

By: Jackson

H.B. No. 1073

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for determining the incompetency of a defendant to stand trial.

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

SECTION 1. Article 46B.001, Code of Criminal Procedure, is amended by adding Subdivision (9) to read as follows:

(9) "Electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.

SECTION 2. Article 46B.107(d), Code of Criminal Procedure, is amended to read as follows:

(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. The court may conduct the hearing at the facility or by means of an electronic broadcast system.

SECTION 3. Article 46B.113, Code of Criminal Procedure, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) Subject to Subsection (b-1), the [The] court may hold a hearing on a motion filed by a party to determine whether the defendant has been restored to competency, except that the court may not hold a hearing on the motion if two experts at the facility

1 who meet the qualifications for appointment under Article 46B.022
2 file with the court in response to the motion, not later than the
3 20th day after the date the motion is filed, a joint report stating
4 that the defendant will not attain competency in the foreseeable
5 future. Subject to Article 46B.115(b), the court may not hold a
6 hearing on any subsequent motion filed by the same party under this
7 subchapter until the earlier of:

8 (1) the first anniversary of the date of the party's
9 most recent motion; or

10 (2) the date that the experts who filed the joint
11 report or, if those experts are unavailable, any two experts from
12 the facility who meet the qualifications for appointment under
13 Article 46B.022 file a joint report retracting the earlier report.

14 (b-1) The court may hold a hearing on the court's own motion
15 to inquire into restoration of competency ~~[or on the court's~~
16 ~~decision on its own motion to inquire into restoration of~~
17 ~~competency,~~] and shall hold a hearing if a motion of a party and any
18 supporting material establish good reason to believe the defendant
19 may have been restored to competency.

20 (c) If a court holds a hearing under this article, on the
21 request of either party or the motion of the court, a jury shall
22 make the competency determination. If the competency determination
23 will be made by the court rather than a jury, the court may conduct
24 the hearing at the facility or by means of an electronic broadcast
25 system.

26 SECTION 4. Article 46B.114, Code of Criminal Procedure, is
27 amended to read as follows:

1 Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the
2 hearing is not conducted at the facility to which the defendant has
3 been committed under this chapter or conducted by means of an
4 electronic broadcast system as permitted by this subchapter, an
5 ~~[An]~~ order setting a hearing to determine whether the defendant has
6 been restored to competency shall direct that the defendant be
7 placed in the custody of the sheriff of the county in which the
8 committing court is located or the sheriff's designee for
9 transportation to the court.

10 SECTION 5. Article 46B.115, Code of Criminal Procedure, is
11 amended by amending Subsection (b) and adding Subsection (c) to
12 read as follows:

13 (b) Regardless of whether a joint report of the defendant's
14 incompetency has been submitted or retracted as provided by Article
15 46B.113(b), the ~~[The]~~ court may hold a hearing on a request or
16 motion under this article ~~[only]~~ if the court first finds reason to
17 believe the defendant's condition has materially changed since the
18 prior determination that the defendant was not restored to
19 competency.

20 (c) If the competency determination will be made by the
21 court, the court may conduct the hearing at the facility to which
22 the defendant has been committed under this chapter or may conduct
23 the hearing by means of an electronic broadcast system.

24 SECTION 6. Article 46B.117(a), Code of Criminal Procedure,
25 is amended to read as follows:

26 (a) If a defendant under order of commitment to a facility
27 is found to not have been restored to competency to stand trial, the

1 court shall remand the defendant pursuant to that order of
2 commitment, and, if applicable, order the defendant placed in the
3 custody of the sheriff or the sheriff's designee for transportation
4 back to the facility.

5 SECTION 7. The change in law made by this Act applies only
6 to a competency hearing requested by the motion of a party or held
7 on the motion of the court on or after the effective date of this
8 Act. A competency hearing requested by the motion of a party or
9 held on the motion of the court before the effective date of this
10 Act is covered by the law in effect when the motion for a hearing was
11 made by a party or by the court, as applicable, and the former law is
12 continued in effect for that purpose.

13 SECTION 8. This Act takes effect September 1, 2005.