

By: Wentworth

S.B. No. 837

A BILL TO BE ENTITLED

AN ACT

relating to the insanity defense.

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

SECTION 1. Article 46.03, Code of Criminal Procedure, is repealed.

SECTION 2. Title 1, Code of Criminal Procedure, is amended by adding Chapter 46C to read as follows:

CHAPTER 46C. INSANITY DEFENSE

SUBCHAPTER A. GENERAL PROVISIONS

Art. 46C.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.

(4) "Mental retardation" has the meaning assigned by Section 591.003, Health and Safety Code.

(5) "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

Art. 46C.002. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by reason of insanity may not be committed to a mental hospital or other inpatient or residential care facility or ordered to receive

1 outpatient or community-based treatment and supervision under
2 Subchapter F for a cumulative period that exceeds the maximum term
3 provided by law for the offense for which the acquitted person was
4 tried.

5 (b) On expiration of that maximum term, the acquitted person
6 may be further confined in a mental hospital or other inpatient or
7 residential care facility or ordered to receive outpatient or
8 community-based treatment and supervision only under civil
9 commitment proceedings.

10 [Articles 46C.003-46C.050 reserved for expansion]

11 SUBCHAPTER B. RAISING THE INSANITY DEFENSE

12 Art. 46C.051. NOTICE OF INTENT TO RAISE INSANITY DEFENSE.

13 (a) A defendant planning to offer evidence of the insanity defense
14 must file with the court a notice of the defendant's intention to
15 offer that evidence.

16 (b) The notice must:

17 (1) contain a certification that a copy of the notice
18 has been served on the attorney representing the state; and

19 (2) be filed at least 10 days before the date the case
20 is set for trial, except as described by Subsections (c) and (d).

21 (c) If before the 10-day period the court sets a pretrial
22 hearing, the defendant shall give notice at the hearing.

23 (d) If before the 10-day period the defendant raises the
24 issue of the defendant's incompetency to stand trial, the defendant
25 must at the same time file notice of the defendant's intention to
26 offer evidence of the insanity defense.

27 Art. 46C.052. EFFECT OF FAILURE TO GIVE NOTICE. Unless

1 notice is timely filed under Article 46C.051, evidence on the
2 insanity defense is not admissible unless the court finds that good
3 cause exists for failure to give notice.

4 [Articles 46C.053-46C.100 reserved for expansion]

5 SUBCHAPTER C. COURT-ORDERED EXAMINATION AND REPORT

6 Art. 46C.101. APPOINTMENT OF EXPERTS. (a) If notice of
7 intention to raise the insanity defense is filed under Article
8 46C.051, the court may, on its own motion or motion by the
9 defendant, the defendant's counsel, or the attorney representing
10 the state, appoint one or more disinterested experts to:

11 (1) examine the defendant with regard to the insanity
12 defense; and

13 (2) testify as to the issue of insanity at any trial or
14 hearing involving that issue.

15 (b) The court shall advise an expert appointed under this
16 article of the facts and circumstances of the offense with which the
17 defendant is charged and the elements of the insanity defense.

18 Art. 46C.102. EXPERTS: QUALIFICATIONS. (a) The court may
19 appoint qualified psychiatrists or psychologists as experts under
20 this chapter. To qualify for appointment under this subchapter as
21 an expert, a psychiatrist or psychologist must:

22 (1) as appropriate, be a physician licensed in this
23 state or be a psychologist licensed in this state who has a doctoral
24 degree in psychology; and

25 (2) have the following certification or experience or
26 training:

27 (A) as appropriate, certification by:

1 (i) the American Board of Psychiatry and
2 Neurology with added or special qualifications in forensic
3 psychiatry; or

4 (ii) the American Board of Professional
5 Psychology in forensic psychology; or

6 (B) experience or training consisting of:

7 (i) at least 24 hours of specialized
8 forensic training relating to incompetency or insanity
9 evaluations;

10 (ii) at least five years of experience in
11 performing criminal forensic evaluations for courts; and

12 (iii) eight or more hours of continuing
13 education relating to forensic evaluations, completed in the 12
14 months preceding the appointment and documented with the court.

