

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 amending Subdivision (1) and adding Subdivision (9) to read as follows:

(1) "Department" means the [~~Texas~~] Department of State Health Services [~~Mental Health and Mental Retardation~~].

(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.004, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

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

(e) At any time during the proceedings under this chapter after the issue of the defendant's incompetency to stand trial is first raised, the court on the motion of the attorney representing the state may dismiss all charges pending against the defendant, regardless of whether there is any evidence to support a finding of

1 the defendant's incompetency under Subsection (d) or whether the  
2 court has made a finding of incompetency under this chapter. If the  
3 court dismisses the charges against the defendant, the court may  
4 not continue the proceedings under this chapter, except that, if  
5 there is evidence to support a finding of the defendant's  
6 incompetency under Subsection (d), the court may proceed under  
7 Subchapter F. If the court does not elect to proceed under  
8 Subchapter F, the court shall discharge the defendant.

9 SECTION 3. Articles 46B.005, 46B.007, 46B.008, 46B.009, and  
10 46B.011, Code of Criminal Procedure, are amended to read as  
11 follows:

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

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

17 (b) Except as provided by Subsection (c), the court shall  
18 hold a trial [~~hearing~~] under Subchapter C before determining  
19 whether the defendant is incompetent to stand trial on the merits.

20 (c) A trial under this chapter [~~The court~~] is not required  
21 [~~to hold a hearing~~] if:

22 (1) neither party's counsel [~~party~~] requests a [~~jury~~]  
23 trial on the issue of incompetency;

24 (2) neither party's counsel [~~party~~] opposes a finding  
25 of incompetency; and

26 (3) the court does not, on its own motion, determine  
27 that a trial [~~hearing~~] is necessary to determine incompetency.

1 (d) If the issue of the defendant's incompetency to stand  
2 trial is raised after the trial on the merits begins, the court may  
3 determine the issue at any time before the sentence is pronounced  
4 [~~sentencing~~]. If the determination is delayed until after the  
5 return of a verdict, the court shall make the determination as soon  
6 as reasonably possible after the return. If a verdict of not guilty  
7 is returned, the court may not determine the issue of incompetency.

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

14 (1) a trial [~~hearing~~] on the defendant's incompetency;  
15 or

16 (2) any proceeding at which the defendant first  
17 introduces into evidence a statement, testimony, or evidence  
18 described by this article [~~section~~].

19 Art. 46B.008. RULES OF EVIDENCE. Notwithstanding Rule 101,  
20 Texas Rules of Evidence, the Texas Rules of Evidence apply to a  
21 trial under Subchapter C or other proceeding [~~hearing~~] under this  
22 chapter whether the proceeding [~~hearing~~] is before a jury or before  
23 the court.

24 Art. 46B.009. TIME CREDITS. (a) A court sentencing a  
25 person convicted of a criminal offense shall credit to the term of  
26 the person's sentence the time the person is confined in a mental  
27 health facility, ~~or~~ residential care facility, or jail pending

1 trial under Subchapter C.

2 (b) A defendant may not be committed to a mental hospital or  
3 other in-patient or residential facility under this chapter for a  
4 cumulative period that exceeds the maximum term provided by law for  
5 the offense for which the defendant was to be tried. On expiration  
6 of that maximum term, the defendant may be confined for an  
7 additional period in a mental hospital or other in-patient or  
8 residential facility only pursuant to civil commitment  
9 proceedings.

10 Art. 46B.011. APPEALS. Neither the state nor the defendant  
11 is entitled to make an interlocutory appeal relating to a  
12 determination or ruling [~~of incompetency~~] under Article 46B.005.

13 SECTION 4. Subchapter A, Chapter 46B, Code of Criminal  
14 Procedure, is amended by adding Article 46B.013 to read as follows:

15 Art. 46B.013. USE OF ELECTRONIC BROADCAST SYSTEM IN CERTAIN  
16 PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted  
17 using an electronic broadcast system as permitted by this chapter  
18 and in accordance with the other provisions of this code if:

19 (1) written consent to the use of an electronic  
20 broadcast system is filed with the court by:

21 (A) the defendant or the attorney representing  
22 the defendant; and

23 (B) the attorney representing the state;

24 (2) the electronic broadcast system provides for a  
25 simultaneous, compressed full motion video, and interactive  
26 communication of image and sound between the judge, the attorney  
27 representing the state, the attorney representing the defendant,

1 and the defendant; and

2 (3) on request of the defendant or the attorney  
3 representing the defendant, the defendant and the attorney  
4 representing the defendant are able to communicate privately  
5 without being recorded or heard by the judge or the attorney  
6 representing the state.

