

By: Duncan S.B. No. 1057
(In the Senate - Filed March 10, 2003; March 17, 2003, read first time and referred to Committee on Jurisprudence; March 24, 2003, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 1; March 24, 2003, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1057 By: Duncan

A BILL TO BE ENTITLED
AN ACT

relating to the determination of incompetency in criminal and juvenile justice cases.

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

SECTION 1. Title 1, 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.

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

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

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

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

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

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

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

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

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

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

Art. 46B.005. DETERMINING INCOMPETENCY TO STAND TRIAL.

(a) If after an informal inquiry the court determines that evidence exists to support a finding of incompetency, the court shall order an examination under Subchapter B to determine whether the defendant is incompetent to stand trial.

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

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

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

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

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

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

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

(a) A defendant is entitled to representation by counsel before any court-ordered competency evaluation and during any proceeding at which it is suggested that the defendant may be incompetent to stand trial.

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

Art. 46B.007. ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER EVIDENCE. 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 may not be admitted in evidence against the defendant in any criminal proceeding, other than at:

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

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

Art. 46B.008. RULES OF EVIDENCE. 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. A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence the time the person is confined in a mental health facility or residential care facility pending trial.

Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. 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, the court on the motion of the attorney representing the state shall dismiss the charge.

Art. 46B.011. APPEALS. 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. 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) On a suggestion that the defendant may be incompetent to stand trial, the court may appoint one or more disinterested experts to:

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

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

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

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

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

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

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

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

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

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

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

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

(B) experience or training consisting of:

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

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

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

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

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

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

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

determined relevant by the expert, the following:

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

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

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

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

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

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

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

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

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

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

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

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

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

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

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

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

(1) the exact nature of the deficits resulting from the defendant's mental illness or mental retardation, if any, that impact the factors listed in Article 46B.024, contributing to the defendant's incompetency; and

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

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

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

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

Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF FACILITIES. (a) For any appointment under this chapter, the

county in which the indictment was returned or information was filed shall pay for services described by Articles 46B.021(a)(1) and (2). If those services are provided by an expert who is an employee of the local mental health authority or local mental retardation authority, the county shall pay the authority for the services.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are determined by the department 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) If a court holds a hearing to determine whether the defendant is incompetent to stand trial, on the request of either party or the motion of the court, a jury shall make the determination.

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

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

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

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

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

Art. 46B.054. UNCONTESTED INCOMPETENCY. 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, the court shall proceed in the same manner as if a jury had been impaneled and had found the defendant incompetent to stand trial.

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

SUBCHAPTER D. PROCEDURES ON DETERMINATION OF INCOMPETENCY

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

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

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

Art. 46B.072. RELEASE ON BAIL. 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, the court may 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.

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

(b) The court shall 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) 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, the court shall enter an order committing the defendant to the maximum security unit of any facility designated by the department, to an agency of the United States operating a mental hospital, or to a Department of Veterans

Affairs hospital.

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

Art. 46B.074. COMPETENT TESTIMONY REQUIRED. A defendant may 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. A commitment order issued under this subchapter must 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) If the defendant is found incompetent to stand trial, the court shall 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. The court shall also provide to the facility copies of the following made available to the court during the incompetency hearing:

- (1) reports of each expert;
- (2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;
- (3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;
- (4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;
- (5) the defendant's criminal history record; and
- (6) the addresses of the attorney representing the state and the attorney representing the defendant.

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

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The facility to which the defendant is committed shall:

- (1) develop an individual program of treatment;
- (2) assess and evaluate whether the defendant will obtain competency in the foreseeable future; and
- (3) report to the court and to the local mental health authority or to the local mental retardation authority on the defendant's progress toward achieving competency.

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

- (1) not later than the 14th day after the date on which the defendant's treatment begins; and
- (2) until the defendant is no longer released to the treatment program, at least once during each 30-day period following the date of the report required by Subdivision (1).

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the charges pending against a defendant are dismissed, the committing court shall send a copy of the order of dismissal to the sheriff of the county in which the committing court is located and to the head of the facility in which the defendant is held. On receipt of the copy of the order, the facility shall 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. A defendant committed under this subchapter shall be returned to the committing court as soon as practicable after the earliest of the following dates:

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

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

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

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

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

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

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

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

Art. 46B.081. EXTENSION OF COMMITMENT ORDER. (a) On the request of the head of a facility made under Article 46B.080(c), the court may enter an order extending the term of the commitment order for a period of 60 days.

