued to the surety or his agent.

(e) An arrest warrant or capias issued under this article may be executed by a peace officer, a security officer, or a private investigator licensed in this state.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 1047, Sec. 2, eff. June 20, 1987; Subsec. (b) amended by Acts 1989, 71st Leg., ch. 374, Sec. 3, eff. Sept. 1, 1989; Subsec. (a) amended by Acts 1999, 76th Leg., ch. 1506, Sec. 3, eff. Sept. 1, 1999; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003; Subsec. (c) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003; Subsec. (d) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003; Subsec. (e) amended by Acts 2003, 78th Leg., ch. 942, Sec. 4, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1263 (H.B. 3060), Sec. 2, eff. September 1, 2007.

Art. 17.20. BAIL IN MISDEMEANOR. In cases of misdemeanor, the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, may, whether during the term of the court or in vacation, where the officer has a defendant in custody, take of the defendant a bail bond.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 3046, ch. 1006, Sec. 1, eff. Aug. 30, 1971.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 736 (H.B. 1070), Sec. 3, eff. June 17, 2011.

Art. 17.21. BAIL IN FELONY. In cases of felony, when the accused is in custody of the sheriff or other officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff or other peace officer, unless it be the police of a city, or a jailer licensed under Chapter 1701, Occupations Code, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. The defendant and the defendant's sureties are not required to appear in court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 736 (H.B. 1070), Sec. 4, eff. June 17, 2011.

Art. 17.22. MAY TAKE BAIL IN FELONY. In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody may take the defendant's bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 736 (H.B. 1070), Sec. 5, eff. June 17, 2011.

Art. 17.23. SURETIES SEVERALLY BOUND. In all bail bonds taken under any provision of this Code, the sureties shall be severally bound. Where a surrender of the principal is made by one or more of them, all the sureties shall be considered discharged.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.24. GENERAL RULES APPLICABLE. All general rules in the Chapter are applicable to bail defendant before an examining court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.25. PROCEEDINGS WHEN BAIL IS GRANTED. After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance before the proper court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.26. TIME GIVEN TO PROCURE BAIL. Reasonable time shall be given the accused to procure security.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.27. WHEN BAIL IS NOT GIVEN. If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a commitment accordingly.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.28. WHEN READY TO GIVE BAIL. If the party be ready to give bail, the magistrate shall cause to be prepared a bond, which shall be signed by the accused and his surety or sureties, if any.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.29. ACCUSED LIBERATED. (a) When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty.

(b) Before releasing on bail a person arrested for an offense under Section 42.072, Penal Code, or a person arrested or held without warrant in the prevention of family violence, the law enforcement agency holding the person shall make a reasonable attempt to give personal notice of the imminent release to the victim of the alleged offense or to another person designated by the victim to receive the notice. An attempt by an agency to give notice to the victim or the person designated by the victim at the victim's or person's last known telephone number or address, as shown on the records of the agency, constitutes a reasonable attempt to give notice under this subsection. If possible, the arresting officer shall collect the address and telephone number of the victim at the time the arrest is made and shall communicate that information to the agency holding the person.

(c) A law enforcement agency or an employee of a law enforcement agency is not liable for damages arising from complying or failing to comply with Subsection (b) of this article.

(d) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1995, 74th Leg., ch. 656, Sec. 1, eff. June 14, 1995; Acts 1995, 74th Leg., ch. 661, Sec. 1, eff. Aug. 28, 1995; Subsec. (b) amended by Acts 1997, 75th Leg., ch. 1, Sec. 3, eff. Jan. 28, 1997; Subsec. (d) amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(e), eff. Sept. 1, 2003.

Art. 17.291. FURTHER DETENTION OF CERTAIN PERSONS. (a) In this article:

(1) "family violence" has the meaning assigned to that phrase by Section 71.004, Family Code; and

(2) "magistrate" has the meaning assigned to it by Article 2.09 of this code.