7 (b) On the motion of the defendant, the attorney  
8 representing the defendant, or the attorney representing the state  
9 or on the court's own motion, the court may terminate an appearance  
10 made through an electronic broadcast system at any time during the  
11 appearance and require an appearance by the defendant in open  
12 court.

13 (c) A recording of the communication shall be made and  
14 preserved until any appellate proceedings have been concluded. The  
15 defendant may obtain a copy of the recording on payment of a  
16 reasonable amount to cover the costs of reproduction or, if the  
17 defendant is indigent, the court shall provide a copy to the  
18 defendant without charging a cost for the copy.

19 SECTION 5. The heading to Subchapter C, Chapter 46B, Code of  
20 Criminal Procedure, is amended to read as follows:

21 SUBCHAPTER C. INCOMPETENCY [~~HEARING AND~~] TRIAL

22 SECTION 6. Article 46B.051, Code of Criminal Procedure, is  
23 amended to read as follows:

24 Art. 46B.051. TRIAL [~~HEARING~~] BEFORE JUDGE OR JURY.

25 (a) If a court holds a trial [~~hearing~~] to determine whether the  
26 defendant is incompetent to stand trial, on the request of either  
27 party or the motion of the court, a jury shall make the

1 determination.

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

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

7 SECTION 7. Articles 46B.053 and 46B.054, Code of Criminal  
8 Procedure, are amended to read as follows:

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

15 Art. 46B.054. UNCONTESTED INCOMPETENCY. If the court finds  
16 ~~[as required by Article 46B.005]~~ that ~~[there is]~~ evidence exists to  
17 support a finding of incompetency to stand trial and the court and  
18 the counsel for each party agree that the defendant is incompetent  
19 to stand trial, the court shall proceed in the same manner as if a  
20 jury had been impaneled and had found the defendant incompetent to  
21 stand trial.

22 SECTION 8. The heading to Subchapter D, Chapter 46B, Code of  
23 Criminal Procedure, is amended to read as follows:

24 SUBCHAPTER D. PROCEDURES AFTER ~~[ON]~~ DETERMINATION OF INCOMPETENCY

25 SECTION 9. Subsections (c) and (d), Article 46B.073, Code  
26 of Criminal Procedure, are amended to read as follows:

27 (c) If the defendant is charged with an offense listed in

1 Article 17.032(a) or the indictment alleges [~~requests~~] an  
2 affirmative finding under Section 3g(a)(2), Article 42.12, the  
3 court shall enter an order committing the defendant to the maximum  
4 security unit of any facility designated by the department, to an  
5 agency of the United States operating a mental hospital, or to a  
6 Department of Veterans Affairs hospital.

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

14 SECTION 10. Article 46B.074, Code of Criminal Procedure, is  
15 amended to read as follows:

16 Art. 46B.074. COMPETENT TESTIMONY REQUIRED. (a) A  
17 defendant may be committed to a mental health facility or  
18 residential care facility under this subchapter only on competent  
19 medical or psychiatric testimony provided by an expert qualified  
20 under Article 46B.022.

21 (b) The court may allow an expert to substitute the expert's  
22 report under Article 46B.025 for any testimony by the expert that  
23 may be required under this article.

24 SECTION 11. Subsection (a), Article 46B.076, Code of  
25 Criminal Procedure, is amended to read as follows:

26 (a) If the defendant is found incompetent to stand trial,  
27 the court shall send a copy of the order to the facility to which the

1 defendant is committed not later than the date the defendant is  
2 committed to the facility. The court shall also provide to the  
3 facility copies of the following made available to the court during  
4 the incompetency trial [~~hearing~~]:

5 (1) reports of each expert;

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

8 (3) documents provided by the attorney representing  
9 the state or the attorney representing the defendant that relate to  
10 the defendant's current or past mental condition;

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

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

14 (6) the addresses of the attorney representing the  
15 state and the attorney representing the defendant.

16 SECTION 12. Articles 46B.079 and 46B.080, Code of Criminal  
17 Procedure, are amended to read as follows:

18 Art. 46B.079. RETURN TO COMMITTING COURT. (a) A defendant  
19 committed under this subchapter shall be returned to the committing  
20 court as soon as practicable after the date on which the defendant's  
21 term of commitment expires.