15 (b) In addition to meeting qualifications required by
16 Subsection (a), to be appointed as an expert a psychiatrist or
17 psychologist must have completed six hours of required continuing
18 education in courses in forensic psychiatry or psychology, as
19 appropriate, in the 24 months preceding the appointment.

20 (c) A court may appoint as an expert a psychiatrist or
21 psychologist who does not meet the requirements of Subsections (a)
22 and (b) only if exigent circumstances require the court to base the
23 appointment on professional training or experience of the expert
24 that directly provides the expert with a specialized expertise to
25 examine the defendant that would not ordinarily be possessed by a
26 psychiatrist or psychologist who meets the requirements of
27 Subsections (a) and (b).

1 Art. 46C.103. COMPETENCY TO STAND TRIAL: CONCURRENT
2 APPOINTMENT. (a) An expert appointed under this subchapter to
3 examine the defendant with regard to the insanity defense also may
4 be appointed by the court to examine the defendant with regard to
5 the defendant's competency to stand trial under Chapter 46B, if the
6 expert files with the court separate written reports concerning the
7 defendant's competency to stand trial and the insanity defense.

8 (b) Notwithstanding Subsection (a), an expert may not
9 examine the defendant for purposes of determining the defendant's
10 sanity and may not file a report regarding the defendant's sanity if
11 in the opinion of the expert the defendant is incompetent to
12 proceed.

13 Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO
14 EXAMINATION. (a) For the purposes described by this chapter, the
15 court may order any defendant to submit to examination, including a
16 defendant who is free on bail. If the defendant fails or refuses to
17 submit to examination, the court may order the defendant to custody
18 for examination for a reasonable period not to exceed 21 days.
19 Custody ordered by the court under this subsection may include
20 custody at a facility operated by the department.

21 (b) If a defendant who has been ordered to a facility
22 operated by the department for examination remains in the facility
23 for a period that exceeds 21 days, the head of that facility shall
24 cause the defendant to be immediately transported to the committing
25 court and placed in the custody of the sheriff of the county in
26 which the committing court is located. That county shall reimburse
27 the facility for the mileage and per diem expenses of the personnel

1 required to transport the defendant, calculated in accordance with
2 the state travel rules in effect at that time.

3 (c) The court may not order a defendant to a facility
4 operated by the department for examination without the consent of
5 the head of that facility.

6 Art. 46C.105. REPORTS SUBMITTED BY EXPERTS. (a) A written
7 report of the examination shall be submitted to the court not later
8 than the 30th day after the date of the order of examination. The
9 court shall provide copies of the report to the defense counsel and
10 the attorney representing the state.

11 (b) The report must include a description of the procedures
12 used in the examination and the examiner's observations and
13 findings pertaining to the insanity defense.

14 (c) The examiner shall submit a separate report stating the
15 examiner's observations and findings concerning:

16 (1) whether the defendant is presently a person with a
17 mental illness and requires court-ordered mental health services
18 under Subtitle C, Title 7, Health and Safety Code; or

19 (2) whether the defendant is presently a person with
20 mental retardation.

21 Art. 46C.106. COMPENSATION OF EXPERTS. (a) The appointed
22 experts shall be paid by the county in which the indictment was
23 returned or information was filed.

24 (b) The county in which the indictment was returned or
25 information was filed shall reimburse a facility operated by the
26 department that accepts a defendant for examination under this
27 subchapter for expenses incurred that are determined by the

1 department to be reasonably necessary and incidental to the proper
2 examination of the defendant.

3 Art. 46C.107. EXAMINATION BY EXPERT OF DEFENDANT'S CHOICE.

4 If a defendant wishes to be examined by an expert of the defendant's
5 own choice, the court on timely request shall provide the examiner
6 with reasonable opportunity to examine the defendant.