(b) Article 17.29 does not apply when a person has been arrested or held without a warrant in the prevention of family violence if there is probable cause to believe the violence will continue if the person is immediately released. The head of the agency arresting or holding such a person may hold the person for a period of not more than four hours after bond has been posted. This detention period may be extended for an additional period not to exceed 48 hours, but only if authorized in a writing directed to the person having custody of the detained person by a magistrate who concludes that:

(1) the violence would continue if the person is released; and

(2) if the additional period exceeds 24 hours, probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested:

(A) on more than one occasion for an offense involving family violence; or

(B) for any other offense, if a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during commission of the offense or during immediate flight after commission of the offense.

Added by Acts 1991, 72nd Leg., ch. 552, Sec. 2, eff. June 16, 1991. Subsec. (b) amended by Acts 1999, 76th Leg., ch. 1341, Sec. 1, eff. Sept. 1, 1999. Subsec. (a) amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(f), eff. Sept. 1, 2003.

Art. 17.292. MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION. (a) At a defendant's appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 20A.02, 20A.03, 22.011, 22.021, or 42.072, Penal Code, the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

(1) the victim of the offense;

(2) the guardian of the victim;

(3) a peace officer; or

(4) the attorney representing the state.

(b) At a defendant's appearance before a magistrate after arrest for an offense involving family violence, the magistrate shall issue an order for emergency protection if the arrest is for an offense that also involves:

(1) serious bodily injury to the victim; or

(2) the use or exhibition of a deadly weapon during the commission of an assault.

(c) The magistrate in the order for emergency protection may prohibit the arrested party from:

(1) committing:

(A) family violence or an assault on the person protected under the order; or

(B) an act in furtherance of an offense under Section 20A.02 or 42.072, Penal Code;

(2) communicating:

(A) directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;

(B) a threat through any person to a member of the family or household or to the person protected under the order; or

(C) if the magistrate finds good cause, in any manner with a person protected under the order or a member of the family or household of a person protected under the order, except through the party's attorney or a person appointed by the court;

(3) going to or near:

(A) the residence, place of employment, or business of a member of the family or household or of the person protected under the order; or

(B) the residence, child care facility, or school where a child protected under the order resides or attends; or

(4) possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(c-1) In addition to the conditions described by Subsection (c), the magistrate in the order for emergency protection may impose a condition described by Article 17.49(b) in the manner provided by that article, including ordering a defendant's participation in a global positioning monitoring system or allowing participation in the system by an alleged victim or other person protected under the order.

(d) The victim of the offense need not be present when the order for emergency protection is issued.

(e) In the order for emergency protection the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the person or persons protected by the order that specific descriptions of the locations should be omitted.

(f) To the extent that a condition imposed by an order for emergency protection issued under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for the duration of the order for emergency protection.

(f-1) To the extent that a condition imposed by an order issued under this article conflicts with a condition imposed by an order subsequently issued under Chapter 85, Subtitle B, Title 4, Family Code, or under Title 1 or Title 5, Family Code, the condition imposed by the order issued under the Family Code prevails.

(f-2) To the extent that a condition imposed by an order issued under this article conflicts with a condition imposed by an order subsequently issued under Chapter 83, Subtitle B, Title 4, Family Code, the condition imposed by the order issued under this article prevails unless the court issuing the order under Chapter 83, Family Code:

(1) is informed of the existence of the order issued under this article; and

(2) makes a finding in the order issued under Chapter 83, Family Code, that the court is superseding the order issued under this article.

(g) An order for emergency protection issued under this article must contain the following statements printed in bold-face type or in capital letters:

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OR TRAFFICKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

(h) As soon as possible but not later than the next business day after the date the magistrate issues an order for emergency protection under this article, the magistrate shall send a copy of the order to the chief of police in the municipality where the member of the family or household or individual protected by the order resides, if the person resides in a municipality, or to the sheriff of the county where the person resides, if the person does not reside in a municipality. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. The clerk of the court shall send a copy of the order to the victim at the victim's last known address as soon as possible but not later than the next business day after the date the order is issued.