22 (b) A defendant committed under this subchapter whose term  
23 of commitment has not yet expired shall be returned to the  
24 committing court as soon as practicable after the 15th day  
25 following the date on which the parties receive service on any  
26 report filed under Article 46B.080(b) regarding the defendant's  
27 ability to attain competency, except that, if a party objects to the



1 findings of the report and the issue is set for a hearing under  
2 Article 46B.084, the defendant may not be returned to the  
3 committing court earlier than 72 hours before the date the hearing  
4 is scheduled [~~the earliest of the following dates:~~

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

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

9 ~~or~~

10 ~~(3) the date on which the term of commitment~~  
11 ~~expires].~~

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

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

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

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

25 (c) When the head of the facility gives notice to the court  
26 under Subsection (a) or (b), the head of the facility also shall  
27 file a final report with the court stating the reason for the

1 proposed discharge under this chapter and including a list of the  
2 types and dosages of medications with which the defendant was  
3 treated for mental illness while in the facility. The court shall  
4 provide copies of the report to the attorney representing the  
5 defendant and the attorney representing the state.

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

11 SECTION 13. Subsection (a), Article 46B.081, Code of  
12 Criminal Procedure, is amended to read as follows:

13 (a) On the request of the head of a facility made under  
14 Article 46B.080(d) [~~46B.080(c)~~], the court may enter an order  
15 extending the term of the commitment order for a period of 60 days.

16 SECTION 14. Article 46B.083, Code of Criminal Procedure, is  
17 amended to read as follows:

18 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED  
19 [REPORT] BY FACILITY HEAD. (a) [~~When the head of a facility to~~  
20 ~~which the defendant is committed discharges the defendant and the~~  
21 ~~defendant is returned to the committing court, the head of the~~  
22 ~~facility shall file a final report with the court stating the reason~~  
23 ~~for the discharge under Article 46B.080. The court shall furnish~~  
24 ~~copies of the report to the defense counsel and the prosecuting~~  
25 ~~attorney.~~

26 [~~(b)~~] If the head of the facility believes that the  
27 defendant is a person with mental illness and meets the criteria for

1 court-ordered inpatient mental health services under Subtitle C,  
2 Title 7, Health and Safety Code, the head of the facility shall have  
3 submitted to the court a certificate of medical examination for  
4 mental illness. [~~The head of the facility shall include in the~~  
5 ~~final report a list of the types and dosages of medications with~~  
6 ~~which the defendant was treated for mental illness while in the~~  
7 ~~facility.~~]

8 (b) [~~(c)~~] If the head of the facility is of the opinion that  
9 the defendant is a person with mental retardation, the head of the  
10 facility shall have submitted to the court an affidavit stating the  
11 conclusions reached as a result of the examination.

12 SECTION 15. Article 46B.084, Code of Criminal Procedure, is  
13 amended by amending Subsections (a) and (c) and adding Subsection  
14 (b-1) to read as follows:

15 (a) On the return of a defendant to the committing court,  
16 the court shall make a determination with regard to the defendant's  
17 competency to stand trial. The court may make the determination  
18 based solely on the report filed under Article 46B.080(c)  
19 [~~46B.080(b)~~], unless any party objects in writing or in open court  
20 to the findings of the report not later than the 15th day after the  
21 date on which the report is served on the parties.

22 (b-1) If the hearing is before the court, the hearing may be  
23 conducted by means of an electronic broadcast system as provided by  
24 Article 46B.013. Notwithstanding any other provision of this  
25 chapter, the defendant is not required to be returned to the  
26 committing court with respect to any hearing that is conducted  
27 under this article in the manner described by this subsection.

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

4 SECTION 16. Article 46B.085, Code of Criminal Procedure, is  
5 amended to read as follows:

6 Art. 46B.085. SUBSEQUENT COMMITMENTS AND EXTENSIONS  
7 [RECOMMITMENT] PROHIBITED. (a) The court may order only one  
8 commitment and one extension under this subchapter [A defendant  
9 committed under this subchapter may not be recommitted under this  
10 subchapter] in connection with the same offense.

11 (b) After a commitment and an extension are ordered as  
12 described by Subsection (a), any subsequent court orders for  
13 treatment must be issued under Subchapter E or F.

