

1-1 By: Duncan S.B. No. 679
1-2 (In the Senate - Filed February 23, 2005; March 2, 2005,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 679 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the procedure for determining the incompetency of a
1-11 defendant to stand trial.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 46B.001, Code of Criminal Procedure, is
1-14 amended by amending Subdivision (1) and adding Subdivision (9) to
1-15 read as follows:

1-16 (1) "Department" means the [~~Texas~~] Department of State
1-17 Health Services [~~Mental Health and Mental Retardation~~].

1-18 (9) "Electronic broadcast system" means a two-way
1-19 electronic communication of image and sound between the defendant
1-20 and the court and includes secure Internet videoconferencing.

1-21 SECTION 2. Article 46B.004, Code of Criminal Procedure, is
1-22 amended by amending Subsection (d) and adding Subsection (e) to
1-23 read as follows:

1-24 (d) If the court determines there is evidence to support a
1-25 finding of incompetency, the court, except as provided by
1-26 Subsection (e) and Article 46B.005(d), shall stay all other
1-27 proceedings in the case.

1-28 (e) At any time during the proceedings under this chapter
1-29 after the issue of the defendant's incompetency to stand trial is
1-30 first raised, the court on the motion of the attorney representing
1-31 the state may dismiss all charges pending against the defendant,
1-32 regardless of whether there is any evidence to support a finding of
1-33 the defendant's incompetency under Subsection (d) or whether the
1-34 court has made a finding of incompetency under this chapter. If the
1-35 court dismisses the charges against the defendant, the court may
1-36 not continue the proceedings under this chapter, except that, if
1-37 there is evidence to support a finding of the defendant's
1-38 incompetency under Subsection (d), the court may proceed under
1-39 Subchapter F. If the court does not elect to proceed under
1-40 Subchapter F, the court shall discharge the defendant.

1-41 SECTION 3. Articles 46B.005, 46B.007, 46B.008, 46B.009, and
1-42 46B.011, Code of Criminal Procedure, are amended to read as
1-43 follows:

1-44 Art. 46B.005. DETERMINING INCOMPETENCY TO STAND TRIAL.

1-45 (a) If after an informal inquiry the court determines that
1-46 evidence exists to support a finding of incompetency, the court
1-47 shall order an examination under Subchapter B to determine whether
1-48 the defendant is incompetent to stand trial.

1-49 (b) Except as provided by Subsection (c), the court shall
1-50 hold a trial [~~hearing~~] under Subchapter C before determining
1-51 whether the defendant is incompetent to stand trial.

1-52 (c) A trial [~~The court~~] is not required [~~to hold a hearing~~]
1-53 if:

1-54 (1) neither party's counsel [~~party~~] requests a [~~jury~~]
1-55 trial on the issue of incompetency;

1-56 (2) neither party's counsel [~~party~~] opposes a finding
1-57 of incompetency; and

1-58 (3) the court does not, on its own motion, determine
1-59 that a trial [~~hearing~~] is necessary to determine incompetency.

1-60 (d) If the issue of the defendant's incompetency to stand
1-61 trial is raised after the trial on the merits begins, the court may
1-62 determine the issue at any time before the sentence is pronounced
1-63 [~~sentencing~~]. If the determination is delayed until after the

2-1 return of a verdict, the court shall make the determination as soon
 2-2 as reasonably possible after the return. If a verdict of not guilty
 2-3 is returned, the court may not determine the issue of incompetency.

2-4 Art. 46B.007. ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER
 2-5 EVIDENCE. A statement made by a defendant during an examination or
 2-6 trial [hearing] on the defendant's incompetency, the testimony of
 2-7 an expert based on that statement, and evidence obtained as a result
 2-8 of that statement may not be admitted in evidence against the
 2-9 defendant in any criminal proceeding, other than at:

2-10 (1) a trial [hearing] on the defendant's incompetency;
 2-11 or

2-12 (2) any proceeding at which the defendant first
 2-13 introduces into evidence a statement, testimony, or evidence
 2-14 described by this section.