7 [Articles 46C.108-46C.150 reserved for expansion]

8 SUBCHAPTER D. DETERMINATION OF ISSUE OF DEFENDANT'S SANITY

9 Art. 46C.151. DETERMINATION OF SANITY ISSUE BY JURY.

10 (a) In a case tried to a jury, the issue of the defendant's sanity
11 shall be submitted to the jury only if the issue is supported by
12 competent evidence. The jury shall determine the issue.

13 (b) If the issue of the defendant's sanity is submitted to
14 the jury, the jury shall determine and specify in the verdict
15 whether the defendant is guilty, not guilty, or not guilty by reason
16 of insanity.

17 Art. 46C.152. DETERMINATION OF SANITY ISSUE BY JUDGE.

18 (a) If a jury trial is waived and if the issue is supported by
19 competent evidence, the judge as trier of fact shall determine the
20 issue of the defendant's sanity.

21 (b) The parties may, with the consent of the judge, agree to
22 have the judge determine the issue of the defendant's sanity on the
23 basis of introduced or stipulated competent evidence, or both.

24 (c) If the judge determines the issue of the defendant's
25 sanity, the judge shall enter a finding of guilty, not guilty, or
26 not guilty by reason of insanity.

27 Art. 46C.153. GENERAL PROVISIONS RELATING TO DETERMINATION

1 OF SANITY ISSUE BY JUDGE OR JURY. (a) The judge or jury shall
2 determine that a defendant is not guilty by reason of insanity if:

3 (1) the prosecution has established beyond a
4 reasonable doubt that the alleged conduct constituting the offense
5 was committed; and

6 (2) the defense has established by a preponderance of
7 the evidence that the defendant was insane at the time of the
8 alleged conduct.

9 (b) The parties may, with the consent of the judge, agree to
10 both:

11 (1) dismissal of the indictment or information on the
12 ground that the defendant was insane; and

13 (2) entry of a judgment of dismissal due to the
14 defendant's insanity.

15 (c) An entry of judgment under Subsection (b)(2) has the
16 same effect as a judgment stating that the defendant has been found
17 not guilty by reason of insanity.

18 Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF
19 ACQUITTAL. The court, the attorney representing the state, or the
20 attorney for the defendant may not inform a juror or a prospective
21 juror of the consequences to the defendant if a verdict of not
22 guilty by reason of insanity is returned.

23 Art. 46C.155. FINDING OF NOT GUILTY BY REASON OF INSANITY
24 CONSIDERED ACQUITTAL. (a) Except as provided by Subsection (b), a
25 defendant who is found not guilty by reason of insanity stands
26 acquitted of the offense charged and may not be considered a person
27 charged with an offense.

1 (b) A defendant who is found not guilty by reason of
2 insanity is not considered to be acquitted for purposes of Chapter
3 55.

4 Art. 46C.156. JUDGMENT. (a) In each case in which the
5 insanity defense is raised, the judgment must reflect whether the
6 defendant was found guilty, not guilty, or not guilty by reason of
7 insanity.

8 (b) If the defendant was found not guilty by reason of
9 insanity, the judgment must specify the offense of which the
10 defendant was found not guilty.

11 (c) If the defendant was found not guilty by reason of
12 insanity, the judgment must reflect the finding made under Article
13 46C.157.

14 Art. 46C.157. DETERMINATION REGARDING DANGEROUS CONDUCT OF
15 ACQUITTED PERSON. If a defendant is found not guilty by reason of
16 insanity, the court immediately shall determine whether the offense
17 of which the person was acquitted involved conduct that:

18 (1) caused serious bodily injury to another person;

19 (2) placed another person in imminent danger of
20 serious bodily injury; or

21 (3) consisted of a threat of serious bodily injury to
22 another person through the use of a deadly weapon.

