

BILL ANALYSIS

Senate Research Center

S.B. 1057
By: Duncan
Jurisprudence
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Enrolled

DIGEST AND PURPOSE

A 16-member task force, created by the 77th Texas Legislature in 2001, concluded that the criminal competency statute is complex, confusing, and difficult to use. S.B. 1057 rewrites the criminal competency statute to streamline the process and ensure consistency in its application across the state.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Code of Criminal Procedure by adding Chapter 46B, as follows:

CHAPTER 46B. INCOMPETENCY TO STAND TRIAL

SUBCHAPTER A. GENERAL PROVISIONS

Art. 46B.001. DEFINITIONS. Defines “department,” “inpatient mental health facility,” “local mental health authority,” “local mental retardation authority,” “mental health facility,” “mental illness,” “mental retardation,” and “residential care facility.”

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

Art. 46B.003. INCOMPETENCY; PRESUMPTIONS. (a) Provides that a person is incompetent to stand trial if the person does not have certain abilities.

(b) Provides that 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.

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

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

(c) Requires the court, on suggestion that the defendant may be incompetent to stand trial, to 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.

(d) Requires the court, except as provided by Article 46B.005(d), to stay all other

proceedings in the case, if the court determines there is evidence to support a finding of incompetency.

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

(b) Requires the court, except as provided by Subsection (c), to hold a hearing under Subchapter C before determining whether the defendant is incompetent to stand trial.

(c) Provides that the court is not required to hold a hearing if certain conditions exist.

(d) Authorizes the court, if the issue of the defendant's incompetency to stand trial is raised after the trial begins, to determine the issue at any time before sentencing. Requires the court, if the determination is delayed until after the return of a verdict, to make the determination as soon as reasonably possible after the return. Prohibits the court from determining the issue of incompetency, if a verdict of not guilty is returned.

Art. 46B.006. APPOINTMENT OF AND REPRESENTATION BY COUNSEL. (a) Provides that 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) Requires the court to appoint counsel as necessary to comply with Subsection (a), if the defendant is indigent and the court has not appointed counsel to represent the defendant.

Art. 46B.007. ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER EVIDENCE. Prohibits a statement made by a defendant during an examination or hearing on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement from being admitted in evidence against the defendant in any criminal proceeding, other than at certain hearings or proceedings.

Art. 46B.008. RULES OF EVIDENCE. Provides that notwithstanding Rule 101, Texas Rules of Evidence, the Texas Rules of Evidence apply to a hearing under this chapter whether the hearing is before a jury or before the court.

Art. 46B.009. TIME CREDITS. Requires a court sentencing a person convicted of a criminal offense to credit to the term of the person's sentence the time the person is confined in a mental health facility or residential care facility pending trial.

Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. Requires the court, on the motion of the attorney representing the state, to dismiss the charge, if a court commits a defendant who is charged with a misdemeanor punishable by confinement and the defendant is not tried before the second anniversary of the date on which the order of commitment was entered.

Art. 46B.011. APPEALS. Provides that neither the state nor the defendant is entitled to make an interlocutory appeal relating to a determination of incompetency under Article 46B.005.

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

SUBCHAPTER B. EXAMINATION

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

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

(c) Prohibits an expert involved in the treatment of the defendant from being appointed to examine the defendant under this article.

(d) Requires the movant or other party as directed by the court to 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) Authorizes the court to appoint as experts under this chapter qualified psychiatrists or psychologists employed by the local mental health authority or local mental retardation authority. Provides that the local mental health authority or local mental retardation authority is entitled to compensation and reimbursement as provided by Article 46B.027.

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

Art. 46B.022. EXPERTS: QUALIFICATIONS. (a) Requires a psychiatrist or psychologist, to qualify for appointment under this subchapter as an expert, to meet certain requirements.

(b) Requires a psychiatrist or psychologist, in addition to meeting qualifications required by Subsection (a) to be appointed as an expert, to 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) Authorizes a court to 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).

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

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

Art. 46B.025. EXPERT'S REPORT. (a) Requires an expert's report to the court to 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 to also provide certain information.

(b) Requires the expert, if in the opinion of such expert appointed under Article 46B.021 the defendant is incompetent to proceed, to state in the report certain information.

(c) Prohibits an expert's report from stating 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.

Art. 46B.026. REPORT DEADLINE. (a) Requires an expert examining the defendant, except as provided by Subsection (b), to 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) Authorizes the court, for good cause shown, to 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).

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

(b) Requires the county in which the indictment was returned or information was filed to reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are determined by the Texas Department of Mental Health and Mental Retardation (MHMR) to be reasonably necessary and incidental to the proper examination of the defendant.

SUBCHAPTER C. INCOMPETENCY HEARING AND TRIAL

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

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

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

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

(b) Requires the verdict to be concurred in by each juror.