14 SECTION 17. The heading to Subchapter E, Chapter 46B, Code  
15 of Criminal Procedure, is amended to read as follows:

16 SUBCHAPTER E. CIVIL ~~[EXTENDED]~~ COMMITMENT: CHARGES PENDING

17 SECTION 18. The heading to Article 46B.102, Code of  
18 Criminal Procedure, is amended to read as follows:

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

20 SECTION 19. The heading to Article 46B.103, Code of  
21 Criminal Procedure, is amended to read as follows:

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

24 SECTION 20. Article 46B.104, Code of Criminal Procedure, is  
25 amended to read as follows:

26 Art. 46B.104. CIVIL ~~[EXTENDED]~~ COMMITMENT PLACEMENT:  
27 FINDING OF VIOLENCE. A defendant committed to a facility as a

1 result of proceedings initiated under this chapter shall be  
2 committed to the maximum security unit of any facility designated  
3 by the department if:

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

6 (2) the indictment charging the offense alleges  
7 [~~requests~~] an affirmative finding under Section 3g(a)(2), Article  
8 42.12.

9 SECTION 21. The heading to Article 46B.105, Code of  
10 Criminal Procedure, is amended to read as follows:

11 Art. 46B.105. TRANSFER FOLLOWING CIVIL [~~EXTENDED~~]  
12 COMMITMENT PLACEMENT.

13 SECTION 22. The heading to Article 46B.106, Code of  
14 Criminal Procedure, is amended to read as follows:

15 Art. 46B.106. CIVIL [~~EXTENDED~~] COMMITMENT PLACEMENT: NO  
16 FINDING OF VIOLENCE.

17 SECTION 23. The heading to Article 46B.107, Code of  
18 Criminal Procedure, is amended to read as follows:

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

20 SECTION 24. Subsection (d), Article 46B.107, Code of  
21 Criminal Procedure, is amended to read as follows:

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

27 (1) at the facility; or

1           (2) by means of an electronic broadcast system as  
2 provided by Article 46B.013.

3           SECTION 25. Subsection (b), Article 46B.108, Code of  
4 Criminal Procedure, is amended to read as follows:

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

11           SECTION 26. Article 46B.110, Code of Criminal Procedure, is  
12 amended to read as follows:

13           Art. 46B.110. MOTION BY DEFENDANT, ATTORNEY REPRESENTING  
14 DEFENDANT, OR ATTORNEY REPRESENTING STATE. (a) The defendant, the  
15 attorney representing the defendant, or the attorney representing  
16 the state may move that the court determine that the defendant has  
17 been restored to competency.

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

21           SECTION 27. Subsection (c), Article 46B.113, Code of  
22 Criminal Procedure, is amended to read as follows:

23           (c) If a court holds a hearing under this article, on the  
24 request of the counsel for either party or the motion of the court,  
25 a jury shall make the competency determination. If the competency  
26 determination will be made by the court rather than a jury, the  
27 court may conduct the hearing:

- 1           (1) at the facility; or
- 2           (2) by means of an electronic broadcast system as
- 3 provided by Article 46B.013.

4           SECTION 28. Article 46B.114, Code of Criminal Procedure, is  
5 amended to read as follows:

6           Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the  
7 hearing is not conducted at the facility to which the defendant has  
8 been committed under this chapter or conducted by means of an  
9 electronic broadcast system as described by this subchapter, an  
10 [An] order setting a hearing to determine whether the defendant has  
11 been restored to competency shall direct that, as soon as  
12 practicable but not earlier than 72 hours before the date the  
13 hearing is scheduled, the defendant be placed in the custody of the  
14 sheriff of the county in which the committing court is located or  
15 the sheriff's designee for transportation to the court. The  
16 sheriff or the sheriff's designee may not take custody of the  
17 defendant under this article until 72 hours before the date the  
18 hearing is scheduled.

19           SECTION 29. Article 46B.115, Code of Criminal Procedure, is  
20 amended by adding Subsection (c) to read as follows:

21           (c) If the competency determination will be made by the  
22 court, the court may conduct the hearing at the facility to which  
23 the defendant has been committed under this chapter or may conduct  
24 the hearing by means of an electronic broadcast system as provided  
25 by Article 46B.013.

26           SECTION 30. Subsection (a), Article 46B.117, Code of  
27 Criminal Procedure, is amended to read as follows:

1 (a) If a defendant under order of commitment to a facility  
2 is found to not have been restored to competency to stand trial, the  
3 court shall remand the defendant pursuant to that order of  
4 commitment, and, if applicable, order the defendant placed in the  
5 custody of the sheriff or the sheriff's designee for transportation  
6 back to the facility.