2-15 Art. 46B.008. RULES OF EVIDENCE. Notwithstanding Rule 101,
 2-16 Texas Rules of Evidence, the Texas Rules of Evidence apply to a
 2-17 trial under Subchapter C or other proceeding [hearing] under this
 2-18 chapter whether the proceeding [hearing] is before a jury or before
 2-19 the court.

2-20 Art. 46B.009. TIME CREDITS. (a) A court sentencing a
 2-21 person convicted of a criminal offense shall credit to the term of
 2-22 the person's sentence the time the person is confined in a mental
 2-23 health facility, ~~or~~ residential care facility, or jail pending
 2-24 trial under Subchapter C.

2-25 (b) A defendant may not be committed to a mental hospital or
 2-26 other in-patient or residential facility under this chapter for a
 2-27 cumulative period that exceeds the maximum term provided by law for
 2-28 the offense for which the defendant was to be tried. On expiration
 2-29 of that maximum term, the defendant may be further confined in a
 2-30 mental hospital or other in-patient or residential facility only
 2-31 pursuant to civil commitment proceedings.

2-32 Art. 46B.011. APPEALS. Neither the state nor the defendant
 2-33 is entitled to make an interlocutory appeal relating to a
 2-34 determination or ruling ~~[of incompetency]~~ under Article 46B.005.

2-35 SECTION 4. The heading to Subchapter C, Chapter 46B, Code of
 2-36 Criminal Procedure, is amended to read as follows:

2-37 SUBCHAPTER C. INCOMPETENCY ~~[HEARING AND]~~ TRIAL

2-38 SECTION 5. The heading to Article 46B.051, Code of Criminal
 2-39 Procedure, is amended to read as follows:

2-40 Art. 46B.051. TRIAL ~~[HEARING]~~ BEFORE JUDGE OR JURY.

2-41 SECTION 6. Articles 46B.053 and 46B.054, Code of Criminal
 2-42 Procedure, are amended to read as follows:

2-43 Art. 46B.053. PROCEDURE AFTER FINDING OF COMPETENCY. If
 2-44 ~~[at a hearing]~~ the court or jury determines that the defendant is
 2-45 competent to stand trial, the court shall continue the trial on the
 2-46 merits. If a jury determines that the defendant is competent and
 2-47 the trial on the merits is to be held before a jury, the court shall
 2-48 continue the trial with another jury selected for that purpose.

2-49 Art. 46B.054. UNCONTESTED INCOMPETENCY. If the court finds
 2-50 ~~[as required by Article 46B.005]~~ that ~~[there is]~~ evidence exists to
 2-51 support a finding of incompetency to stand trial and the court and
 2-52 the counsel for each party agree that the defendant is incompetent
 2-53 to stand trial, the court shall proceed in the same manner as if a
 2-54 jury had been impaneled and had found the defendant incompetent to
 2-55 stand trial.

2-56 SECTION 7. The heading to Subchapter D, Chapter 46B, Code of
 2-57 Criminal Procedure, is amended to read as follows:

2-58 SUBCHAPTER D. PROCEDURES AFTER ~~[ON]~~ DETERMINATION OF INCOMPETENCY

2-59 SECTION 8. Subsections (c) and (d), Article 46B.073, Code
 2-60 of Criminal Procedure, are amended to read as follows:

2-61 (c) If the defendant is charged with an offense listed in
 2-62 Article 17.032(a) or the indictment alleges ~~[requests]~~
 2-63 an affirmative finding under Section 3g(a)(2), Article 42.12, the
 2-64 court shall enter an order committing the defendant to the maximum
 2-65 security unit of any facility designated by the department, to an
 2-66 agency of the United States operating a mental hospital, or to a
 2-67 Department of Veterans Affairs hospital.

2-68 (d) If the defendant is not charged with an offense listed
 2-69 in Article 17.032(a) and the indictment does not allege ~~[request]~~

3-1 an affirmative finding under Section 3g(a)(2), Article 42.12, the
3-2 court shall enter an order committing the defendant to a mental
3-3 health facility or residential care facility determined to be
3-4 appropriate by the local mental health authority or local mental
3-5 retardation authority.