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

(1) the defendant has not attained competency; and

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

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

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

(b) If 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), the head of that facility shall cause the defendant to be promptly transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. The county in which the committing court is located shall reimburse the department for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

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

(b) 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, the head of the facility shall have submitted to the court a certificate of medical examination for mental illness. The head of the facility shall 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) If the head of the facility is of the opinion that the defendant is a person with mental retardation, the head of the facility shall 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) On the return of a defendant to the committing court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based solely on the report filed under Article 46B.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) If a party objects under Subsection (a), the issue shall be set for a hearing. The hearing is before the court, except that on motion by the defendant, the defense counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury.

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

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

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

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

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

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

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

(2) for whom a continuity of care plan has been prepared by a facility that requires the defendant to take 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;

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

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

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

(e) A statement made by a defendant to a physician during an

examination under Subsection (c) may not be admitted against the defendant in any criminal proceeding, other than at:

- (1) a hearing on the defendant's incompetency; or
- (2) any proceeding at which the defendant first introduces into evidence the contents of the statement.

SUBCHAPTER E. EXTENDED COMMITMENT: CHARGES PENDING

Art. 46B.101. APPLICABILITY. 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) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be committed to a mental health facility.

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

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

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

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

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

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

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

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

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

(d) In the proceedings conducted under this subchapter:

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

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

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

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

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

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

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

(1) a unit of an inpatient mental health facility

other than a maximum security unit;

(2) a residential care facility; or

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

(b) The commissioner of mental health and mental retardation shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or 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) The review board may not make a determination as to the defendant's need for treatment.

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

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

Art. 46B.106. EXTENDED COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE. (a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to 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) A facility may not refuse 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) The release from the department 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) 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, the head of the facility shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility intends to release the defendant.

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

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

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

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

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

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

Art. 46B.109. REQUEST BY HEAD OF FACILITY. (a) The head of

a facility to which a defendant has been committed as a result of a finding of incompetency to stand trial may request the court to determine that the defendant has been restored to competency.

(b) The head of the facility shall 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) The defendant or the attorney representing the state may move that the court determine that the defendant has been restored to competency.

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

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

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

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

(2) the court concurs.

Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT AGREEMENT. (a) The court shall 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) The court may hold a hearing on a motion to determine whether the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, and shall hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency.

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

(d) 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) 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. An order setting a hearing to determine whether the defendant has been restored to competency shall 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) If the court has made a determination that a defendant has not been restored to competency under this subchapter, a subsequent request or motion for a redetermination of competency filed before the 91st day after the date of that determination must:

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

(2) provide support for the belief.

(b) The court may hold a hearing on a request or motion under

12-1 this article only if the court first finds reason to believe the
 12-2 defendant's condition has materially changed since the prior
 12-3 determination that the defendant was not restored to competency.

12-4 Art. 46B.116. DISPOSITION ON DETERMINATION OF COMPETENCY.
 12-5 If the defendant is found competent to stand trial, the proceedings
 12-6 on the criminal charge may proceed.

12-7 Art. 46B.117. DISPOSITION ON DETERMINATION OF
 12-8 INCOMPETENCY. (a) If a defendant under order of commitment to a
 12-9 facility is found to not have been restored to competency to stand
 12-10 trial, the court shall remand the defendant pursuant to that order
 12-11 of commitment, and order the defendant placed in the custody of the
 12-12 sheriff or the sheriff's designee for transportation back to the
 12-13 facility.

12-14 (b) If a defendant not under order of commitment is found to
 12-15 not have been restored to competency to stand trial, the court shall
 12-16 order the defendant's custody status to remain unchanged.

12-17 SUBCHAPTER F. EXTENDED COMMITMENT: CHARGES DISMISSED

12-18 Art. 46B.151. COURT DETERMINATION RELATED TO COMMITMENT.
 12-19 (a) If a court is required by Article 46B.084(f) to proceed under
 12-20 this subchapter, the court shall determine whether there is
 12-21 evidence to support a finding that the defendant is either a person
 12-22 with mental illness or a person with mental retardation.

