

BILL ANALYSIS

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S.B. 837
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Jurisprudence
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Article 46.03, Code of Criminal Procedure, sets out the procedures for the examination, trial, and disposition of individuals accused of a crime who offer the defense of not guilty by reason of insanity.

The Senate Jurisprudence Committee, in its Interim Report to the 79th Legislature, recommended enacting legislation to rewrite Article 46.03, Code of Criminal Procedure, to make the language more concise and easier for attorneys, judges, and mental health professionals to follow. The recommendations included making the provisions concerning release standards and post-release monitoring more explicit as well as conforming the standards for experts used in an insanity case to those standards for experts used to determine the competency of a defendant to stand trial.

As proposed, S.B. 837 rewrites the insanity defense statute to streamline the process and improve the post-acquittal procedures for persons found not guilty by reason of insanity by including specific release standards and provisions regarding post-release monitoring.

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. Repealer: Article 46.03 (Insanity Defense), Code of Criminal Procedure.

SECTION 2. Amends the Code of Criminal Procedure, by adding Chapter 46C, as follows:

CHAPTER 46C. INSANITY DEFENSE

SUBCHAPTER A. GENERAL PROVISIONS

Art. 46C.001. DEFINITIONS. Defines "commission," "commissioner," "mental illness," "mental retardation," and "residential health care facility."

Art. 46C.002. THE INSANITY DEFENSE. (a) Authorizes the insanity defense to be submitted to the jury only if supported by competent evidence.

(b) Requires the trier of fact, if the insanity defense is submitted, to determine and include in the verdict or judgment or both whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

(c) Sets forth the circumstances under which the trier of fact is required to return a verdict of not guilty by reason of insanity.

(d) Provides that a defendant who is found not guilty by reason of insanity stands acquitted of the offense charged and may not be considered a person charged with an offense.

(e) Prohibits the court, the attorney for the state, or the attorney for the defendant from informing a juror or prospective juror of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

Art. 46C.003. RAISING THE INSANITY DEFENSE. (a) Requires a defendant planning to offer evidence of the insanity defense to file with the court and the prosecuting attorney a notice of the defendant's intention to offer that evidence.

(b) Requires the notice to be filed at least 10 days before the date the case is set for trial and creates certain exceptions.

(c) Provides that, unless notice is timely filed, evidence on the insanity defense is not admissible and creates an exception.

[Reserves Articles 46C.005-46C.050 for expansion.]

SUBCHAPTER B. EXAMINATION OF DEFENDANT

Art. 46C.051. APPOINTMENT OF EXPERTS. (a) Authorizes the court, if notice of intention to raise the insanity defense is filed, on its own motion or motion by certain other participants, to appoint one or more disinterested experts to perform certain functions.

(b) Requires the court to advise an expert appointed under this article of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

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

Art. 46C.052. EXPERTS: QUALIFICATIONS. (a) Authorizes the court to appoint qualified psychiatrists or psychologists as experts. Sets forth the required qualifications for the appointed psychiatrist or psychologist.

(b) Sets forth additional required qualifications for the appointed psychiatrist or psychologist.

(c) Sets forth the circumstances under which the court is authorized to appoint a psychiatrist or psychologist who does not meet the requirements of Subsections (a) and (b).

Art. 46C.053. ORDER COMPELLING DEFENDANT TO SUBMIT TO EXAMINATION. (a) Authorizes the court to order any defendant to submit to examination for the purposes described by this chapter. Authorizes the court to take the defendant into custody for a certain period if the defendant fails or refuses to submit to the examination. Provides that court-ordered custody may include custody at a facility operated by the Health and Human Services Commission (commission).

(b) Requires the head of a commission facility, if the defendant has remained at that facility past a certain timeframe, to transport the defendant to the committing court and place the defendant in the custody of the sheriff. Sets forth the required reimbursement by the county to the facility.

(c) Prohibits the court from ordering the defendant to a facility operated by the commission for examination without the consent of the head of the facility.