(h-1) A magistrate or clerk of the court may delay sending a copy of the order under Subsection (h) only if the magistrate or clerk lacks information necessary to ensure service and enforcement.

(i) If an order for emergency protection issued under this article prohibits a person from going to or near a child care facility or school, the magistrate shall send a copy of the order to the child care facility or school.

(i-1) The copy of the order and any related information may be sent under Subsection (h) or (i) electronically or in another manner that can be accessed by the recipient.

(j) An order for emergency protection issued under this article is effective on issuance, and the defendant shall be served a copy of the order by the magistrate or the magistrate's designee in person or electronically. The magistrate shall make a separate record of the service in written or electronic format. An order for emergency protection issued under Subsection (a) or (b)(1) of this article remains in effect up to the 61st day but not less than 31 days after the date of issuance. An order for emergency protection issued under Subsection (b)(2) of this article remains in effect up to the 91st day but not less than 61 days after the date of issuance. After notice to each affected party and a hearing, the issuing court may modify all or part of an order issued under this article if the court finds that:

(1) the order as originally issued is unworkable;

(2) the modification will not place the victim of the offense at greater risk than did the original order; and

(3) the modification will not in any way endanger a person protected under the order.

(k) To ensure that an officer responding to a call is aware of the existence and terms of an order for emergency protection issued under this article, not later than the third business day after the date of receipt of the copy of the order by the applicable law enforcement agency with jurisdiction over the municipality or county in which the victim resides, the law enforcement agency shall enter the information required under Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

(k-1) A law enforcement agency may delay entering the information required under Subsection (k) only if the agency lacks information necessary to ensure service and enforcement.

(l) In the order for emergency protection, the magistrate shall suspend a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code, that is held by the defendant.

(m) In this article:

(1) "Family," "family violence," and "household" have the meanings assigned by Chapter 71, Family Code.

(2) "Firearm" has the meaning assigned by Chapter 46, Penal Code.

(3) "Business day" means a day other than a Saturday, Sunday, or state or national holiday.

(n) On motion, notice, and hearing, or on agreement of the parties, an order for emergency protection issued under this article may be transferred to the court assuming jurisdiction over the criminal act giving rise to the issuance of the emergency order for protection. On transfer, the criminal court may modify all or part of an order issued under this subsection in the same manner and under the same standards as the issuing court under Subsection (j).

Added by Acts 1995, 74th Leg., ch. 658, Sec. 1, eff. June 14, 1995. Subsecs. (a), (b) amended by Acts 1997, 75th Leg., ch. 1, Sec. 4, eff. Jan. 28, 1997. Amended by Acts 1997, 75th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1997; Subsec. (i) amended by Acts 1999, 76th Leg., ch. 514, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1412, Sec. 1, eff. Sept. 1, 1999; Subsecs. (c), (g), (m) amended by Acts 2001, 77th Leg., ch. 23, Sec. 4, eff. Sept. 1, 2001; Subsecs. (f-1), (f-2), (n) added and Subsec. (j) amended by Acts 2003, 78th Leg., ch. 424, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 361 (S.B. 1275), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 66 (S.B. 584), Sec. 1, eff. May 11, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 11.20, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1276 (H.B. 1506), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 255 (H.B. 570), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 108 (S.B. 112), Sec. 1, eff. May 23, 2015.

Acts 2015, 84th Leg., R.S., Ch. 243 (S.B. 737), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 243 (S.B. 737), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 6, eff. January 1, 2016.

Art. 17.293. DELIVERY OF ORDER FOR EMERGENCY PROTECTION TO OTHER PERSONS. The magistrate or the clerk of the magistrate's court issuing an order for emergency protection under Article 17.292 that suspends a license to carry a handgun shall immediately send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:

(1) record the suspension of the license in the records of the department;

(2) report the suspension to local law enforcement agencies, as appropriate; and

(3) demand surrender of the suspended license from the license holder.