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

Art. 46B.054. UNCONTESTED INCOMPETENCY. Requires the court to proceed in

the same manner as if a jury had been impaneled and had found the defendant incompetent to stand trial, if the court finds as required by Article 46B.005 that there is evidence to support a finding of incompetency to stand trial and the court and each party agree that the defendant is incompetent to stand trial.

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

SUBCHAPTER D. PROCEDURES ON DETERMINATION OF INCOMPETENCY

Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY. Requires the court, on a determination that a defendant is incompetent to stand trial, to perform certain tasks.

Art. 46B.072. RELEASE ON BAIL. Authorizes the court to release the defendant on bail or continue the defendant's release on bail, subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment, 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 for the purpose of attaining competency to stand trial.

Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY. (a) Provides that this article applies only to a defendant not released on bail.

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

(c) Requires the court, if the defendant is charged with an offense listed in Article 17.032(a) or the indictment requests an affirmative finding under Section 3g(a)(2), Article 42.12, to 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) Requires the court, if the defendant is not charged with an offense listed in Article 17.032(a) and the indictment does not request an affirmative finding under Section 3g(a)(2), Article 42.12, to 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.

Art. 46B.074. COMPETENT TESTIMONY REQUIRED. Authorizes a defendant to be committed to a mental health facility or residential care facility under this subchapter only on competent medical or psychiatric testimony.

Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY. Requires a commitment order issued under this subchapter to place the defendant in the custody of the sheriff for transportation to the facility in which the defendant is to be confined.

Art. 46B.076. COURT'S ORDER. (a) Requires the court, if the defendant is found incompetent to stand trial, to send a copy of the order to the facility to which the defendant is committed not later than the date the defendant is committed to the facility. Requires the court to also provide to the facility certain copies made available to the court during the incompetency hearing.

(b) Requires the court to 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.

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) Requires the facility to which the defendant is committed to perform certain acts.

(b) Requires the facility, if the defendant is committed to an inpatient mental health facility or to a residential care facility, to report to the court at least once during the commitment period. Requires the treatment program, if the defendant is released to a treatment program not provided by an inpatient mental health facility or a residential care facility, to report to the court according to certain guidelines.

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. Requires the committing court, if the charges pending against a defendant are dismissed, to 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 in which the defendant is held. Requires the facility, on receipt of the copy of the order, to discharge the defendant into the care of the sheriff for transportation in the manner described by Article 46B.082.

Art. 46B.079. RETURN TO COMMITTING COURT. Requires a defendant committed under this subchapter to be returned to the committing court as soon as practicable after the earliest of certain dates.

Art. 46B.080. NOTICE TO COMMITTING COURT. (a) Requires 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, to notify the committing court that the term of the commitment is about to expire.

(b) Requires the head of the facility to which a defendant has been committed under this subchapter to promptly notify the committing court when the head of the facility is of a certain opinion.

(c) Authorizes the notice, if the head of the facility to which the defendant has been committed notifies the court that the commitment order is about to expire, to 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. EXTENSION OF COMMITMENT ORDER. (a) Authorizes the court, on the request of the head of a facility made under Article 46B.080(c), to enter an order extending the term of the commitment order for a period of 60 days.

(b) Authorizes the court to enter an order under Subsection (a) only if the court determines that, on the basis of information provided by the head of the facility, certain conditions exist.

(c) Authorizes the court to grant only one extension under this article for the term of a defendant's commitment order.

Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) Requires the sheriff of the county in which the committing court is located or the sheriff's designee, on notification from the committing court under Article 46B.078, to transport the defendant to the committing court.

(b) Requires the head of that facility, if a defendant committed to a maximum security unit of a facility of the department has not been transported from the unit before the 15th day after the date on which the court received notification under Article 46B.080(a), to 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. Requires the county in which the committing court is located to 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. **REPORT BY FACILITY HEAD.** (a) Requires the head of the facility, when the head of a facility to which the defendant is committed discharges the defendant and the defendant is returned to the committing court, to file a final report with the court stating the reason for the discharge under Article 46B.080. Requires the court to furnish copies of the report to the defense counsel and the prosecuting attorney.

(b) Requires the head of the facility, if the head of the facility 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, to have submitted to the court a certificate of medical examination for mental illness. Requires the head of the facility to include in the final report a list of the types and dosages of medications with which the defendant was treated for mental illness while in the facility.

(c) Requires the head of the facility, if the head of the facility is of the opinion that the defendant is a person with mental retardation, to have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

Art. 46B.084. **PROCEEDINGS ON RETURN OF DEFENDANT TO COURT.** (a) Requires the court, on the return of a defendant to the committing court, to make a determination with regard to the defendant's competency to stand trial. Authorizes the court to make the determination based solely on the report filed under Article 46B.080(b), 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 report is served on the parties.