7 SECTION 31. The heading to Subchapter F, Chapter 46B, Code  
8 of Criminal Procedure, is amended to read as follows:

9 SUBCHAPTER F. CIVIL [~~EXTENDED~~] COMMITMENT: CHARGES DISMISSED

10 SECTION 32. The heading to Article 46B.151, Code of  
11 Criminal Procedure, is amended to read as follows:

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

14 SECTION 33. Subsection (a), Article 46B.151, Code of  
15 Criminal Procedure, is amended to read as follows:

16 (a) If a court is required by Article 46B.084(f) or  
17 permitted by Article 46B.004(e) to proceed under this subchapter,  
18 the court shall determine whether there is evidence to support a  
19 finding that the defendant is either a person with mental illness or  
20 a person with mental retardation.

21 SECTION 34. Article 46B.171, Code of Criminal Procedure, is  
22 amended to read as follows:

23 Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS [~~+~~  
24 ~~DOCUMENTATION~~]. (a) The court shall order that:

25 (1) a transcript of all medical testimony received in  
26 both the criminal proceedings and the civil commitment proceedings  
27 under Subchapter E or F be prepared as soon as possible by the court



1 reporters; and

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

5 (b) On the request of the defendant or the attorney  
6 representing the defendant, a mental health facility or a  
7 residential care facility shall provide to the defendant or the  
8 attorney copies of the facility's records regarding the defendant.

9 SECTION 35. Section 614.0032, Health and Safety Code, is  
10 amended to read as follows:

11 Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY  
12 RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING COMPETENCY OR  
13 FITNESS TO PROCEED [~~COMPETENCY DETERMINATION~~]. (a) The office  
14 shall perform duties imposed on the office by Section 508.146,  
15 Government Code.

16 (b) The office, with the special assistance of committee  
17 members appointed under Section 614.002(b)(1), shall:

18 (1) review examinations to determine the competency of  
19 defendants in criminal cases to stand trial and examinations to  
20 determine the fitness of children to proceed with respect to  
21 adjudications of delinquent conduct or conduct indicating a need  
22 for supervision; and

23 (2) periodically [~~shall~~] report to the legislature and  
24 the court of criminal appeals findings made as a result of the  
25 review described by Subdivision (1) [~~to the legislature and the~~  
26 ~~court of criminal appeals~~].

27 (c) A district or juvenile court shall submit to the office

1 on a monthly basis all reports based on examinations described by  
2 Subsection (b).

3 SECTION 36. (a) The change in law made by this Act in  
4 amending Articles 46B.001, 46B.107, 46B.113, 46B.114, 46B.115, and  
5 46B.117, Code of Criminal Procedure, applies only to a competency  
6 hearing requested by the motion of a party or held on the motion of  
7 the court on or after the effective date of this Act. A competency  
8 hearing requested by the motion of a party or held on the motion of  
9 the court before the effective date of this Act is covered by the  
10 law in effect when the motion for a hearing was made by a party or by  
11 the court, as applicable, and the former law is continued in effect  
12 for that purpose.

13 (b) The change in law made by this Act in amending Articles  
14 46B.004, 46B.011, and 46B.074 and Subsection (c), Article 46B.084,  
15 Article 46B.085, and Subsection (a), Article 46B.151, Code of  
16 Criminal Procedure, applies only to a defendant charged with an  
17 offense committed on or after the effective date of this Act. A  
18 defendant charged with an offense committed before the effective  
19 date of this Act is covered by the law in effect when the offense was  
20 committed, and the former law is continued in effect for that  
21 purpose. For purposes of this subsection, an offense was committed  
22 before the effective date of this Act if any element of the offense  
23 was committed before that date.

24 (c) The change in law made by this Act in amending Articles  
25 46B.009, 46B.080, 46B.083, and 46B.171, Code of Criminal Procedure,  
26 and adding Subsection (b-1), Article 46B.084, Code of Criminal  
27 Procedure, applies to a defendant charged with an offense committed

1 before, on, or after the effective date of this Act.

2 SECTION 37. Notwithstanding Section 16, Chapter 35, Acts of  
3 the 78th Legislature, Regular Session, 2003, a determination of  
4 incompetency is covered by Chapter 46B, Code of Criminal Procedure,  
5 for a defendant:

6 (1) against whom proceedings were initiated before  
7 January 1, 2004, under former Article 46.02, Code of Criminal  
8 Procedure; and

9 (2) for whom proceedings have not become final before  
10 the effective date of this Act.

11 SECTION 38. This Act takes effect September 1, 2005.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 679 passed the Senate on April 21, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 23, 2005, by a viva-voce vote.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 679 passed the House, with amendment, on May 19, 2005, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor