

By: Duncan

S.B. No. 1057

A BILL TO BE ENTITLED

AN ACT

relating to the determination of incompetency in criminal cases.

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

SECTION 1. The Code of Criminal Procedure is amended by adding Chapter 46B to read as follows:

CHAPTER 46B. INCOMPETENCY TO STAND TRIAL

SUBCHAPTER A. GENERAL PROVISIONS

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

(1) "Department" means the Texas Department of Mental Health and Mental Retardation.

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

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

(4) "Local mental retardation 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) "Mental retardation" has the meaning assigned by Section 591.003, Health and Safety Code.

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

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

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

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

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

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

14 Art. 46B.004. RAISING ISSUE OF INCOMPETENCY TO STAND TRIAL.

15 (a) Either party may suggest by motion, or the trial court may
16 suggest on its own motion, that the defendant may be incompetent to
17 stand trial. A motion suggesting that the defendant may be
18 incompetent to stand trial may be supported by affidavits setting
19 out the facts on which the suggestion is made.

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

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

1 (d) If the court determines there is evidence to support a
2 finding of incompetency, the court, except as provided by Article
3 46B.005(d), shall stay all other proceedings in the case.

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

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

12 (c) The court is not required to hold a hearing if:

13 (1) neither party requests a jury trial on the issue of
14 incompetency;

15 (2) neither party opposes a finding of incompetency;
16 and

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

19 (d) If the issue of the defendant's incompetency to stand
20 trial is raised after the trial begins, the court may determine the
21 issue at any time before sentencing. If the determination is
22 delayed until after the return of a verdict, the court shall make
23 the determination as soon as reasonably possible after the return.
24 If a verdict of not guilty is returned, the court may not determine
25 the issue of incompetency.

26 Art. 46B.006. APPOINTMENT OF AND REPRESENTATION BY COUNSEL.

27 (a) A defendant is entitled to representation by counsel before any

1 court-ordered competency evaluation and during any proceeding at
2 which it is suggested that the defendant may be incompetent to stand
3 trial.

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

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

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

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

17 Art. 46B.008. RULES OF EVIDENCE. Notwithstanding Rule 101,
18 Texas Rules of Evidence, the Texas Rules of Evidence apply to a
19 hearing under this chapter whether the hearing is before a jury or
20 before the court.

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

25 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
26 If a court commits a defendant who is charged with a misdemeanor
27 punishable by confinement and the defendant is not tried before the

1 second anniversary of the date on which the order of commitment was
2 entered, the court on the motion of the attorney representing the
3 state shall dismiss the charge.

4 Art. 46B.011. APPEALS. Neither the state nor the defendant
5 is entitled to make an interlocutory appeal relating to a
6 determination of incompetency under Article 46B.005.

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

10 SUBCHAPTER B. EXAMINATION

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

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

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

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

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

24 (d) The movant or other party as directed by the court shall
25 provide to experts appointed under this article information
26 relevant to a determination of the defendant's competency,
27 including copies of the indictment or information, any supporting

1 documents used to establish probable cause in the case, and
2 previous mental health evaluation and treatment records.

3 (e) The court may appoint as experts under this chapter
4 qualified psychiatrists or psychologists employed by the local
5 mental health authority or local mental retardation authority. The
6 local mental health authority or local mental retardation authority
7 is entitled to compensation and reimbursement as provided by
8 Article 46B.027.

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

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

15 (1) as appropriate, be a physician licensed in this
16 state or be a psychologist licensed in this state who has a doctoral
17 degree in psychology; and

18 (2) have the following certification or experience or
19 training:

20 (A) as appropriate, certification by:

21 (i) the American Board of Psychiatry and
22 Neurology, Inc., with added or special qualifications in forensic
23 psychiatry; or

24 (ii) the American Board of Professional
25 Psychology in forensic psychology; or

26 (B) experience or training consisting of:

27 (i) at least 24 hours of specialized

1 forensic training relating to incompetency or insanity
2 evaluations;

3 (ii) for an appointment made before January
4 1, 2005, at least five years of experience before January 1, 2004,
5 in performing criminal forensic evaluations for courts; or

6 (iii) for an appointment made on or after
7 January 1, 2005, at least five years of experience before January 1,
8 2004, in performing criminal forensic evaluations for courts and
9 eight or more hours of continuing education relating to forensic
10 evaluations, completed in the 12 months preceding the appointment
11 and documented with the court.

