

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 679
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Jurisprudence
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 78th Legislature, Regular Session, passed a comprehensive rewrite of the criminal competency statute, Article 46B, Code of Criminal Procedure. This legislation is a clean up and modification of that Act.

C.S.S.B. 679 modifies the statute to allow for a hearing to determine the competency of a defendant to stand trial to be held via teleconference; allows a defendant to remain at the state hospital pending the actual setting of a trial or hearing date (instead of the detainee remaining in the county jail); requires the defendant to be transported within 72 hours of the court date; and allows the state to dismiss criminal charges against a defendant while the competency issue is being resolved. Transition language provides that all defendants in the system will be examined under the new guidelines.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 46B.001, Code of Criminal Procedure, by amending Subdivision (l) to redefine "department" and adding Subdivision (9) to define "electronic broadcast system."

SECTION 2. Amends Article 46B.004, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Makes a conforming change.

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

SECTION 3. Amends Articles 46B.005, 46B.007-46B.009, and 46B.011, Code of Criminal Procedure, as follows:

Art. 46B.005. DETERMINING INCOMPETENCY TO STAND TRIAL. (a) No changes to this subsection.

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

(c) Provides that a trial, rather than a court, hearing is not required if neither party's counsel requests a trial or opposes a finding of incompetency. Makes a conforming change.

(d) Authorizes the court, if the issue of the defendant's incompetency to stand trial is raised after the trial on merits begins, to determine the issue at any time before the sentence is pronounced, rather than before sentencing.

Art. 46B.007. ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER EVIDENCE. Makes conforming changes.

Art. 46B.008. RULES OF EVIDENCE. Provides that the Texas Rules of Evidence apply to a trial under Subchapter C or other proceeding under this chapter whether the proceeding is before a jury or before the court. Makes conforming changes.

Art. 46B.009. TIME CREDITS. (a) Creates this subsection from existing text. Requires a court sentencing a person convicted of a criminal to credit to the term of the person's sentence the time the person is confined in a mental health facility, residential care facility, or jail pending trial under Subchapter C. Makes a nonsubstantive change.

(b) Prohibits a defendant from being committed to a mental hospital or other in-patient or residential facility under this chapter for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried. Authorizes the defendant, on expiration of that maximum term, to be further confined in a mental hospital or other in-patient or residential facility only pursuant to civil commitment proceedings.

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

SECTION 4. Amends the heading to Subchapter C, Chapter 46B, Code of Criminal Procedure, to read as follows:

SUBCHAPTER C. INCOMPETENCY TRIAL

SECTION 5. Amends the heading to 46B.051, Code of Criminal Procedure, to read as follows:

Art. 46B.051. TRIAL BEFORE JUDGE OR JURY.

SECTION 6. Amends 46B.053 and 46B.054, Code of Criminal Procedure, as follows:

Art. 46B.053. PROCEDURE AFTER FINDING OF COMPETENCY. Makes a conforming change.

Art. 46B.054. UNCONTESTED INCOMPETENCY. Requires the court, if the court finds that evidence exists to support a finding of incompetency to stand trial and the court and the counsel for each party agree that the defendant is incompetent to stand trial, to proceed in the same manner as if a jury has been impaneled and had found the defendant incompetent to stand trial. Deletes existing text relating to a requirement by Article 46B.005. Makes a nonsubstantive change.

SECTION 7. Amends the heading to Subchapter D, Chapter 46B, Code of Criminal Procedure, to read as follows:

SUBCHAPTER D. PROCEDURES AFTER DETERMINATION OF INCOMPETENCY

SECTION 8. Amends Articles 46B.073(c) and (d), Code of Criminal Procedure, as follows:

(c) Requires the court, if the defendant is charged with an offense listed in Article 17.032(a) (Release on Personal Bond of Certain Mentally Ill Defendants) and the

indictment does not allege, rather than request, an affirmative finding under Section 3g(a)(2), Article 42.12 (Finding That Controlled Substance Used to Commit Offense), to enter an order committing the defendant to the maximum security unit of any facility designated by the Texas Department of Mental Health and Mental Retardation (department), to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(d) Makes a conforming change.