12-23 (b) If it appears to the court that there is evidence to
 12-24 support a finding of mental illness or mental retardation, the
 12-25 court shall enter an order transferring the defendant to the
 12-26 appropriate court for civil commitment proceedings and stating that
 12-27 all charges pending against the defendant in that court have been
 12-28 dismissed. The court may order the defendant:

12-29 (1) detained in jail or any other suitable place
 12-30 pending the prompt initiation and prosecution by the attorney for
 12-31 the state or other person designated by the court of appropriate
 12-32 civil proceedings to determine whether the defendant will be
 12-33 committed to a mental health facility or residential care facility;
 12-34 or

12-35 (2) placed in the care of a responsible person on
 12-36 satisfactory security being given for the defendant's proper care
 12-37 and protection.

12-38 (c) Notwithstanding Subsection (b), a defendant placed in a
 12-39 facility of the department pending civil hearing under this article
 12-40 may be detained in that facility only with the consent of the head
 12-41 of the facility and pursuant to an order of protective custody
 12-42 issued under Subtitle C, Title 7, Health and Safety Code.

12-43 (d) If the court does not detain or place the defendant
 12-44 under Subsection (b), the court shall release the defendant.

12-45 SUBCHAPTER G. PROVISIONS APPLICABLE TO SUBCHAPTERS E AND F

12-46 Art. 46B.171. TRANSCRIPTS; DOCUMENTATION. The court shall
 12-47 order that:

12-48 (1) a transcript of all medical testimony received in
 12-49 both the criminal proceedings and the civil commitment proceedings
 12-50 under Subchapter E or F be prepared as soon as possible by the court
 12-51 reporters; and

12-52 (2) copies of documents listed in Article 46B.076
 12-53 accompany the defendant to the mental health facility or
 12-54 residential care facility.

12-55 SECTION 2. Subsections (b) and (c), Article 16.22, Code of
 12-56 Criminal Procedure, is amended to read as follows:

12-57 (b) A written report of the examination shall be submitted
 12-58 to the magistrate within 30 days of the order of examination, and
 12-59 the magistrate shall furnish copies of the report to the defense
 12-60 counsel and the prosecuting attorney. The report shall include a
 12-61 description of the procedures used in the examination and[7] the
 12-62 examiner's observations and findings pertaining to:

12-63 (1) whether the defendant is a person who has a mental
 12-64 illness or is a person with mental retardation;

12-65 (2) [and] whether there is clinical evidence to
 12-66 support a belief that the defendant may be incompetent [is
 12-67 competent] to stand trial and should undergo a complete competency
 12-68 examination under Subchapter B, Chapter 46B;[7] and

12-69 (3) recommended treatment.

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

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

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

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

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

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

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

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

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

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

(1) defendant's:

(A) mental impairment is chronic in nature; or

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

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

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

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

SECTION 6. Subsection (a), Section 51.20, Family Code, is amended to read as follows:

(a) At any stage of the proceedings under this title, the juvenile court may 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

14-1 be examined by a disinterested [the local mental health or mental
 14-2 retardation authority or another appropriate] expert, including a
 14-3 physician, psychiatrist, or psychologist, qualified by education
 14-4 and clinical training in mental health or mental retardation and
 14-5 experienced in forensic evaluation, to determine whether the child
 14-6 has a mental illness as defined by Section 571.003, Health and
 14-7 Safety Code, or is a person with mental retardation as defined by
 14-8 Section 591.003, Health and Safety Code. If the examination is to
 14-9 include a determination of the child's fitness to proceed, an
 14-10 expert may be appointed to conduct the examination only if the
 14-11 expert is qualified under Subchapter B, Chapter 46B, Code of
 14-12 Criminal Procedure, to examine a defendant in a criminal case, and
 14-13 the examination and the report resulting from an examination under
 14-14 this subsection must comply with the requirements under Subchapter
 14-15 B, Chapter 46B, Code of Criminal Procedure, for the examination and
 14-16 resulting report of a defendant in a criminal case.