Art. 46C.054. REPORTS SUBMITTED BY EXPERTS. (a) Requires a written report of the examination to be submitted to the court within a certain timeframe. Requires the court to provide copies of the report to the defense counsel and the prosecuting attorney.

(b) Sets forth the information the report must include.

(c) Requires the examiner to submit a separate report stating certain observations and findings regarding mental illness and mental retardation.

Art. 46C.055. COMPENSATION OF EXPERTS. (a) Requires the appointed experts to be paid by the county in which the indictment was returned or information was filed.

(b) Requires the county to reimburse reasonable expenses to a facility operated by the commission that accepts a defendant for examination.

Art. 46C.056. COMPETENCY TO STAND TRIAL: CONCURRENT APPOINTMENT. Authorizes an expert appointed to examine the defendant with regard to the insanity defense to be appointed by the court to examine the defendant with regard to the defendant's competency to stand trial if the expert files separate written reports with the court.

[Reserves Articles 46C.057-46C.100 for expansion.]

SUBCHAPTER C. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF INSANITY: DETERMINATION REGARDING VIOLENCE OF CONDUCT

Art. 46C.101. DETERMINATION REGARDING VIOLENCE OF CONDUCT. Requires the court, if a defendant is found not guilty by reason of insanity, to determine whether the conduct committed by the acquitted person involved an act, attempt, or threat of serious bodily injury to another person.

Art. 46C.102. DISPOSITION: NONVIOLENT CONDUCT. (a) Requires the court, if the court determines that the person did not commit an act, attempt, or threat of seriously bodily injury to another person, to determine whether there is evidence to support a finding that the person is a person with a mental illness or with mental retardation.

(b) Sets forth the required and authorized actions of the court to detain or place the defendant upon determining that there is evidence to support a finding of mental illness or mental retardation.

(c) Provides that notwithstanding Subsection (b), a person placed in a commission facility pending civil hearing may be detained only under certain circumstances.

(d) Requires the court to release the person if the court does not detain or place the person under Subsection (b).

Art. 46C.103. DISPOSITION: VIOLENT CONDUCT. (a) Authorizes the court, if a defendant is found not guilty by reason of insanity and the court determines that the acquitted person committed an act, attempt, or threat of serious bodily injury to another person, to transfer the acquitted person to the appropriate court for civil commitment proceedings. Requires the trial court that transfers the person to order the person detained in jail or in other suitable place pending the initiation of appropriate civil proceedings.

(b) Provides that a court that does not transfer a person for civil commitment proceedings retains jurisdiction over the person. Requires the court to proceed as provided by Subchapters D and E.

[Reserves Articles 46C.104-46C.150 for expansion.]

SUBCHAPTER D. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF INSANITY: COMMITMENT BY TRIAL COURT

Art. 46C.151. COMMITMENT TO MAXIMUM SECURITY UNIT. (a) Requires a trial court that retains jurisdiction over a person as permitted by Article 46C.103 to order the

person to be committed to the maximum security unit of any facility designated by the commission until certain events occur.

Art. 46C.152. TRANSFER TO NONSECURITY UNIT. (a) Requires a person to be transferred to a nonsecurity unit of a facility designated by the commission within a certain timeframe, unless the person is determined to be manifestly dangerous by a review board within the commission.

(b) Requires the health and human services commissioner (commissioner) to appoint a review board of five members, including certain persons, to determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

(c) Requires the matter to be referred to the commissioner if the superintendent of the facility disagrees with the determination. Requires the commissioner to decide whether the person is manifestly dangerous.

Art. 46C.153. EXAMINATION; REPORT. Requires the court to order that an examination of the person's present mental condition be conducted and that a report be filed with the court.

Art. 46C.154. HEARING. (a) Requires a hearing to take place within a certain timeframe of acquittal to determine if the person is presently a person with a mental illness or with mental retardation and meets the criteria for involuntary commitment.

(b) Sets forth the manner in which the trial court is required to conduct the hearing.

(c) Requires the court to order the person to be committed to a mental hospital or other appropriate facility, if the court finds that the acquitted person meets the criteria for involuntary commitment, for a certain period. Authorizes the court to order the acquitted person to participate in certain out-patient care or treatment.