Added by Acts 1999, 76th Leg., ch. 1412, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 7, eff. January 1, 2016.

Art. 17.30. SHALL CERTIFY PROCEEDINGS. The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well as where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.31. DUTY OF CLERKS WHO RECEIVE SUCH PROCEEDINGS. If the proceedings be delivered to a district clerk, he shall keep them safely and deliver the same to the next grand jury. If the proceedings are delivered to a county clerk, he shall without delay deliver them to the district or county attorney of his county.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.32. IN CASE OF NO ARREST. Upon failure from any cause to arrest the accused the magistrate shall file with the proper clerk the complaint, warrant of arrest, and a list of the witnesses.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.33. REQUEST SETTING OF BAIL. The accused may at any time after being confined request a magistrate to review the written statements of the witnesses for the State as well as all other evidence available at that time in determining the amount of bail. This setting of the amount of bail does not waive the defendant's right to an examining trial as provided in Article 16.01.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.34. WITNESSES TO GIVE BOND. Witnesses for the State or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court. A personal bond may be taken of a witness by the court before whom the case is pending.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.35. SECURITY OF WITNESS. The amount of security to be required of a witness is to be regulated by his pecuniary condition, character and the nature of the offense with respect to which he is a witness.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.36. EFFECT OF WITNESS BOND. The bond given by a witness for his appearance has the same effect as a bond of the accused and may be forfeited and recovered upon in the same manner.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.37. WITNESS MAY BE COMMITTED. A witness required to give bail who fails or refuses to do so shall be committed to jail as in other cases of a failure to give bail when required, but shall be released from custody upon giving such bail.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.38. RULES APPLICABLE TO ALL CASES OF BAIL. The rules in this Chapter respecting bail are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate, or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 17.39. RECORDS OF BAIL. A magistrate or other officer who sets the amount of bail or who takes bail shall record in a well-bound book the name of the person whose appearance the bail secures, the amount of bail, the date bail is set, the magistrate or officer who sets bail, the offense or other cause for which the appearance is secured, the magistrate or other officer who takes bail, the date the person is released, and the name of the bondsman, if any.

Added by Acts 1977, 65th Leg., p. 1525, ch. 618, Sec. 1, eff. Aug. 29, 1977.

Art. 17.40. CONDITIONS RELATED TO VICTIM OR COMMUNITY SAFETY. (a) To secure a defendant's attendance at trial, a magistrate may impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community.

(b) At a hearing limited to determining whether the defendant violated a condition of bond imposed under Subsection (a), the magistrate may revoke the defendant's bond only if the magistrate finds

by a preponderance of the evidence that the violation occurred. If the magistrate finds that the violation occurred, the magistrate shall revoke the defendant's bond and order that the defendant be immediately returned to custody. Once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. A discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.

Added by Acts 1999, 76th Leg., ch. 768, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1113 (H.B. 3692), Sec. 4, eff. January 1, 2008.

Art. 17.41. CONDITION WHERE CHILD ALLEGED VICTIM. (a) This article applies to a defendant charged with an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct); or

(3) Section 43.25 (Sexual Performance by a Child).

(b) Subject to Subsections (c) and (d), a magistrate shall require as a condition of bond for a defendant charged with an offense described by Subsection (a) that the defendant not:

(1) directly communicate with the alleged victim of the offense; or

(2) go near a residence, school, or other location, as specifically described in the bond, frequented by the alleged victim.

(c) A magistrate who imposes a condition of bond under this article may grant the defendant supervised access to the alleged victim.

(d) To the extent that a condition imposed under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for a period specified by the magistrate, not to exceed 90 days.

Added by Acts 1985, 69th Leg., ch. 595, Sec. 1, eff. Sept. 1, 1985. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.21, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 982 (H.B. 3751), Sec. 1, eff. September 1, 2009.

Art. 17.42. PERSONAL BOND OFFICE.