14-17 SECTION 7. Subsection (b), Section 55.19, Family Code, is
 14-18 amended to read as follows:

14-19 (b) The juvenile court shall send notification of the
 14-20 transfer of a child under Subsection (a) to the inpatient mental
 14-21 health facility. The criminal court shall, within 90 days of the
 14-22 transfer, institute proceedings under Chapter 46B [Article 46.02],
 14-23 Code of Criminal Procedure. If those or any subsequent proceedings
 14-24 result in a determination that the defendant is competent to stand
 14-25 trial, the defendant may not receive a punishment for the
 14-26 delinquent conduct described by Subsection (a)(2) that results in
 14-27 confinement for a period longer than the maximum period of
 14-28 confinement the defendant could have received if the defendant had
 14-29 been adjudicated for the delinquent conduct while still a child and
 14-30 within the jurisdiction of the juvenile court.

14-31 SECTION 8. Subsection (b), Section 55.44, Family Code, is
 14-32 amended to read as follows:

14-33 (b) The juvenile court shall send notification of the
 14-34 transfer of a child under Subsection (a) to the facility. The
 14-35 criminal court shall, before the 91st day after the date of the
 14-36 transfer, institute proceedings under Chapter 46B [Article 46.02],
 14-37 Code of Criminal Procedure. If those or any subsequent proceedings
 14-38 result in a determination that the defendant is competent to stand
 14-39 trial, the defendant may not receive a punishment for the
 14-40 delinquent conduct described by Subsection (a)(2) that results in
 14-41 confinement for a period longer than the maximum period of
 14-42 confinement the defendant could have received if the defendant had
 14-43 been adjudicated for the delinquent conduct while still a child and
 14-44 within the jurisdiction of the juvenile court.

14-45 SECTION 9. Subsection (b), Section 571.011, Health and
 14-46 Safety Code, is amended to read as follows:

14-47 (b) The provisions in this subtitle relating to the
 14-48 discharge, furlough, or transfer of a patient do not apply to a
 14-49 person charged with a criminal offense who is admitted to a mental
 14-50 health facility under Subchapter D or E, Chapter 46B [Section 5,
 14-51 Article 46.02], Code of Criminal Procedure.

14-52 SECTION 10. Subsection (e), Section 574.001, Health and
 14-53 Safety Code, is amended to read as follows:

14-54 (e) An order transferring a criminal defendant against whom
 14-55 all charges have been dismissed to the appropriate court for a
 14-56 hearing on court-ordered mental health services in accordance with
 14-57 Subchapter F, Chapter 46B [Section 7, Article 46.02], Code of
 14-58 Criminal Procedure, serves as an application under this section.
 14-59 The order must state that all charges have been dismissed.

14-60 SECTION 11. Subsection (b), Section 574.002, Health and
 14-61 Safety Code, is amended to read as follows:

14-62 (b) The application must state whether the application is
 14-63 for temporary or extended mental health services. An application
 14-64 for extended mental health services must state that the person has
 14-65 received court-ordered inpatient mental health services under this
 14-66 subtitle or under Subchapter D or E, Chapter 46B [Section 5, Article
 14-67 46.02], Code of Criminal Procedure, for at least 60 consecutive
 14-68 days during the preceding 12 months.

14-69 SECTION 12. Subsections (a) and (b), Section 574.035,

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, health, or safety; and

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

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

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

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

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

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

(A) the proposed patient is mentally ill;

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

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

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

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

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

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

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

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

(F) the proposed patient 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 13. Section 575.003, Health and Safety Code, is amended to read as follows:

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

(1) an alcoholic admitted under Chapter 462; or

(2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B [~~Section 5, Article 46.02~~],

Code of Criminal Procedure.

SECTION 14. Subsection (a), Section 576.025, Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

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

(B) Chapter 55, Family Code.

SECTION 15. Article 46.02, Code of Criminal Procedure, is repealed.

SECTION 16. The change in law made by this Act applies only to a defendant against whom proceedings have not been initiated under Article 46.02, Code of Criminal Procedure, before the effective date of this Act. The determination of incompetency for a defendant against whom proceedings have been initiated under Article 46.02, Code of Criminal Procedure, before the effective date of this Act is covered by the law in effect when the proceedings were initiated, and the former law is continued in effect for this purpose.

SECTION 17. This Act takes effect January 1, 2004.

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