3-6 SECTION 9. Articles 46B.074, 46B.079, and 46B.080, Code of
3-7 Criminal Procedure, are amended to read as follows:

3-8 Art. 46B.074. COMPETENT TESTIMONY REQUIRED. (a) A
3-9 defendant may be committed to a mental health facility or
3-10 residential care facility under this subchapter only on competent
3-11 medical or psychiatric testimony provided by an expert qualified
3-12 under Article 46B.022.

3-13 (b) The court may allow an expert to substitute the expert's
3-14 report under Article 46B.025 for any testimony by the expert that
3-15 may be required under this article.

3-16 Art. 46B.079. RETURN TO COMMITTING COURT. (a) A defendant
3-17 committed under this subchapter shall be returned to the committing
3-18 court as soon as practicable after the date on which the defendant's
3-19 term of commitment expires.

3-20 (b) A defendant committed under this subchapter whose term
3-21 of commitment has not yet expired shall be returned to the
3-22 committing court as soon as practicable after the 15th day
3-23 following the date on which the parties receive service on any
3-24 report filed under Article 46B.080(b) regarding the defendant's
3-25 ability to attain competency, except that, if a party objects to the
3-26 findings of the report and the issue is set for a hearing under
3-27 Article 46B.084, the defendant may not be returned to the
3-28 committing court earlier than 72 hours before the date the hearing
3-29 is scheduled [the earliest of the following dates:

3-30 ~~[(1) the date on which the facility determines that~~
3-31 ~~the defendant has attained competency;~~

3-32 ~~[(2) the date on which the facility determines that~~
3-33 ~~the defendant will not attain competency in the foreseeable future,~~
3-34 ~~or~~

3-35 ~~[(3) the date on which the term of commitment~~
3-36 ~~expires].~~

3-37 Art. 46B.080. NOTICE TO COMMITTING COURT. (a) The head of
3-38 a facility to which a defendant has been committed under this
3-39 subchapter, not later than the 14th day before the date on which a
3-40 commitment order is to expire, shall notify the committing court
3-41 that the term of the commitment is about to expire.

3-42 (b) The head of the facility to which a defendant has been
3-43 committed under this subchapter shall promptly notify the
3-44 committing court when the head of the facility is of the opinion
3-45 that:

3-46 (1) the defendant has attained competency to stand
3-47 trial; or

3-48 (2) the defendant will not attain competency in the
3-49 foreseeable future.

3-50 (c) When the head of the facility gives notice to the court
3-51 under Subsection (b), the head of the facility also shall file a
3-52 final report with the court stating the reason for the proposed
3-53 discharge and including a list of the types and dosages of
3-54 medications with which the defendant was treated for mental illness
3-55 while in the facility. The court shall provide copies of the report
3-56 to the defense counsel and the attorney representing the state.

3-57 (d) If the head of the facility to which the defendant has
3-58 been committed notifies the court that the commitment order is
3-59 about to expire, the notice may contain a request for an extension
3-60 of the commitment order for a period of 60 days and an explanation
3-61 for the basis of the request.

3-62 SECTION 10. Subsection (a), Article 46B.081, Code of
3-63 Criminal Procedure, is amended to read as follows:

3-64 (a) On the request of the head of a facility made under
3-65 Article 46B.080(d) [~~46B.080(c)~~], the court may enter an order
3-66 extending the term of the commitment order for a period of 60 days.

3-67 SECTION 11. Article 46B.083, Code of Criminal Procedure, is
3-68 amended to read as follows:

3-69 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED

4-1 ~~[REPORT] BY FACILITY HEAD. (a) [When the head of a facility to~~
4-2 ~~which the defendant is committed discharges the defendant and the~~
4-3 ~~defendant is returned to the committing court, the head of the~~
4-4 ~~facility shall file a final report with the court stating the reason~~
4-5 ~~for the discharge under Article 46B.080. The court shall furnish~~
4-6 ~~copies of the report to the defense counsel and the prosecuting~~
4-7 ~~attorney.~~

4-8 ~~[(b)]~~ If the head of the facility believes that the
4-9 defendant is a person with mental illness and meets the criteria for
4-10 court-ordered inpatient mental health services under Subtitle C,
4-11 Title 7, Health and Safety Code, the head of the facility shall have
4-12 submitted to the court a certificate of medical examination for
4-13 mental illness. ~~[The head of the facility shall include in the~~
4-14 ~~final report a list of the types and dosages of medications with~~
4-15 ~~which the defendant was treated for mental illness while in the~~
4-16 ~~facility.]~~

4-17 (b) ~~[(c)]~~ If the head of the facility is of the opinion that
4-18 the defendant is a person with mental retardation, the head of the
4-19 facility shall have submitted to the court an affidavit stating the
4-20 conclusions reached as a result of the examination.