Sec. 1. Any county, or any judicial district with jurisdiction in more than one county, with the approval of the commissioners court of each county in the district, may establish a personal bond office to gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its findings to the court before which the case is pending.

Sec. 2. (a) The commissioners court of a county that establishes the office or the district and county judges of a judicial district that establishes the office may employ a director of the office.

(b) The director may employ the staff authorized by the commissioners court of the county or the commissioners court of each county in the judicial district.

Sec. 3. If a judicial district establishes an office, each county in the district shall pay its pro rata share of the costs of administering the office according to its population.

Sec. 4. (a) Except as otherwise provided by this subsection, if a court releases an accused on personal bond on the recommendation of a personal bond office, the court shall assess a personal bond fee of $20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown. A court that requires a defendant to give a personal bond under Article 45.016 may not assess a personal bond fee under this subsection.

(b) Fees collected under this article may be used solely to defray expenses of the personal bond office, including defraying the expenses of extradition.

(c) Fees collected under this article shall be deposited in the county treasury, or if the office serves more than one county, the fees shall be apportioned to each county in the district according to each county's pro rata share of the costs of the office.

Sec. 5. (a) A personal bond pretrial release office established under this article shall:

(1) prepare a record containing information about any accused person identified by case number only who, after review by the office, is released by a court on personal bond before sentencing in a pending case;

(2) update the record on a monthly basis; and

(3) file a copy of the record with the district or county clerk, as applicable based on court jurisdiction over the categories of offenses addressed in the records, in any county served by the office.

(b) In preparing a record under Subsection (a), the office shall include in the record a statement of:

(1) the offense with which the person is charged;

(2) the dates of any court appearances scheduled in the matter that were previously unattended by the person;

(3) whether a warrant has been issued for the person's arrest for failure to appear in accordance with the terms of the person's release;

(4) whether the person has failed to comply with conditions of release on personal bond; and

(5) the presiding judge or magistrate who authorized the personal bond.

(c) This section does not apply to a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervision department.

Sec. 6. (a) Not later than April 1 of each year, a personal bond office established under this article shall submit to the commissioners court or district and county judges that established the office an annual report containing information about the operations of the office during the preceding year.

(b) In preparing an annual report under Subsection (a), the office shall include in the report a statement of:

(1) the office's operating budget;

(2) the number of positions maintained for office staff;

(3) the number of accused persons who, after review by the office, were released by a court on personal bond before sentencing in a pending case; and

(4) the number of persons described by Subdivision (3):

(A) who failed to attend a scheduled court appearance;

(B) for whom a warrant was issued for the arrest of those persons for failure to appear in accordance with the terms of their release; or

(C) who, while released on personal bond, were arrested for any other offense in the same county in which the persons were released on bond.

(c) This section does not apply to a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervision department.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 5.01(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1080, Sec. 1, eff. Sept. 1, 1989. Secs. 5, 6 added by Acts 1995, 74th Leg., ch. 318, Sec. 44, eff. Sept. 1, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 420 (S.B. 882), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1174 (S.B. 965), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 977 (H.B. 351), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1064 (H.B. 3165), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1064 (H.B. 3165), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1127 (S.B. 1913), Sec. 2, eff. September 1, 2017.

Art. 17.43. HOME CURFEW AND ELECTRONIC MONITORING AS CONDITION. (a) A magistrate may require as a condition of release on personal bond that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate.

(b) Cost of monitoring may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

Added by Acts 1989, 71st Leg., ch. 374, Sec. 4, eff. Sept. 1, 1989.

Art. 17.44. HOME CONFINEMENT, ELECTRONIC MONITORING, AND DRUG TESTING AS CONDITION. (a) A magistrate may require as a condition of release on bond that the defendant submit to:

(1) home confinement and electronic monitoring under the supervision of an agency designated by the magistrate; or

(2) testing on a weekly basis for the presence of a controlled substance in the defendant's body.