23 Art. 46C.158. CONTINUING JURISDICTION OF DANGEROUS
24 ACQUITTED PERSON. If the court finds that the offense of which the
25 person was acquitted involved conduct that caused serious bodily
26 injury to another person, placed another person in imminent danger
27 of serious bodily injury, or consisted of a threat of serious bodily

1 injury to another person through the use of a deadly weapon, the
2 court retains jurisdiction over the acquitted person until either:

3 (1) the court discharges the person and terminates its
4 jurisdiction under Article 46C.268; or

5 (2) the cumulative total period of
6 institutionalization and outpatient or community-based treatment
7 and supervision under the court's jurisdiction equals the maximum
8 term provided by law for the offense of which the person was
9 acquitted by reason of insanity and the court's jurisdiction is
10 automatically terminated under Article 46C.269.

11 Art. 46C.159. PROCEEDINGS REGARDING NONDANGEROUS ACQUITTED
12 PERSON. If the court finds that the offense of which the person was
13 acquitted did not involve conduct that caused serious bodily injury
14 to another person, placed another person in imminent danger of
15 serious bodily injury, or consisted of a threat of serious bodily
16 injury to another person through the use of a deadly weapon, the
17 court shall proceed under Subchapter E.

18 Art. 46C.160. DETENTION PENDING FURTHER PROCEEDINGS.
19 (a) On a determination by the judge or jury that the defendant is
20 not guilty by reason of insanity, pending further proceedings under
21 this chapter, the court may order the defendant detained in jail or
22 any other suitable place for a period not to exceed 14 days.

23 (b) The court may order a defendant detained in a facility
24 of the department or a facility of the Department of Aging and
25 Disability Services under this article only with the consent of the
26 head of the facility.

27 [Articles 46C.161-46C.200 reserved for expansion]

1 SUBCHAPTER E. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF
2 INSANITY: NO FINDING OF DANGEROUS CONDUCT

3 Art. 46C.201. DISPOSITION: NONDANGEROUS CONDUCT. (a) If
4 the court determines that the offense of which the person was
5 acquitted did not involve conduct that caused serious bodily injury
6 to another person, placed another person in imminent danger of
7 serious bodily injury, or consisted of a threat of serious bodily
8 injury to another person through the use of a deadly weapon, the
9 court shall determine whether there is evidence to support a
10 finding that the person is a person with a mental illness or with
11 mental retardation.

12 (b) If the court determines that there is evidence to
13 support a finding of mental illness or mental retardation, the
14 court shall enter an order transferring the person to the
15 appropriate court for civil commitment proceedings to determine
16 whether the person should receive court-ordered mental health
17 services under Subtitle C, Title 7, Health and Safety Code, or be
18 committed to a residential care facility to receive mental
19 retardation services under Subtitle D, Title 7, Health and Safety
20 Code. The court may also order the person:

21 (1) detained in jail or any other suitable place
22 pending the prompt initiation and prosecution of appropriate civil
23 proceedings by the attorney representing the state or other person
24 designated by the court; or

25 (2) placed in the care of a responsible person on
26 satisfactory security being given for the acquitted person's proper
27 care and protection.

1 Art. 46C.202. DETENTION OR RELEASE. (a) Notwithstanding
2 Article 46C.201(b), a person placed in a department facility or a
3 facility of the Department of Aging and Disability Services pending
4 civil hearing as described by that subsection may be detained only
5 with the consent of the head of the facility and under an Order of
6 Protective Custody issued under Subtitle C or D, Title 7, Health and
7 Safety Code.

8 (b) If the court does not detain or place the person under
9 Article 46C.201(b), the court shall release the person.

10 [Articles 46C.203-46C.250 reserved for expansion]

11 SUBCHAPTER F. DISPOSITION FOLLOWING ACQUITTAL BY
12 REASON OF INSANITY: FINDING OF DANGEROUS CONDUCT

13 Art. 46C.251. COMMITMENT FOR EVALUATION AND TREATMENT;
14 REPORT. (a) The court shall order the acquitted person to be
15 committed for evaluation of the person's present mental condition
16 and for treatment to the maximum security unit of any facility
17 designated by the department. The period of commitment under this
18 article may not exceed 30 days.

19 (b) The court shall order that:

20 (1) a transcript of all medical testimony received in
21 the criminal proceeding be prepared as soon as possible by the court
22 reporter and the transcript be forwarded to the facility to which
23 the acquitted person is committed; and

24 (2) the following information be forwarded to the
25 facility and, as applicable, to the department or the Department of
26 Aging and Disability Services:

27 (A) the complete name, race, and gender of the

1 person;

2 (B) any known identifying number of the person,
3 including social security number, driver's license number, or state
4 identification number;

5 (C) the person's date of birth; and

6 (D) the offense of which the person was found not
7 guilty by reason of insanity and a statement of the facts and
8 circumstances surrounding the alleged offense.

9 (c) The court shall order that a report be filed with the
10 court under Article 46C.252.

11 (d) To determine the proper disposition of the acquitted
12 person, the court shall hold a hearing on disposition not later than
13 the 30th day after the date of acquittal.

14 Art. 46C.252. REPORT AFTER EVALUATION. (a) The report
15 ordered under Article 46C.251 must be filed with the court as soon
16 as practicable before the hearing on disposition but not later than
17 the fourth day before that hearing.

18 (b) The report in general terms must describe and explain
19 the procedure, techniques, and tests used in the examination of the
20 person.

21 (c) The report must address:

22 (1) whether the acquitted person has a mental illness
23 or mental retardation and, if so, whether the mental illness or
24 mental retardation is severe;

25 (2) whether as a result of any severe mental illness or
26 mental retardation the acquitted person is likely to cause serious
27 harm to another;

1 (3) whether as a result of any impairment the
2 acquitted person is subject to commitment under Subtitle C or D,
3 Title 7, Health and Safety Code;

4 (4) prospective treatment and supervision options, if
5 any, appropriate for the acquitted person; and

6 (5) whether any required treatment and supervision can
7 be safely and effectively provided as outpatient or community-based
8 treatment and supervision.

9 Art. 46C.253. HEARING ON DISPOSITION. (a) The hearing on
10 disposition shall be conducted in the same manner as a hearing on an
11 application for involuntary commitment under Subtitle C or D, Title
12 7, Health and Safety Code, except that the use of a jury is governed
13 by Article 46C.255.

14 (b) At the hearing, the court shall address:

15 (1) whether the person acquitted by reason of insanity
16 has a severe mental illness or mental retardation;

17 (2) whether as a result of any mental illness or mental
18 retardation the person is likely to cause serious harm to another;
19 and

20 (3) whether appropriate treatment and supervision for
21 any mental illness or mental retardation rendering the person
22 dangerous to another can be safely and effectively provided as
23 outpatient or community-based treatment and supervision.

24 (c) The court shall order the acquitted person committed for
25 inpatient treatment or residential care under Article 46C.256 if
26 the grounds required for that order are established.

27 (d) The court shall order the acquitted person to receive

1 outpatient or community-based treatment and supervision under
2 Article 46C.257 if the grounds required for that order are
3 established.

4 (e) The court shall order the acquitted person transferred
5 to an appropriate court for proceedings under Subtitle C or D, Title
6 7, Health and Safety Code, if the state fails to establish the
7 grounds required for an order under Article 46C.256 or 46C.257 but
8 the evidence provides a reasonable basis for believing the
9 acquitted person is a proper subject for those proceedings.

10 (f) The court shall order the acquitted person discharged
11 and immediately released if the evidence fails to establish that
12 disposition under Subsection (c), (d), or (e) is appropriate.

13 Art. 46C.254. EFFECT OF STABILIZATION ON TREATMENT REGIMEN.
14 If an acquitted person is stabilized on a treatment regimen,
15 including medication and other treatment modalities, rendering the
16 person no longer likely to cause serious harm to another, inpatient
17 treatment or residential care may be found necessary to protect the
18 safety of others only if:

19 (1) the person would become likely to cause serious
20 harm to another if the person fails to follow the treatment regimen
21 on an Order to Receive Outpatient or Community-Based Treatment and
22 Supervision; and

23 (2) under an Order to Receive Outpatient or
24 Community-Based Treatment and Supervision either:

25 (A) the person is likely to fail to comply with an
26 available regimen of outpatient or community-based treatment, as
27 determined by the person's insight into the need for medication,

1 the number, severity, and controllability of side effects, the
2 availability of support and treatment programs for the person from
3 community members, and other appropriate considerations; or

4 (B) a regimen of outpatient or community-based
5 treatment will not be available to the person.

6 Art. 46C.255. TRIAL BY JURY. (a) The following
7 proceedings under this chapter must be before the court, and the
8 underlying matter determined by the court, unless the acquitted
9 person or the state requests a jury trial or the court on its own
10 motion sets the matter for jury trial:

11 (1) a hearing under Article 46C.253;

12 (2) a proceeding for renewal of an order under Article
13 46C.261;

14 (3) a proceeding on a request for modification or
15 revocation of an order under Article 46C.266; and

16 (4) a proceeding seeking discharge of an acquitted
17 person under Article 46C.268.

18 (b) The following proceedings may not be held before a jury:

19 (1) a proceeding to determine outpatient or
20 community-based treatment and supervision under Article 46C.262;
21 or

22 (2) a proceeding to determine modification or
23 revocation of outpatient or community-based treatment and
24 supervision under Article 46C.267.

25 (c) If a hearing is held before a jury and the jury
26 determines that the person has a mental illness or mental
27 retardation and is likely to cause serious harm to another, the

1 court shall determine whether inpatient treatment or residential
2 care is necessary to protect the safety of others.

3 Art. 46C.256. ORDER OF COMMITMENT TO INPATIENT TREATMENT OR
4 RESIDENTIAL CARE. (a) The court shall order the acquitted person
5 committed to a mental hospital or other appropriate facility for
6 inpatient treatment or residential care if the state establishes by
7 clear and convincing evidence that:

8 (1) the person has a severe mental illness or mental
9 retardation;

10 (2) the person, as a result of that mental illness or
11 mental retardation, is likely to cause serious bodily injury to
12 another if the person is not provided with treatment and
13 supervision; and

14 (3) inpatient treatment or residential care is
15 necessary to protect the safety of others.

16 (b) In determining whether inpatient treatment or
17 residential care has been proved necessary, the court shall
18 consider whether the evidence shows both that:

19 (1) an adequate regimen of outpatient or
20 community-based treatment will be available to the person; and

21 (2) the person will follow that regimen.

22 (c) The order of commitment to inpatient treatment or
23 residential care expires on the 181st day following the date the
24 order is issued but is subject to renewal as provided by Article
25 46C.261.

26 Art. 46C.257. ORDER TO RECEIVE OUTPATIENT OR
27 COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court shall

1 order the acquitted person to receive outpatient or community-based
2 treatment and supervision if:

3 (1) the state establishes by clear and convincing
4 evidence that the person:

5 (A) has a severe mental illness or mental
6 retardation; and

7 (B) as a result of that mental illness or mental
8 retardation is likely to cause serious bodily injury to another if
9 the person is not provided with treatment and supervision; and

10 (2) the state fails to establish by clear and
11 convincing evidence that inpatient treatment or residential care is
12 necessary to protect the safety of others.

13 (b) The order of commitment to outpatient or
14 community-based treatment and supervision expires on the first
15 anniversary of the date the order is issued but is subject to
16 renewal as provided by Article 46C.261.

