

By: Duncan

S.B. No. 679

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the procedure for determining the incompetency of a
3 defendant to stand trial.

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

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

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

10 SECTION 2. Article 46B.004, Code of Criminal Procedure, is
11 amended by amending Subsection (d) and adding Subsection (e) to
12 read as follows:

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

17 (e) At any time during the proceedings under this chapter
18 after the issue of the defendant's incompetency to stand trial is
19 first raised, the court on the motion of the attorney representing
20 the state may dismiss all charges pending against the defendant,
21 regardless of whether there is any evidence to support a finding of
22 the defendant's incompetency under Subsection (d) or whether the
23 court has made a finding of incompetency under this chapter. If the
24 court dismisses the charges against the defendant, the court may

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

6 SECTION 3. Article 46B.079, Code of Criminal Procedure, is
7 amended to read as follows:

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

12 (b) A defendant committed under this subchapter whose term
13 of commitment has not yet expired shall be returned to the
14 committing court as soon as practicable after the 15th day
15 following the date on which the parties receive service on any
16 report filed under Article 46B.080(b) regarding the defendant's
17 ability to attain competency, except that, if a party objects to the
18 findings of the report and the issue is set for a hearing under
19 Article 46B.084, the defendant may not be returned to the
20 committing court earlier than 72 hours before the date the hearing
21 is scheduled [~~the earliest of the following dates:~~

22 [~~(1) the date on which the facility determines that~~
23 ~~the defendant has attained competency,~~

24 [~~(2) the date on which the facility determines that~~
25 ~~the defendant will not attain competency in the foreseeable future,~~

26 ~~or~~

27 [~~(3) the date on which the term of commitment~~

1 expires].

2 SECTION 4. Article 46B.107(d), Code of Criminal Procedure,
3 is amended to read as follows:

4 (d) The court may, on motion of the attorney representing
5 the state or on its own motion, hold a hearing to determine whether
6 release is appropriate under the applicable criteria in Subtitle C
7 or D, Title 7, Health and Safety Code. The court may conduct the
8 hearing at the facility or by means of an electronic broadcast
9 system.

10 SECTION 5. Article 46B.113(c), Code of Criminal Procedure,
11 is amended to read as follows:

12 (c) If a court holds a hearing under this article, on the
13 request of either party or the motion of the court, a jury shall
14 make the competency determination. If the competency determination
15 will be made by the court rather than a jury, the court may conduct
16 the hearing at the facility or by means of an electronic broadcast
17 system.

18 SECTION 6. Article 46B.114, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the
21 hearing is not conducted at the facility to which the defendant has
22 been committed under this chapter or conducted by means of an
23 electronic broadcast system as permitted by this subchapter, an
24 [An] order setting a hearing to determine whether the defendant has
25 been restored to competency shall direct that, as soon as possible
26 but not earlier than 72 hours before the date the hearing is
27 scheduled, the defendant be placed in the custody of the sheriff of

1 the county in which the committing court is located or the sheriff's
2 designee for transportation to the court. The sheriff or the
3 sheriff's designee may not take custody of the defendant under this
4 article until 72 hours before the date the hearing is scheduled.

5 SECTION 7. Article 46B.115, Code of Criminal Procedure, is
6 amended by adding Subsection (c) to read as follows:

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

11 SECTION 8. Article 46B.117(a), Code of Criminal Procedure,
12 is amended to read as follows:

13 (a) If a defendant under order of commitment to a facility
14 is found to not have been restored to competency to stand trial, the
15 court shall remand the defendant pursuant to that order of
16 commitment, and, if applicable, order the defendant placed in the
17 custody of the sheriff or the sheriff's designee for transportation
18 back to the facility.

19 SECTION 9. Article 46B.151(a), Code of Criminal Procedure,
20 is amended to read as follows:

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

26 SECTION 10. Article 46B.085, Code of Criminal Procedure, is
27 repealed.

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

11 (b) The change in law made by this Act in amending Articles
12 46B.004 and 46B.151, Code of Criminal Procedure, applies only to a
13 defendant charged with an offense committed on or after the
14 effective date of this Act. A defendant charged with an offense
15 committed before the effective date of this Act is covered by the
16 law in effect when the offense was committed, and the former law is
17 continued in effect for that purpose. For purposes of this
18 subsection, an offense was committed before the effective date of
19 this Act if any element of the offense was committed before that
20 date.

21 (c) The change in law made by this Act in repealing Article
22 46B.085, Code of Criminal Procedure, applies to a defendant charged
23 with an offense committed before, on, or after the effective date of
24 this Act.

25 SECTION 12. Notwithstanding Section 16, Chapter 35, Acts of
26 the 78th Legislature, Regular Session, 2003, a determination of
27 incompetency is covered by Chapter 46B, Code of Criminal Procedure,

1 for a defendant:

2 (1) against whom proceedings were initiated before
3 January 1, 2004, under former Article 46.02, Code of Criminal
4 Procedure; and

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

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