SECTION 9. Amends Articles 46B.074, 46B.079, and 46B.080, Code of Criminal Procedure, as follows:

Art. 46B.074. **COMPETENT TESTIMONY REQUIRED** (a) Creates this subsection from existing text. Authorizes a defendant to be committed to a mental health facility or residential care facility under this subchapter only on competent medical or psychiatric testimony provided by an expert qualified under Article 46B.022 (Experts: Qualifications).

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

Art. 46B.079. **RETURN TO COMMITTING COURT.** (a) Creates this subsection from existing text. Requires a defendant committed under this subchapter to be returned to the committing court as soon as practicable after the date on which the defendant's term of commitment expires.

(b) Requires a defendant committed under this subchapter whose term of commitment has not yet expired to be returned to the committing court as soon as practicable after the 15th day following the date on which the parties receive service on any report filed under Article 46B.080(b) (Notice to Committing Court) regarding the defendant's ability to attain competency, except that, if a party objects to the findings of the report and the issue is set for a hearing under Article 46B.084 (Proceedings on Return of Defendant to Court), the defendant is prohibited from being returned to the committing court earlier than 72 hours before the date the hearing is scheduled. Deletes existing text relating to the timeline of a committed defendant's return to the committing court.

Art. 46B.080. **NOTICE TO COMMITTING COURT.** (a) and (d) Makes no changes to these subsections.

(c) Requires the head of the facility, when the head of the facility gives notice to the court under Subsection (b), to also file a final report with the court stating the reason for the proposed discharge and including a list of the types and dosages of medications with which the defendant was treated for mental illness while in the facility. Requires the court to provide copies of the report to the defense counsel and the attorney representing the state.

(d) Creates subsection from existing text.

SECTION 10. Amends Article 46B.081(a), Code of Criminal Procedure, to authorize the court, on the request of the head of a facility made under Article 46B.080(d), rather than 46B.080(c), to enter an order extending the term of the commitment order for a period of 60 days.

SECTION 11. Amends Article 46B.083, Code of Criminal Procedure, as follows:

Art. 46B.083. **New heading: SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY HEAD.** (a) Deletes existing text relating to the head of a facility filling a report once the defendant is returned to the committing court and list what type medications the defendant was treated for mental illness. Redesignates text of existing Subsection (b) as Subsection (a).

(b) Redesignates from text of existing Subsection (c).

SECTION 12. Amends Article 46B.084, Code of Criminal Procedure, by amending Subsections (a) and (c) and adding Subsection (b-1), as follows:

(a) Authorizes the court to make the determination based solely on the report filed under Article 46B.080(c), rather than 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-1) Authorizes the hearing, if the parties agree and if the hearing is before the court, to be conducted by means of an electronic broadcast system. Provides that the defendant is not required to be returned to the committing court with respect to any hearing that is conducted under this article as described by this subsection.

(c) Requires the hearing to be held within 30 days following the date of objection unless continued for good cause for a period not to exceed 30 days.

SECTION 13. Amends Article 46B.085. Code of Criminal Procedure, as follows

Art. 46B.085. New heading: SUBSEQUENT COMMITMENTS AND EXTENSIONS PROHIBITED. (a) Authorizes the court to order only one commitment and one extension under this subchapter in connection with the same offense. Deletes existing text relating to a prohibition of recommitting a defendant under this subchapter.

(b) Requires any subsequent court orders for treatment, after a commitment and an extension are ordered as described by Subsection (a), to be issued under Subchapter E or F.

SECTION 14. Amends the heading to Subchapter E, Chapter 46B, Code of Criminal Procedure, to read as follows:

SUBCHAPTER E. CIVIL COMMITMENT: CHARGES PENDING

SECTION 15. Amends the heading to Article 46B.102, Code of Criminal Procedure, to read as follows:

Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS

SECTION 16. Amends the heading to Article 46B.103, Code of Criminal Procedure, to read as follows:

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

SECTION 17. Amends Article 46B.104, Code of Criminal Procedure, as follows:

Art. 46B.104. New heading: CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. Requires a defendant committed to facility as a result of proceedings initiated under this chapter to be committed to the maximum security unit of any facility designated by the department if charged with certain charges listed in or the indictment alleges an affirmative finding under certain articles.

SECTION 18. Amends the heading to Article 46B.105, Code of Criminal Procedure, to read as follows:

Art. 46B.105. TRANSFER FOLLOWING CIVIL COMMITMENT PLACEMENT.

SECTION 19. Amends the heading to Article 46B.106, Code of Criminal Procedure, to read as follows:

Art.46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE.

SECTION 20. Amends the heading to Article 46B.107, Code of Criminal Procedure, to read as follows:

Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT.

SECTION 21. Amends Article 46B.107(d) Code of Criminal Procedure, to authorize the court to conduct the hearing at the facility or by means of an electronic broadcast system.

SECTION 22. Amends Article 46B.108(b) Code of Criminal Procedure, to add the defendant's attorney to the list of persons who may request an inquiry into restoration on competency under this subchapter.

SECTION 23. Amends Article 46B.110, Code of Criminal Procedure, as follows:

Art. 46B.110. New heading: MOTION BY DEFENDANT, DEFENDANT'S ATTORNEY, OR ATTORNEY REPRESENTING STATE. Makes a conforming change.

SECTION 24. Amends Article 46B.113(c), Code of Criminal Procedure Code, to require a jury, if a court holds a hearing under this article, on the request of either party or the motion of the court, to make the competency determination. Authorizes the court, if the competency determination will be made by the court, rather than a jury, to conduct the hearing at the facility or by means of an electronic broadcast system.

SECTION 25. Amends Article 46B.114, Code of Criminal Procedure, as follows:

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

SECTION 26. Amends Article 46B.115, Code of Criminal Procedure, by adding Subsection (c) to authorize the court, if the competency determination will be made by the court, to conduct the hearing at the facility to which the defendant has been committed under this chapter or to conduct the hearing by means of an electronic broadcast system.

SECTION 27. Amends Article 46B.117(a), Code of Criminal Procedure, to require the court, if a defendant under order of commitment to a facility is found to not have been restored to competency to stand trial, to remand the defendant pursuant to that order of commitment, and if applicable, order the defendant placed in the custody of the sheriff or the sheriff's designee for transportation back to the facility.

SECTION 28. Amends the heading to Subchapter F, Chapter 46B, Code of Criminal Procedure, to read as follows:

SUBCHAPTER F. CIVIL COMMITMENT: CHARGES DISMISSED

SECTION 29. Amends the heading to Article 46B.151, Code of Criminal Procedure, to read as follows:

Art. 46B.151. COURT DETERMINATION RELATED TO CIVIL COMMITMENT.

SECTION 30. Amends Article 46B.151(a), Code of Criminal Procedure, to make a conforming change.

SECTION 31. Amends Article 46B.171, Code of Criminal Procedure, as follows:

Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS. (a) Creates subsection from existing text.

(b) Requires a mental health facility or a residential care facility, on the request of the defendant or the defendant's attorney, to provide to the defendant or the attorney copies of the facility's records regarding the defendant.

SECTION 32. Amends Section 614.0032, Health and Safety Code, as follows:

Sec. 614.0032. New heading: SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING COMPETENCY OR FITNESS TO PROCEED. (a) Makes no changes to this subsection.

(b) Requires the Texas Correctional Office on Offenders with Medical or Mental Impairments, with the special assistance of committee members appointed under Section 614.002(b)(1), to make certain reviews and examinations and report periodically to the legislature and court criminal appeals their findings.

(c) Requires a district or juvenile court to submit to the office on a monthly basis all reports based on examinations described by Subsection (b).

SECTION 33. (a), (b), and (c) Make application of this Act prospective.

SECTION 34. Provides that a determination of incompetency is covered by Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure, notwithstanding Section 16, Chapter 35, Acts of the 78th Legislature, for a defendant against whom proceedings were initiated before January 1, 2004, under former Article 46.02 (Insanity as a Defense), Code of Criminal Procedure, and for whom proceedings have not become final before the effective date of this Act.

SECTION 35. Effective date: September 1, 2005.