(d) Requires the court to order the person's release if the court finds that the person does not meet the criteria for involuntary commitment.

Art. 46C.155. TRANSCRIPT; DOCUMENTATION. Requires the court to issue an order that a transcript of all medical testimony be prepared as soon as possible and that the transcript with a statement of the facts accompany the person to the mental hospital or other appropriate facility.

Art. 46C.156. OUT-PATIENT SUPERVISION. Authorizes the court to order the acquitted person to participate in certain out-patient care or treatment if certain conditions apply.

[Reserves Articles 46C.157-46C.200 for expansion.]

SUBCHAPTER E. REVIEW OF COMMITMENT OR TERMS OF COMMITMENT

Art. 46C.201. JUDICIAL RELEASE. Provides that a person acquitted by reason of insanity and committed to a mental hospital or other appropriate facility may be released only by the order of the committing court.

Art. 46C.202. FACILITY RECOMMENDATION FOR RELEASE, CONTINUED IN-PATIENT SUPERVISION, OR OUT-PATIENT SUPERVISION. (a) Requires the superintendent of the facility to file a certificate with the clerk of the committing court if the superintendent determines prior to the expiration of the commitment order that the person no longer meets the criteria for involuntary commitment, or that the person's care can be provided on an out-patient basis.

(b) Requires the superintendent to file a certificate with the committing court within 14 days of the expiration of the commitment order if the superintendent intends to recommend release, out-patient care or continued in-patient care on the expiration of the commitment order.

(c) Requires the clerk to notify the district or county attorney on receipt of the certificate.

Art. 46C.203. JUDICIAL EVALUATION OF COMMITMENT AND POTENTIAL OUT-PATIENT SUPERVISION. (a) Requires the court, upon receipt of a certificate by the superintendent or on expiration of the commitment order to release the person or hold a hearing to determine whether the person continues to meet the criteria for involuntary commitment and an order should be issued requiring the person to participate in a regimen of out-patient care or treatment.

(b) Sets forth the manner in which the hearing must be conducted.

(c) Requires the court to order the person to be returned to a mental hospital or other appropriate facility if the court finds that the person continues to meet the criteria for involuntary commitment and that out-patient supervision is not appropriate.

(d) Provides that the commitment continues until the expiration of the original order, if one is still in effect, or the court shall issue a new commitment order if the court finds that the continued in-patient or residential care is required.

(e) Sets forth the duration of commitment orders issued subsequent to an initial commitment order.

Art. 46C.204. MULTIPLE REQUESTS FOR RELEASE OR OUT-PATIENT SUPERVISION. Sets forth when a court is required to act on a subsequent request if a hearing on a request for release or out-patient supervision has been held before the expiration of a commitment order.

Art. 46C.205. JUDICIAL REVIEW OF EXISTING OUT-PATIENT SUPERVISION; MODIFICATION OR REVOCATION. (a) Authorizes the court to modify or revoke an existing out-patient care or treatment regimen.

(b) Sets forth at which times the court is required to review the continuing need for an out-patient order.

Art. 46C.206. FACILITY RECOMMENDATION REGARDING EXISTING OUT-PATIENT SUPERVISION. (a) Requires the superintendent or other individual responsible for administering out-patient care to notify the court if the person fails to comply or the person's condition has deteriorated to an extent that out-patient care is no longer appropriate.

(b) Authorizes the person to be taken into custody and brought before the court on notice under Subsection (a) or probable cause to believe that the person has failed to comply with the treatment regimen.

(c) Requires the court to determine, after a hearing, whether the person should be remanded to a suitable facility for protective custody, pending a hearing regarding involuntary commitment and the out-patient order.

Art. 46C.207. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) Prohibits a person acquitted by reason of insanity from being committed to any facility for a cumulative period that exceeds the maximum term of the offense for which the person was tried.

(b) Authorizes the person to be confined on expiration of that maximum term only pursuant to civil commitment proceedings.

SECTION 3. Amends Section 576.025(a) , Health and Safety Code, to make a conforming change.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2005.