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

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

26 Art. 46B.023. CUSTODY STATUS. During an examination under
27 this subchapter, except as otherwise ordered by the court, the

1 defendant shall be maintained under the same custody or status as
2 the defendant was maintained under immediately before the
3 examination began.

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

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

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

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

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

17 (D) understand the adversarial nature of
18 criminal proceedings;

19 (E) exhibit appropriate courtroom behavior; and

20 (F) testify;

21 (2) whether the defendant has a diagnosable mental
22 illness or is a person with mental retardation;

23 (3) the impact of the mental illness or mental
24 retardation, if existent, on the defendant's capacity to engage
25 with counsel in a reasonable and rational manner; and

26 (4) if the defendant is taking psychoactive or other
27 medication:

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

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

6 Art. 46B.025. EXPERT'S REPORT. (a) An expert's report to
7 the court must state an opinion on a defendant's competency or
8 incompetency to stand trial or explain why the expert is unable to
9 state such an opinion and must also:

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

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

17 (3) in general terms, describe procedures,
18 techniques, and tests used in the examination and the purpose of
19 each procedure, technique, or test; and

20 (4) state the expert's clinical observations,
21 findings, and opinions on each specific issue referred to the
22 expert by the court, and state specifically any issues on which the
23 expert could not provide an opinion.

24 (b) If in the opinion of an expert appointed under Article
25 46B.021 the defendant is incompetent to proceed, the expert shall
26 state in the report:

27 (1) the exact nature of the deficits resulting from

1 the defendant's mental illness or mental retardation, if any, that
2 impact the factors listed in Article 46B.024, contributing to the
3 defendant's incompetency; and

4 (2) prospective treatment options, if any,
5 appropriate for the defendant.

6 (c) An expert's report may not:

7 (1) if in the opinion of the expert the defendant is
8 incompetent to proceed, state the expert's opinion on the
9 defendant's sanity at the time of the alleged offense; or

10 (2) contain or refer to any statement made by the
11 defendant relating to the alleged offense, unless in the
12 professional judgment of the expert, the statement must be
13 contained or referred to in the report to provide complete
14 information supporting the expert's findings and conclusions
15 regarding the defendant's competency or incompetency.

16 (d) Article 46B.007 governs the admissibility of a
17 statement described by Subsection (c)(2).

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

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

1 Subsection (a).

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

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

14 SUBCHAPTER C. INCOMPETENCY HEARING AND TRIAL

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

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

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

24 Art. 46B.052. JURY VERDICT. (a) If a jury determination of
25 the issue of incompetency to stand trial is required by Article
26 46B.051(a), the court shall require the jury to state in its verdict
27 whether the defendant is incompetent to stand trial.

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

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

8 Art. 46B.054. UNCONTESTED INCOMPETENCY. If the court finds
9 as required by Article 46B.005 that there is evidence to support a
10 finding of incompetency to stand trial and the court and each party
11 agree that the defendant is incompetent to stand trial, the court
12 shall proceed in the same manner as if a jury had been impaneled and
13 had found the defendant incompetent to stand trial.

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

17 SUBCHAPTER D. PROCEDURES ON DETERMINATION OF INCOMPETENCY

18 Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY. On
19 a determination that a defendant is incompetent to stand trial, the
20 court shall:

21 (1) commit the defendant to a facility under Article
22 46B.073; or

23 (2) release the defendant on bail under Article
24 46B.072.

25 Art. 46B.072. RELEASE ON BAIL. If the court determines that
26 a defendant found incompetent to stand trial is not a danger to
27 others and may be safely treated on an outpatient basis for the

1 purpose of attaining competency to stand trial, the court may
2 release the defendant on bail or continue the defendant's release
3 on bail, subject to conditions reasonably related to assuring
4 public safety and the effectiveness of the defendant's treatment.

5 Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY.

6 (a) This article applies only to a defendant not released on bail.

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

12 (c) If the defendant is charged with an offense listed in
13 Article 17.032(a) or the indictment requests an affirmative finding
14 under Section 3g(a)(2), Article 42.12, the court shall enter an
15 order committing the defendant to the maximum security unit of any
16 facility designated by the department, to an agency of the United
17 States operating a mental hospital, or to a Department of Veterans
18 Affairs hospital.

19 (d) If the defendant is not charged with an offense listed
20 in Article 17.032(a) and the indictment does not request an
21 affirmative finding under Section 3g(a)(2), Article 42.12, the
22 court shall enter an order committing the defendant to a mental
23 health facility or residential care facility determined to be
24 appropriate by the local mental health authority or local mental
25 retardation authority.

26 Art. 46B.074. COMPETENT TESTIMONY REQUIRED. A defendant
27 may be committed to a mental health facility or residential care

1 facility under this subchapter only on competent medical or
2 psychiatric testimony.

3 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY. A
4 commitment order issued under this subchapter must place the
5 defendant in the custody of the sheriff for transportation to the
6 facility in which the defendant is to be confined.

7 Art. 46B.076. COURT'S ORDER. (a) If the defendant is found
8 incompetent to stand trial, the court shall send a copy of the order
9 to the facility to which the defendant is committed not later than
10 the date the defendant is committed to the facility. The court
11 shall also provide to the facility copies of the following made
12 available to the court during the incompetency hearing:

13 (1) reports of each expert;

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

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

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

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

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

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

27 Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The

1 facility to which the defendant is committed shall:

2 (1) develop an individual program of treatment;

3 (2) assess and evaluate whether the defendant will
4 obtain competency in the foreseeable future; and

5 (3) report to the court and to the local mental health
6 authority or to the local mental retardation authority on the
7 defendant's progress toward achieving competency.

8 (b) If the defendant is committed to an inpatient mental
9 health facility or to a residential care facility, the facility
10 shall report to the court at least once during the commitment
11 period. If the defendant is released to a treatment program not
12 provided by an inpatient mental health facility or a residential
13 care facility, the treatment program shall report to the court:

14 (1) not later than the 14th day after the date on which
15 the defendant's treatment begins; and

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

19 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
20 charges pending against a defendant are dismissed, the committing
21 court shall send a copy of the order of dismissal to the sheriff of
22 the county in which the committing court is located and to the head
23 of the facility in which the defendant is held. On receipt of the
24 copy of the order, the facility shall discharge the defendant into
25 the care of the sheriff for transportation in the manner described
26 by Article 46B.082.

27 Art. 46B.079. RETURN TO COMMITTING COURT. A defendant

1 committed under this subchapter shall be returned to the committing
2 court as soon as practicable after the earliest of the following
3 dates:

4 (1) the date on which the facility determines that the
5 defendant has attained competency;

6 (2) the date on which the facility determines that the
7 defendant will not attain competency in the foreseeable future; or

8 (3) the date on which the term of commitment expires.

9 Art. 46B.080. NOTICE TO COMMITTING COURT. (a) The head of
10 a facility to which a defendant has been committed under this
11 subchapter, not later than the 14th day before the date on which a
12 commitment order is to expire, shall notify the committing court
13 that the term of the commitment is about to expire.

14 (b) The head of the facility to which a defendant has been
15 committed under this subchapter shall promptly notify the
16 committing court when the head of the facility is of the opinion
17 that:

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

20 (2) the defendant will not attain competency in the
21 foreseeable future.