(b) Requires the issue, if a party objects under Subsection (a), to be set for a hearing. Provides that 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.

(c) Requires the hearing to be held within 30 days following the date of objection unless continued for good cause.

(d) Authorizes criminal proceedings against the defendant to be resumed, if the defendant is found competent to stand trial.

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

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

Art. 46B.085. **RECOMMITMENT PROHIBITED.** Prohibits a defendant committed under this subchapter from being recommitted under this subchapter in connection with the same offense.

Art. 46B.086. **COURT-ORDERED MEDICATIONS.** (a) Provides that this article applies only to a certain defendant.

(b) Requires the director of the correctional facility, if a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, to 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. Requires the court to promptly notify the attorney representing the state and the attorney representing the defendant of the defendant's refusal. Authorizes the attorney representing the state to file a written motion to compel medication. Authorizes the court, after notice and after a hearing that is held as soon as practicable, to authorize the director of a correctional facility to have the medication administered to the defendant, by reasonable force if necessary.

(c) Authorizes the court to 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 the correctional facility 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. Authorizes the court to require either or both physicians to examine the defendant and report on the examination to the court.

(d) Authorizes the court to issue an order under this article if the court finds by clear and convincing evidence that certain conditions exist.

(e) Prohibits a statement made by a defendant to a physician during an examination under Subsection (c) from being admitted against the defendant in any criminal proceeding, other than at certain hearings or proceedings.

SUBCHAPTER E. EXTENDED COMMITMENT: CHARGES PENDING

Art. 46B.101. **APPLICABILITY.** Provides that this subchapter applies to a defendant against whom a court is required to proceed under Article 46B.084(e).

Art. 46B.102. **COMMITMENT HEARING: MENTAL ILLNESS.** (a) Requires the court, if it appears to the court that the defendant may be a person with mental illness, to hold a hearing to determine whether the defendant should be committed to a mental health facility.

(b) Provides that proceedings for commitment of the defendant to a mental health facility are governed by Title 7C, 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) Requires the defendant, if the court enters an order committing the defendant to a mental health facility, to be treated in conformity with Title 7C, Health and Safety Code, except as otherwise provided by this chapter and released in conformity with Article 46B.107.

Art. 46B.103. **COMMITMENT HEARING: MENTAL RETARDATION.** (a) Requires the court, if it appears to the court that the defendant may be a person with mental retardation, to hold a hearing to determine whether the defendant is a person with mental retardation.

(b) Provides that proceedings for commitment of the defendant to a residential care facility are governed by Title 7D, 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) Requires the defendant, if the court enters an order committing the defendant to a residential care facility, to be treated and released according to certain guidelines.

(d) Provides that certain proceedings are conducted under this subchapter.

Art. 46B.104. EXTENDED COMMITMENT PLACEMENT: FINDING OF VIOLENCE. Requires a defendant committed to a facility as a result of proceedings initiated under this chapter to be committed to the maximum security unit of any facility designated by the department if a certain condition exists.

Art. 46B.105. TRANSFER FOLLOWING EXTENDED COMMITMENT PLACEMENT. (a) Requires the defendant, not later than the 60th day after the date the defendant arrives at the maximum security unit, to be transferred to a certain unit, facility, or program, unless a defendant is determined to be manifestly dangerous by an MHMR review board.

(b) Requires the commissioner of mental health and mental retardation (commissioner) to 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 mental retardation, 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) Prohibits the review board from making a determination as to the defendant's need for treatment.

(d) Provides that 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 Title 7C or 7D, Health and Safety Code.

(e) Requires the matter, if the superintendent of the facility at which the maximum security unit is located disagrees with the determination, to be referred to the commissioner. Requires the commissioner to decide whether the defendant is manifestly dangerous.

Art. 46B.106. EXTENDED COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE. (a) Requires 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, to be committed to a facility designated by the local mental health authority or local mental retardation authority to serve the catchment area in which the committing court is located.

(b) Prohibits a facility from refusing to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

Art. 46B.107. RELEASE OF DEFENDANT AFTER COMMITMENT. (a) Provides that the release from MHMR 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 to which the defendant has been committed that a criminal charge remains pending against the defendant.

(b) Requires the head of the facility, if the head of the facility to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, to 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 intends to release the defendant.

(c) Requires the head of the facility to 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) Authorizes the court, on motion of the attorney representing the state or on its own motion, to hold a hearing to determine whether release is appropriate under

the applicable criteria in Title 7C or 7D, Health and Safety Code.

(e) Requires the court, if the court determines that release is not appropriate, to enter an order directing the head of the facility to not release the defendant.