4-21 SECTION 12. Article 46B.084, Code of Criminal Procedure, is
4-22 amended by amending Subsections (a) and (c) and adding Subsection
4-23 (b-1) to read as follows:

4-24 (a) On the return of a defendant to the committing court,
4-25 the court shall make a determination with regard to the defendant's
4-26 competency to stand trial. The court may make the determination
4-27 based solely on the report filed under Article 46B.080(c)
4-28 ~~[46B.080(b)]~~, unless any party objects in writing or in open court
4-29 to the findings of the report not later than the 15th day after the
4-30 date on which the report is served on the parties.

4-31 (b-1) If the parties agree and if the hearing is before the
4-32 court, the hearing may be conducted by means of an electronic
4-33 broadcast system. Notwithstanding any other provision of this
4-34 chapter, the defendant is not required to be returned to the
4-35 committing court with respect to any hearing that is conducted
4-36 under this article as described by this subsection.

4-37 (c) The hearing shall be held within 30 days following the
4-38 date of objection unless continued for good cause for a period not
4-39 to exceed 30 days.

4-40 SECTION 13. Article 46B.085, Code of Criminal Procedure, is
4-41 amended to read as follows:

4-42 Art. 46B.085. SUBSEQUENT COMMITMENTS AND EXTENSIONS
4-43 [RECOMMITMENT] PROHIBITED. (a) The court may order only one
4-44 commitment and one extension under this subchapter [A defendant
4-45 committed under this subchapter may not be recommitted under this
4-46 subchapter] in connection with the same offense.

4-47 (b) After a commitment and an extension are ordered as
4-48 described by Subsection (a), any subsequent court orders for
4-49 treatment must be issued under Subchapter E or F.

4-50 SECTION 14. The heading to Subchapter E, Chapter 46B, Code
4-51 of Criminal Procedure, is amended to read as follows:

4-52 SUBCHAPTER E. CIVIL [EXTENDED] COMMITMENT: CHARGES PENDING

4-53 SECTION 15. The heading to Article 46B.102, Code of
4-54 Criminal Procedure, is amended to read as follows:

4-55 Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS.

4-56 SECTION 16. The heading to Article 46B.103, Code of
4-57 Criminal Procedure, is amended to read as follows:

4-58 Art. 46B.103. CIVIL COMMITMENT HEARING: MENTAL
4-59 RETARDATION.

4-60 SECTION 17. Article 46B.104, Code of Criminal Procedure, is
4-61 amended to read as follows:

4-62 Art. 46B.104. CIVIL [EXTENDED] COMMITMENT PLACEMENT:
4-63 FINDING OF VIOLENCE. A defendant committed to a facility as a
4-64 result of proceedings initiated under this chapter shall be
4-65 committed to the maximum security unit of any facility designated
4-66 by the department if:

4-67 (1) the defendant is charged with an offense listed in
4-68 Article 17.032(a); or

4-69 (2) the indictment charging the offense alleges

5-1 [~~requests~~] an affirmative finding under Section 3g(a)(2), Article
5-2 42.12.

5-3 SECTION 18. The heading to Article 46B.105, Code of
5-4 Criminal Procedure, is amended to read as follows:

5-5 Art. 46B.105. TRANSFER FOLLOWING CIVIL [~~EXTENDED~~]
5-6 COMMITMENT PLACEMENT.

5-7 SECTION 19. The heading to Article 46B.106, Code of
5-8 Criminal Procedure, is amended to read as follows:

5-9 Art. 46B.106. CIVIL [~~EXTENDED~~] COMMITMENT PLACEMENT: NO
5-10 FINDING OF VIOLENCE.

5-11 SECTION 20. The heading to Article 46B.107, Code of
5-12 Criminal Procedure, is amended to read as follows:

5-13 Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT.