22 (c) If the head of the facility to which the defendant has
23 been committed notifies the court that the commitment order is
24 about to expire, the notice may contain a request for an extension
25 of the commitment order for a period of 60 days and an explanation
26 for the basis of the request.

27 Art. 46B.081. EXTENSION OF COMMITMENT ORDER. (a) On the

1 request of the head of a facility made under Article 46B.080(c), the
2 court may enter an order extending the term of the commitment order
3 for a period of 60 days.

4 (b) The court may enter an order under Subsection (a) only
5 if the court determines that, on the basis of information provided
6 by the head of the facility:

7 (1) the defendant has not attained competency; and

8 (2) an extension of the term of the commitment order
9 will likely enable the facility to restore the defendant to
10 competency.

11 (c) The court may grant only one extension under this
12 article for the term of a defendant's commitment order.

13 Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) On
14 notification from the committing court under Article 46B.078, the
15 sheriff of the county in which the committing court is located or
16 the sheriff's designee shall transport the defendant to the
17 committing court.

18 (b) If a defendant committed to a maximum security unit of a
19 facility of the department has not been transported from the unit
20 before the 15th day after the date on which the court received
21 notification under Article 46B.080(a), the head of that facility
22 shall cause the defendant to be promptly transported to the
23 committing court and placed in the custody of the sheriff of the
24 county in which the committing court is located. The county in
25 which the committing court is located shall reimburse the
26 department for the mileage and per diem expenses of the personnel
27 required to transport the defendant, calculated in accordance with

1 rates provided in the General Appropriations Act for state
2 employees.

3 Art. 46B.083. REPORT BY FACILITY HEAD. (a) When the head
4 of a facility to which the defendant is committed discharges the
5 defendant and the defendant is returned to the committing court,
6 the head of the facility shall file a final report with the court
7 stating the reason for the discharge under Article 46B.080. The
8 court shall furnish copies of the report to the defense counsel and
9 the prosecuting attorney.

10 (b) If the head of the facility believes that the defendant
11 is a person with mental illness and meets the criteria for
12 court-ordered inpatient mental health services under Subtitle C,
13 Title 7, Health and Safety Code, the head of the facility shall have
14 submitted to the court a certificate of medical examination for
15 mental illness. The head of the facility shall include in the final
16 report a list of the types and dosages of medications with which the
17 defendant was treated for mental illness while in the facility.

18 (c) If the head of the facility is of the opinion that the
19 defendant is a person with mental retardation, the head of the
20 facility shall have submitted to the court an affidavit stating the
21 conclusions reached as a result of the examination.

22 Art. 46B.084. PROCEEDINGS ON RETURN OF DEFENDANT TO COURT.

23 (a) On the return of a defendant to the committing court, the court
24 shall make a determination with regard to the defendant's
25 competency to stand trial. The court may make the determination
26 based solely on the report filed under Article 46B.080(b), unless
27 any party objects in writing or in open court to the findings of the

1 report not later than the 15th day after the date on which the
2 report is served on the parties.

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

7 (c) The hearing shall be held within 30 days following the
8 date of objection unless continued for good cause.

9 (d) If the defendant is found competent to stand trial,
10 criminal proceedings against the defendant may be resumed.

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

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

17 Art. 46B.085. RECOMMITMENT PROHIBITED. A defendant
18 committed under this subchapter may not be recommitted under this
19 subchapter in connection with the same offense.

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

22 (1) who after having been determined under this
23 chapter to be incompetent to stand trial is subsequently determined
24 to be competent to stand trial; and

25 (2) for whom a continuity of care plan has been
26 prepared by a facility that requires the defendant to take
27 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 correctional facility 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 court, after notice and after a hearing that is held as soon as practicable, may authorize the director of a correctional facility to have the medication administered to the defendant, by reasonable force if necessary.

(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 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. The court may require either or both physicians to examine the defendant and report on the examination to the court.