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

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

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

Art. 46B.109. REQUEST BY HEAD OF FACILITY. (a) Authorizes the head of a facility to which a defendant has been committed as a result of a finding of incompetency to stand trial to request the court to determine that the defendant has been restored to competency.

(b) Requires the head of the facility to provide with the request a written statement that in the opinion of the head of the facility the defendant is competent to stand trial.

Art. 46B.110. MOTION BY DEFENDANT OR ATTORNEY REPRESENTING STATE. (a) Authorizes the defendant or the attorney representing the state to move that the court determine that the defendant has been restored to competency.

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

Art. 46B.111. APPOINTMENT OF EXAMINERS. Authorizes the court, 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, to appoint disinterested experts to examine the defendant in accordance with Subchapter B.

Art. 46B.112. DETERMINATION OF RESTORATION WITH AGREEMENT. Requires the court, 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, to 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 certain conditions exist.

Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT AGREEMENT.

(a) Requires the court to hold a hearing on a request by the head of a facility 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) Authorizes the court to 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 to hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency.

(c) Requires a jury, on the request of either party or the motion of the court, to make the determination, if a court holds a hearing under this article.

(d) Provides that if the head of a facility 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) Provides that if the head of a facility 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.

Art. 46B.114. **TRANSPORTATION OF DEFENDANT TO COURT.** Requires an order setting a hearing to determine whether the defendant has been restored to competency to direct that 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.

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

(b) Authorizes the court to 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.

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

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

(b) Requires the court, if a defendant not under order of commitment is found to not have been restored to competency to stand trial, to order the defendant's custody status to remain unchanged.

SUBCHAPTER F. EXTENDED COMMITMENT: CHARGES DISMISSED

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

(b) Requires the court, if it appears to the court that there is evidence to support a finding of mental illness or mental retardation, to 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. Authorizes the court to order the defendant in certain detainment or placement.

(c) Authorizes a defendant placed in an MHMR facility pending civil hearing under this article, notwithstanding Subsection (b), to 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 Title 7C, Health and Safety Code.

(d) Requires the court to release the defendant, if the court does not place the

defendant under Subsection (b).

SUBCHAPTER G. PROVISIONS APPLICABLE TO SUBCHAPTERS E AND F

Art. 46B.171. TRANSCRIPTS; DOCUMENTATION. Requires the court to order the availability of certain information.

SECTION 2. Amends Articles 16.22(b) and (c), Code of Criminal Procedure, as follows:

(b) Requires a written report to include a description of the procedures used in the examination and the examiner's observations and findings pertaining to certain factors, including 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.

(c) Authorizes the court, after the court receives the examining expert's report relating to the defendant under Subsection (b), to resume competency proceedings, if required, as provided by Chapter 46B, rather than Article 46.02, in addition to criminal proceedings.

SECTION 3. Amends Article 42.07, Code of Criminal Procedure, to make a conforming change.

SECTION 4. Amends Section 11(d), Article 42.12, Code of Criminal Procedure, to make a conforming change.

SECTION 5. Amends Section 3(g), Article 46.03, Code of Criminal Procedure, to make a conforming change.

SECTION 6. Amends Section 51.20(a), Family Code, to authorize the juvenile court, at any stage of the proceedings under this title, to order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by a disinterested expert, rather than by the local mental health or mental retardation authority or another appropriate expert, including a physician, psychiatrist, or psychologist, qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation, to determine whether the child 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. Authorizes an expert, if the examination is to include a determination of the child's fitness to proceed, to be appointed to conduct the examination only if the expert is qualified under Subchapter B, Chapter 46B, Code of Criminal Procedure, to examine a defendant in a criminal case. Requires the examination and the report resulting from an examination under this subsection to comply with the requirements under Subchapter B, Chapter 46B, Code of Criminal Procedure, for the examination and resulting report of a defendant in a criminal case.

SECTION 7. Amends Section 55.19(b), Family Code, to make a conforming change.

SECTION 8. Amends Section 55.44(b), Family Code, to make a conforming change.

SECTION 9. Amends Section 571.011(b), Health and Safety Code, to make a conforming change.

SECTION 10. Amends Section 574.001(e), Health and Safety Code, to make a conforming change.

SECTION 11. Amends Section 574.002(b), Health and Safety Code, to make a conforming change.

SECTION 12. Amends Sections 574.035(a) and (b), Health and Safety Code, to make conforming changes.

SECTION 13. Amends Section 575.003, Health and Safety Code, to make a conforming change.

SECTION 14. Amends Section 576.025(a), Health and Safety Code, to make a conforming change.

SECTION 15. Repealer: Article 46.02 (Incompetency to Stand Trial), Code of Criminal Procedure.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Effective date: January 1, 2004.