5-14 SECTION 21. Subsection (d), Article 46B.107, Code of
5-15 Criminal Procedure, is amended to read as follows:

5-16 (d) The court may, on motion of the attorney representing
5-17 the state or on its own motion, hold a hearing to determine whether
5-18 release is appropriate under the applicable criteria in Subtitle C
5-19 or D, Title 7, Health and Safety Code. The court may conduct the
5-20 hearing at the facility or by means of an electronic broadcast
5-21 system.

5-22 SECTION 22. Subsection (b), Article 46B.108, Code of
5-23 Criminal Procedure, is amended to read as follows:

5-24 (b) An inquiry into restoration of competency under this
5-25 subchapter may be made at the request of the head of the mental
5-26 health facility or residential care facility to which the defendant
5-27 has been committed, the defendant's attorney, or the
5-28 attorney representing the state, or may be made on the court's own
5-29 motion.

5-30 SECTION 23. Article 46B.110, Code of Criminal Procedure, is
5-31 amended to read as follows:

5-32 Art. 46B.110. MOTION BY DEFENDANT, DEFENDANT'S ATTORNEY, OR
5-33 ATTORNEY REPRESENTING STATE. (a) The defendant, the defendant's
5-34 attorney, or the attorney representing the state may move that the
5-35 court determine that the defendant has been restored to competency.

5-36 (b) A motion for a determination of competency may be
5-37 accompanied by affidavits supporting the moving party's assertion
5-38 that the defendant is competent.

5-39 SECTION 24. Subsection (c), Article 46B.113, Code of
5-40 Criminal Procedure, is amended to read as follows:

5-41 (c) If a court holds a hearing under this article, on the
5-42 request of the counsel for either party or the motion of the court,
5-43 a jury shall make the competency determination. If the competency
5-44 determination will be made by the court rather than a jury, the
5-45 court may conduct the hearing at the facility or by means of an
5-46 electronic broadcast system.

5-47 SECTION 25. Article 46B.114, Code of Criminal Procedure, is
5-48 amended to read as follows:

5-49 Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the
5-50 hearing is not conducted at the facility to which the defendant has
5-51 been committed under this chapter or conducted by means of an
5-52 electronic broadcast system as permitted by this subchapter, an
5-53 [An] order setting a hearing to determine whether the defendant has
5-54 been restored to competency shall direct that, as soon as
5-55 practicable but not earlier than 72 hours before the date the
5-56 hearing is scheduled, the defendant be placed in the custody of the
5-57 sheriff of the county in which the committing court is located or
5-58 the sheriff's designee for transportation to the court. The
5-59 sheriff or the sheriff's designee may not take custody of the
5-60 defendant under this article until 72 hours before the date the
5-61 hearing is scheduled.

5-62 SECTION 26. Article 46B.115, Code of Criminal Procedure, is
5-63 amended by adding Subsection (c) to read as follows:

5-64 (c) If the competency determination will be made by the
5-65 court, the court may conduct the hearing at the facility to which
5-66 the defendant has been committed under this chapter or may conduct
5-67 the hearing by means of an electronic broadcast system.

5-68 SECTION 27. Subsection (a), Article 46B.117, Code of
5-69 Criminal Procedure, is amended to read as follows:

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

6-7 SECTION 28. The heading to Subchapter F, Chapter 46B, Code
 6-8 of Criminal Procedure, is amended to read as follows:

6-9 SUBCHAPTER F. CIVIL [~~EXTENDED~~] COMMITMENT: CHARGES DISMISSED

6-10 SECTION 29. The heading to Article 46B.151, Code of
 6-11 Criminal Procedure, is amended to read as follows:

6-12 Art. 46B.151. COURT DETERMINATION RELATED TO CIVIL
 6-13 COMMITMENT.

6-14 SECTION 30. Subsection (a), Article 46B.151, Code of
 6-15 Criminal Procedure, is amended to read as follows:

6-16 (a) If a court is required by Article 46B.084(f) or
 6-17 permitted by Article 46B.004(e) to proceed under this subchapter,
 6-18 the court shall determine whether there is evidence to support a
 6-19 finding that the defendant is either a person with mental illness or
 6-20 a person with mental retardation.