(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;

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

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

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

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

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

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

14 SUBCHAPTER E. EXTENDED COMMITMENT: CHARGES PENDING

15 Art. 46B.101. APPLICABILITY. This subchapter applies to a
16 defendant against whom a court is required to proceed under Article
17 46B.084(e).

18 Art. 46B.102. COMMITMENT HEARING: MENTAL ILLNESS. (a) If
19 it appears to the court that the defendant may be a person with
20 mental illness, the court shall hold a hearing to determine whether
21 the defendant should be committed to a mental health facility.

22 (b) Proceedings for commitment of the defendant to a mental
23 health facility are governed by Subtitle C, Title 7, Health and
24 Safety Code, to the extent that Subtitle C applies and does not
25 conflict with this chapter, except that the criminal court shall
26 conduct the proceedings whether or not the criminal court is also
27 the county court.

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

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

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

7 Art. 46B.103. COMMITMENT HEARING: MENTAL RETARDATION.

8 (a) If it appears to the court that the defendant may be a person
9 with mental retardation, the court shall hold a hearing to
10 determine whether the defendant is a person with mental
11 retardation.

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

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

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

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

24 (d) In the proceedings conducted under this subchapter:

25 (1) an application for court-ordered temporary or
26 extended mental health services or to have the defendant declared a
27 person with mental retardation may not be required;

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

4 (3) appeals from the criminal court proceedings are to
5 the court of appeals as in the proceedings for court-ordered
6 inpatient mental health services under Subtitle C, Title 7, Health
7 and Safety Code, or for commitment to a residential care facility
8 under Subtitle D, Title 7, Health and Safety Code.

9 Art. 46B.104. EXTENDED COMMITMENT PLACEMENT: FINDING OF
10 VIOLENCE. A defendant committed to a facility as a result of
11 proceedings initiated under this chapter shall be committed to the
12 maximum security unit of any facility designated by the department
13 if:

14 (1) the defendant is charged with an offense listed in
15 Article 17.032(a); or

16 (2) the indictment charging the offense requests an
17 affirmative finding under Section 3g(a)(2), Article 42.12.

18 Art. 46B.105. TRANSFER FOLLOWING EXTENDED COMMITMENT
19 PLACEMENT. (a) Unless a defendant is determined to be manifestly
20 dangerous by a department review board, not later than the 60th day
21 after the date the defendant arrives at the maximum security unit,
22 the defendant shall be transferred to:

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

25 (2) a residential care facility; or

26 (3) a program designated by a local mental health
27 authority or a local mental retardation authority.

1 (b) The commissioner of the department shall appoint a
2 review board of five members, including one psychiatrist licensed
3 to practice medicine in this state and two persons who work directly
4 with persons with mental illness or mental retardation, to
5 determine whether the defendant is manifestly dangerous and, as a
6 result of the danger the defendant presents, requires continued
7 placement in a maximum security unit.

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

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

14 (e) If the superintendent of the facility at which the
15 maximum security unit is located disagrees with the determination,
16 the matter shall be referred to the commissioner of the department.
17 The commissioner shall decide whether the defendant is manifestly
18 dangerous.

19 Art. 46B.106. EXTENDED COMMITMENT PLACEMENT: NO FINDING OF
20 VIOLENCE. (a) A defendant committed to a facility as a result of
21 the proceedings initiated under this chapter, other than a
22 defendant described by Article 46B.104, shall be committed to a
23 facility designated by the local mental health authority or local
24 mental retardation authority to serve the catchment area in which
25 the committing court is located.

26 (b) A facility may not refuse to accept a placement ordered
27 under this article on the grounds that criminal charges against the

1 defendant are pending.

2 Art. 46B.107. RELEASE OF DEFENDANT AFTER COMMITMENT. (a)
3 The release from the department or a facility of a defendant
4 committed under this chapter is subject to disapproval by the
5 committing court if the court or the attorney representing the
6 state has notified the head of the facility to which the defendant
7 has been committed that a criminal charge remains pending against
8 the defendant.