(b) In this article, "controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(c) The magistrate may revoke the bond and order the defendant arrested if the defendant:

(1) violates a condition of home confinement and electronic monitoring;

(2) refuses to submit to a test for controlled substances or submits to a test for controlled substances and the test indicates the presence of a controlled substance in the defendant's body; or

(3) fails to pay the costs of monitoring or testing for controlled substances, if payment is ordered under Subsection (e) as a condition of bond and the magistrate determines that the defendant is not indigent and is financially able to make the payments as ordered.

(d) The community justice assistance division of the Texas Department of Criminal Justice may provide grants to counties to implement electronic monitoring programs authorized by this article.

(e) The cost of electronic monitoring or testing for controlled substances under this article may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 4.03, eff. Sept. 1, 1989. Renumbered from art. 17.42 by Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(3), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(46), eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 163 (S.B. 1506), Sec. 1, eff. September 1, 2009.

Art. 17.441. CONDITIONS REQUIRING MOTOR VEHICLE IGNITION INTERLOCK. (a) Except as provided by Subsection (b), a magistrate shall require on release that a defendant charged with a subsequent offense under Sections 49.04-49.06, Penal Code, or an offense under Section 49.07 or 49.08 of that code:

(1) have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and

(2) not operate any motor vehicle unless the vehicle is equipped with that device.

(b) The magistrate may not require the installation of the device if the magistrate finds that to require the device would not be in the best interest of justice.

(c) If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle, at the defendant's expense, before the 30th day after the date the defendant is released on bond.

(d) The magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. If the magistrate designates an agency under this subsection, in each month during which the agency verifies the installation of the device or provides a monitoring service the defendant shall pay a fee to the designated agency in the amount set by the magistrate. The defendant shall pay the initial fee at the time the agency verifies the installation of the device. In each subsequent month during which the defendant is required to pay a fee the defendant shall pay the fee on the first occasion in that month that the agency provides a monitoring service. The magistrate shall set the fee in an amount not to exceed $10 as determined by the county auditor, or by the commissioners court of the county if the county does not have a county auditor, to be sufficient to cover the cost incurred by the

designated agency in conducting the verification or providing the monitoring service, as applicable in that county.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 45, eff. Sept. 1, 1995. Subsec. (d) amended by Acts 1999, 76th Leg., ch. 537, Sec. 1, eff. Sept. 1, 1999.

Art. 17.45. CONDITIONS REQUIRING AIDS AND HIV INSTRUCTION. A magistrate may require as a condition of bond that a defendant charged with an offense under Section 43.02, Penal Code, receive counseling or education, or both, relating to acquired immune deficiency syndrome or human immunodeficiency virus.

Added by Acts 1989, 71st Leg., ch. 1195, Sec. 8, eff. Sept. 1, 1989. Renumbered from art. 17.42 by Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(4), eff. Aug. 26, 1991.

Art. 17.46. CONDITIONS FOR A DEFENDANT CHARGED WITH STALKING. (a) A magistrate may require as a condition of release on bond that a defendant charged with an offense under Section 42.072, Penal Code, may not:

(1) communicate directly or indirectly with the victim; or

(2) go to or near the residence, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.

(b) If the magistrate requires the prohibition contained in Subsection (a)(2) of this article as a condition of release on bond, the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.

Added by Acts 1993, 73rd Leg., ch. 10, Sec. 2, eff. March 19, 1993. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 657, Sec. 3, eff. June 14, 1995; amended by Acts 1997, 75th Leg., ch. 1, Sec. 5, eff. Jan. 28, 1997.

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN. (a) A magistrate may require as a condition of release on bail or bond of a defendant that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

(b) A magistrate shall require as a condition of release on bail or bond of a defendant described by Section 411.1471(a), Government Code, that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

Added by Acts 2001, 77th Leg., ch. 1490, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1224 (H.B. 1068), Sec. 17, eff. September 1, 2005.