6-21 SECTION 31. Article 46B.171, Code of Criminal Procedure, is
 6-22 amended to read as follows:

6-23 Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS [~~+~~
 6-24 ~~DOCUMENTATION~~]. (a) The court shall order that:

6-25 (1) a transcript of all medical testimony received in
 6-26 both the criminal proceedings and the civil commitment proceedings
 6-27 under Subchapter E or F be prepared as soon as possible by the court
 6-28 reporters; and

6-29 (2) copies of documents listed in Article 46B.076
 6-30 accompany the defendant to the mental health facility or
 6-31 residential care facility.

6-32 (b) On the request of the defendant or the defendant's
 6-33 attorney, a mental health facility or a residential care facility
 6-34 shall provide to the defendant or the attorney copies of the
 6-35 facility's records regarding the defendant.

6-36 SECTION 32. Section 614.0032, Health and Safety Code, is
 6-37 amended to read as follows:

6-38 Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY
 6-39 RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING COMPETENCY OR
 6-40 FITNESS TO PROCEED [~~COMPETENCY DETERMINATION~~]. (a) The office
 6-41 shall perform duties imposed on the office by Section 508.146,
 6-42 Government Code.

6-43 (b) The office, with the special assistance of committee
 6-44 members appointed under Section 614.002(b)(1), shall:

6-45 (1) review examinations to determine the competency of
 6-46 defendants in criminal cases to stand trial and examinations to
 6-47 determine the fitness of children to proceed with respect to
 6-48 adjudications of delinquent conduct or conduct indicating a need
 6-49 for supervision; and

6-50 (2) periodically [~~shall~~] report to the legislature and
 6-51 the court of criminal appeals findings made as a result of the
 6-52 review described by Subdivision (1) [~~to the legislature and the~~
 6-53 ~~court of criminal appeals~~].

6-54 (c) A district or juvenile court shall submit to the office
 6-55 on a monthly basis all reports based on examinations described by
 6-56 Subsection (b).

6-57 SECTION 33. (a) The change in law made by this Act in
 6-58 amending Articles 46B.001, 46B.107, 46B.113, 46B.114, 46B.115, and
 6-59 46B.117, Code of Criminal Procedure, applies only to a competency
 6-60 hearing requested by the motion of a party or held on the motion of
 6-61 the court on or after the effective date of this Act. A competency
 6-62 hearing requested by the motion of a party or held on the motion of
 6-63 the court before the effective date of this Act is covered by the
 6-64 law in effect when the motion for a hearing was made by a party or by
 6-65 the court, as applicable, and the former law is continued in effect
 6-66 for that purpose.

6-67 (b) The change in law made by this Act in amending Articles
 6-68 46B.004, 46B.011, and 46B.074 and Subsection (c), Article 46B.084,
 6-69 Article 46B.085, and Subsection (a), Article 46B.151, Code of

7-1 Criminal Procedure, applies only to a defendant charged with an
7-2 offense committed on or after the effective date of this Act. A
7-3 defendant charged with an offense committed before the effective
7-4 date of this Act is covered by the law in effect when the offense was
7-5 committed, and the former law is continued in effect for that
7-6 purpose. For purposes of this subsection, an offense was committed
7-7 before the effective date of this Act if any element of the offense
7-8 was committed before that date.

7-9 (c) The change in law made by this Act in amending Articles
7-10 46B.009, 46B.080, 46B.083, and 46B.171, Code of Criminal Procedure,
7-11 and adding Subsection (b-1), Article 46B.084, Code of Criminal
7-12 Procedure, applies to a defendant charged with an offense committed
7-13 before, on, or after the effective date of this Act.

7-14 SECTION 34. Notwithstanding Section 16, Chapter 35, Acts of
7-15 the 78th Legislature, Regular Session, 2003, a determination of
7-16 incompetency is covered by Chapter 46B, Code of Criminal Procedure,
7-17 for a defendant:

7-18 (1) against whom proceedings were initiated before
7-19 January 1, 2004, under former Article 46.02, Code of Criminal
7-20 Procedure; and

7-21 (2) for whom proceedings have not become final before
7-22 the effective date of this Act.

7-23 SECTION 35. This Act takes effect September 1, 2005.

7-24 * * * * *