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

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

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

23 (e) If the court determines that release is not appropriate,
24 the court shall enter an order directing the head of the facility to
25 not release the defendant.

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

1 article.

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

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

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

15 (b) The head of the facility shall provide with the request
16 a written statement that in the opinion of the head of the facility
17 the defendant is competent to stand trial.

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

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

25 Art. 46B.111. APPOINTMENT OF EXAMINERS. On the filing of a
26 request or motion to determine that the defendant has been restored
27 to competency or on the court's decision on its own motion to

1 inquire into restoration of competency, the court may appoint
2 disinterested experts to examine the defendant in accordance with
3 Subchapter B.

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

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

13 (2) the court concurs.

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

19 (b) The court may hold a hearing on a motion to determine
20 whether the defendant has been restored to competency or on the
21 court's decision on its own motion to inquire into restoration of
22 competency, and shall hold a hearing if a motion and any supporting
23 material establish good reason to believe the defendant may have
24 been restored to competency.

25 (c) If a court holds a hearing under this article, on the
26 request of either party or the motion of the court a jury shall make
27 the determination.

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

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

11 Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. An
12 order setting a hearing to determine whether the defendant has been
13 restored to competency shall direct that the defendant be placed in
14 the custody of the sheriff of the county in which the committing
15 court is located or the sheriff's designee for transportation to
16 the court.

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

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

25 (2) provide support for the belief.

26 (b) The court may hold a hearing on a request or motion under
27 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.
If the defendant is found competent to stand trial, the proceedings on the criminal charge may proceed.

Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY. (a) If a defendant under order of commitment to a facility 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 order the defendant placed in the custody of the sheriff or the sheriff's designee for transportation back to the facility.

(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.

SUBCHAPTER F. EXTENDED COMMITMENT: CHARGES DISMISSED

Art. 46B.151. COURT DETERMINATION RELATED TO COMMITMENT.
(a) If a court is required by Article 46B.084(f) 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 mental retardation.

(b) If it appears to the court that there is evidence to support a finding of mental illness or mental retardation, 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 (1) detained in jail or any other suitable place
2 pending the prompt initiation and prosecution by the attorney for
3 the state or other person designated by the court of appropriate
4 civil proceedings to determine whether the defendant will be
5 committed to a mental health facility or residential care facility;
6 or

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

10 (c) Notwithstanding Subsection (b), a defendant placed in a
11 facility of the department pending civil hearing under this article
12 may be detained in that facility only with the consent of the head
13 of the facility and pursuant to an order of protective custody
14 issued under Subtitle C, Title 7, Health and Safety Code.

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

17 SUBCHAPTER G. PROVISIONS APPLICABLE TO SUBCHAPTERS E AND F

18 Art. 46B.171. TRANSCRIPTS; DOCUMENTATION. The court shall
19 order that:

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

24 (2) copies of documents listed in Article 46B.076
25 accompany the defendant to the mental health or residential care
26 facility.

27 SECTION 2. Article 16.22(c), Code of Criminal Procedure, is

1 amended to read as follows:

2 (c) After the court receives the examining expert's report
3 relating to the defendant under Subsection (b), the court may
4 resume:

5 (1) criminal proceedings against the defendant,
6 including proceedings related to the defendant's release on
7 personal bond under Article 17.032; or

8 (2) competency proceedings, if required, as provided
9 by Chapter 46B [~~Article 46.02~~] or other proceedings affecting the
10 defendant's receipt of appropriate court-ordered mental health or
11 mental retardation services, including proceedings related to the
12 defendant's receipt of outpatient mental health services under
13 Section 574.034, Health and Safety Code.

14 SECTION 3. Article 42.07, Code of Criminal Procedure, is
15 amended to read as follows:

16 Art. 42.07. REASONS TO PREVENT SENTENCE. Before
17 pronouncing sentence, the defendant shall be asked whether he has
18 anything to say why the sentence should not be pronounced against
19 him. The only reasons which can be shown, on account of which
20 sentence cannot be pronounced, are:

21 1. That the defendant has received a pardon from the
22 proper authority, on the presentation of which, legally
23 authenticated, he shall be discharged.

24 2. That the defendant is incompetent to stand trial;
25 and if evidence be shown to support a finding of incompetency to
26 stand trial, no sentence shall be pronounced, and the court shall
27 proceed under Chapter 46B [~~Article 46.02 of this code~~]; and

1 3. When a person who has been convicted escapes after
2 conviction and before sentence and an individual supposed to be the
3 same has been arrested he may before sentence is pronounced, deny
4 that he is the person convicted, and an issue be accordingly tried
5 before a jury, or before the court if a jury is waived, as to his
6 identity.

7 SECTION 4. Section 11(d), Article 42.12, Code of Criminal
8 Procedure, is amended to read as follows:

9 (d) If the judge places a defendant on community supervision
10 and the defendant is determined to have a mental illness or be a
11 person with mental retardation by an examining expert under Article
12 16.22 or Chapter 46B [~~Section 3, Article 46.02, of this code~~] or in
13 a psychological evaluation conducted under Section 9(i) of this
14 article, the judge may require the defendant as a condition of
15 community supervision to submit to outpatient or inpatient mental
16 health or mental retardation treatment if the:

17 (1) defendant's:

18 (A) mental impairment is chronic in nature; or

19 (B) ability to function independently will
20 continue to deteriorate if the defendant does not receive mental
21 health or mental retardation services; and

22 (2) judge determines, in consultation with a local
23 mental health or mental retardation services provider, that
24 appropriate mental health or mental retardation services for the
25 defendant are available through the Texas Department of Mental
26 Health and Mental Retardation under Section 534.053, Health and
27 Safety Code, or through another mental health or mental retardation

1 services provider.

2 SECTION 5. Section 3(g), Article 46.03, Code of Criminal
3 Procedure, is amended to read as follows:

4 (g) The experts appointed under this section to examine the
5 defendant with regard to the insanity defense also may be appointed
6 by the court to examine the defendant with regard to his competency
7 to stand trial pursuant to Chapter 46B [~~Section 3 of Article 46.02~~
8 ~~of this code~~], provided that separate written reports concerning
9 the defendant's competency to stand trial and the insanity defense
10 shall be filed with the court.

11 SECTION 6. Section 55.19(b), Family Code, is amended to
12 read as follows:

13 (b) The juvenile court shall send notification of the
14 transfer of a child under Subsection (a) to the inpatient mental
15 health facility. The criminal court shall, within 90 days of the
16 transfer, institute proceedings under Chapter 46B [~~Article 46.02~~],
17 Code of Criminal Procedure. If those or any subsequent proceedings
18 result in a determination that the defendant is competent to stand
19 trial, the defendant may not receive a punishment for the
20 delinquent conduct described by Subsection (a)(2) that results in
21 confinement for a period longer than the maximum period of
22 confinement the defendant could have received if the defendant had
23 been adjudicated for the delinquent conduct while still a child and
24 within the jurisdiction of the juvenile court.

25 SECTION 7. Section 55.44(b), Family Code, is amended to
26 read as follows:

27 (b) The juvenile court shall send notification of the

transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Chapter 46B [~~Article 46.02~~], Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

SECTION 8. Section 571.011(b), Health and Safety Code, is amended to read as follows:

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B [~~Section 5, Article 46.02~~], Code of Criminal Procedure.

SECTION 9. Section 574.001(e), Health and Safety Code, is amended to read as follows:

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F, Chapter 46B [~~Section 7, Article 46.02~~], Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

SECTION 10. Section 574.002(b), Health and Safety Code, is

amended to read as follows:

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B [~~Section 5, Article 46.02~~], Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

SECTION 11. Sections 574.035(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is mentally ill;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing,

1 health, or safety; and

2 (iii) unable to make a rational and informed
3 decision as to whether or not to submit to treatment;

4 (3) the proposed patient's condition is expected to
5 continue for more than 90 days; and

6 (4) the proposed patient has received court-ordered
7 inpatient mental health services under this subtitle or under
8 Chapter 46B [~~Article 46.02~~], Code of Criminal Procedure, for at
9 least 60 consecutive days during the preceding 12 months.

10 (b) The judge may order a proposed patient to receive
11 court-ordered extended outpatient mental health services only if:

12 (1) the judge finds that appropriate mental health
13 services are available to the patient; and

14 (2) the jury, or the judge if the right to a jury is
15 waived, finds from clear and convincing evidence that:

16 (A) the proposed patient is mentally ill;

17 (B) the nature of the mental illness is severe
18 and persistent;

19 (C) as a result of the mental illness, the
20 proposed patient will, if not treated, continue to:

21 (i) suffer severe and abnormal mental,
22 emotional, or physical distress; and

23 (ii) experience deterioration of the
24 ability to function independently to the extent that the proposed
25 patient will be unable to live safely in the community without
26 court-ordered outpatient mental health services;

27 (D) the proposed patient has an inability to

1 participate in outpatient treatment services effectively and
2 voluntarily, demonstrated by:

3 (i) any of the proposed patient's actions
4 occurring within the two-year period which immediately precedes the
5 hearing; or

6 (ii) specific characteristics of the
7 proposed patient's clinical condition that make impossible a
8 rational and informed decision whether to submit to voluntary
9 outpatient treatment;

10 (E) the proposed patient's condition is expected
11 to continue for more than 90 days; and

12 (F) the proposed patient has received
13 court-ordered inpatient mental health services under this subtitle
14 or under Subchapter D or E, Chapter 46B [~~Section 5, Article 46.02~~],
15 Code of Criminal Procedure, for at least 60 consecutive days during
16 the preceding 12 months.

17 SECTION 12. Section 575.003, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 575.003. ADMISSION OF ALCOHOLICS AND PERSONS CHARGED
20 WITH CRIMINAL OFFENSE. This subtitle does not affect the admission
21 to a state mental health facility of:

22 (1) an alcoholic admitted under Chapter 462; or

23 (2) a person charged with a criminal offense admitted
24 under Subchapter D or E, Chapter 46B [~~Section 5, Article 46.02~~],
25 Code of Criminal Procedure.

26 SECTION 13. Section 576.025(a), Health and Safety Code, is
27 amended to read as follows:

1 (a) A person may not administer a psychoactive medication to
2 a patient receiving voluntary or involuntary mental health services
3 who refuses the administration unless:

4 (1) the patient is having a medication-related
5 emergency;

6 (2) the patient is younger than 16 years of age and the
7 patient's parent, managing conservator, or guardian consents to the
8 administration on behalf of the patient;

9 (3) the refusing patient's representative authorized
10 by law to consent on behalf of the patient has consented to the
11 administration;

12 (4) the administration of the medication regardless of
13 the patient's refusal is authorized by an order issued under
14 Section 574.106; or

15 (5) the patient is receiving court-ordered mental
16 health services authorized by an order issued under:

17 (A) Chapter 46B [~~Article 46.02~~] or Article 46.03,
18 Code of Criminal Procedure; or

19 (B) Chapter 55, Family Code.

20 SECTION 14. Article 46.02, Code of Criminal Procedure, is
21 repealed.

22 SECTION 15. The change in law made by this Act applies only
23 to a defendant against whom proceedings have not been initiated
24 under Article 46.02, Code of Criminal Procedure, before the
25 effective date of this Act. The determination of incompetency for a
26 defendant against whom proceedings have been initiated under
27 Article 46.02 before the effective date of this Act is covered by

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1 the law in effect when the proceedings were initiated, and the
2 former law is continued in effect for this purpose.

3 SECTION 16. This Act takes effect January 1, 2004.