Art. 17.48. POSTTRIAL ACTIONS. A convicting court on entering a finding favorable to a convicted person under Article 64.04, after a hearing at which the attorney representing the state and the counsel for the defendant are entitled to appear, may release the convicted person on bail under this chapter pending the conclusion of court proceedings or proceedings under Section 11, Article IV, Texas Constitution, and Article 48.01.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 3, eff. April 5, 2001. Renumbered from Vernon's Ann.C.C.P. art. 17.47 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(6), eff. Sept. 1, 2003.

Art. 17.49. CONDITIONS FOR DEFENDANT CHARGED WITH OFFENSE INVOLVING FAMILY VIOLENCE. (a) In this article:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Global positioning monitoring system" means a system that electronically determines and reports the location of an individual through the use of a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology. The term does not include a system that contains or operates global positioning system technology, radio frequency identification technology, or any other similar technology that is implanted in or otherwise invades or violates the individual's body.

(b) A magistrate may require as a condition of release on bond that a defendant charged with an offense involving family violence:

(1) refrain from going to or near a residence, school, place of employment, or other location, as specifically described in the bond, frequented by an alleged victim of the offense;

(2) carry or wear a global positioning monitoring system device and, except as provided by Subsection (h), pay the costs associated with operating that system in relation to the defendant; or

(3) except as provided by Subsection (h), if the alleged victim of the offense consents after receiving the information described by Subsection (d), pay the costs associated with providing the victim with an electronic receptor device that:

(A) is capable of receiving the global positioning monitoring system information from the device carried or worn by the defendant; and

(B) notifies the victim if the defendant is at or near a location that the defendant has been ordered to refrain from going to or near under Subdivision (1).

(c) Before imposing a condition described by Subsection (b)(1), a magistrate must afford an alleged victim an opportunity to provide the magistrate with a list of areas from which the victim would like the defendant excluded and shall consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going to or near. If the magistrate imposes a condition described by Subsection (b)(1), the magistrate shall specifically describe the locations that the defendant has been ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.

(d) Before imposing a condition described by Subsection (b)(3), a magistrate must provide to an alleged victim information regarding:

(1) the victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation;

(2) the manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;

(3) any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;

(4) any sanctions that the court may impose on the defendant for violating a condition of bond imposed under this article;

(5) the procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails;

(6) community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of family violence; and

(7) the fact that the victim's communications with the court concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

(e) In addition to the information described by Subsection (d), a magistrate shall provide to an alleged victim who participates in a global positioning monitoring system under this article the name and telephone number of an appropriate person employed by a local law enforcement agency whom the victim may call to request immediate assistance if the defendant violates a condition of bond imposed under this article.

(f) In determining whether to order a defendant's participation in a global positioning monitoring system under this article, the magistrate shall consider the likelihood that the defendant's participation will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial.

(g) An alleged victim may request that the magistrate terminate the victim's participation in a global positioning monitoring system at any time. The magistrate may not impose sanctions on the victim for requesting termination of the victim's participation in or refusing to participate in a global positioning monitoring system under this article.

(h) If the magistrate determines that a defendant is indigent, the magistrate may, based on a sliding scale established by local rule, require the defendant to pay costs under Subsection (b)(2) or (3) in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the defendant or providing the victim with an electronic receptor device.

(i) If an indigent defendant pays to an entity that operates a global positioning monitoring system the partial amount ordered by a magistrate under Subsection (h), the entity shall accept the partial amount as payment in full. The county in which the magistrate who enters an order under Subsection (h) is located is not responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent defendant.

(j) A magistrate that imposes a condition described by Subsection (b)(1) or (2) shall order the entity that operates the global positioning monitoring system to notify the court and the appropriate local law enforcement agency if a defendant violates a condition of bond imposed under this article.

(k) A magistrate that imposes a condition described by Subsection (b) may only allow or require the defendant to execute or be released under a type of bond that is authorized by this chapter.

(l) This article does not limit the authority of a magistrate to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

Added by Acts 2009, 81st Leg., R.S., Ch. 1276 (H.B. 1506), Sec. 2, eff. September 1, 2009.