17 Art. 46C.258. RESPONSIBILITY OF INPATIENT OR RESIDENTIAL
18 CARE FACILITY. (a) The head of the facility to which an acquitted
19 person is committed has, during the commitment period, a continuing
20 responsibility to determine:

21 (1) whether the acquitted person continues to have a
22 severe mental illness or mental retardation and is likely to cause
23 serious harm to another because of any severe mental illness or
24 mental retardation; and

25 (2) if so, whether treatment and supervision cannot be
26 safely and effectively provided as outpatient or community-based
27 treatment and supervision.

1 (b) The head of the facility must notify the committing
2 court and seek modification of the order of commitment if the head
3 of the facility determines that an acquitted person no longer has a
4 severe mental illness or mental retardation, is no longer likely to
5 cause serious harm to another, or that treatment and supervision
6 can be safely and effectively provided as outpatient or
7 community-based treatment and supervision.

8 Art. 46C.259. STATUS OF COMMITTED PERSON. If an acquitted
9 person is committed under this subchapter, the person's status as a
10 patient or resident is governed by Subtitle C or D, Title 7, Health
11 and Safety Code, except that:

12 (1) transfer to a nonsecure unit is governed by
13 Article 46C.260;

14 (2) modification of the order to direct outpatient or
15 community-based treatment and supervision is governed by Article
16 46C.262; and

17 (3) discharge is governed by Article 46C.268.

18 Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NONSECURE
19 FACILITY. (a) A person committed to a facility under this
20 subchapter shall be committed to the maximum security unit of any
21 facility designated by the department.

22 (b) A person committed under this subchapter shall be
23 transferred to the maximum security unit immediately on the entry
24 of the order of commitment.

25 (c) Unless the person is determined to be manifestly
26 dangerous by a review board within the department, not later than
27 the 60th day following the date of the person's arrival at the

1 maximum security unit the person shall be transferred to a
2 nonsecure unit of a facility designated by the department or the
3 Department of Aging and Disability Services, as appropriate.

4 (d) The commissioner shall appoint a review board of five
5 members, including one psychiatrist licensed to practice medicine
6 in this state and two persons who work directly with persons with
7 mental illnesses or with mental retardation, to determine whether
8 the person is manifestly dangerous and, as a result of the danger
9 the person presents, requires continued placement in a maximum
10 security unit.

11 (e) If the head of the facility at which the maximum
12 security unit is located disagrees with the determination, then the
13 matter shall be referred to the commissioner. The commissioner
14 shall decide whether the person is manifestly dangerous.

15 Art. 46C.261. RENEWAL OF ORDERS FOR INPATIENT COMMITMENT OR
16 OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) A
17 court that orders an acquitted person committed to inpatient
18 treatment or orders outpatient or community-based treatment and
19 supervision annually shall determine whether to renew the order.

20 (b) Not later than the 30th day before the date an order is
21 scheduled to expire, the institution to which a person is
22 committed, the person responsible for providing outpatient or
23 community-based treatment and supervision, or the attorney
24 representing the state may file a request that the order be renewed.
25 The request must explain in detail the reasons why the person
26 requests renewal under this article. A request to renew an order
27 committing the person to inpatient treatment must also explain in

1 detail why outpatient or community-based treatment and supervision
2 is not appropriate.

3 (c) The request for renewal must be accompanied by a
4 certificate of medical examination for mental illness signed by a
5 physician who examined the person during the 30-day period
6 preceding the date on which the request is filed.

7 (d) On the filing of a request for renewal under this
8 article, the court shall:

9 (1) set the matter for a hearing; and

10 (2) appoint an attorney to represent the person.

11 (e) The court shall act on the request for renewal before
12 the order expires.

13 (f) If a hearing is held, the person may be transferred from
14 the facility to which the acquitted person was committed to a jail
15 for purposes of participating in the hearing only if necessary but
16 not earlier than 72 hours before the hearing begins. If the order
17 is renewed, the person shall be transferred back to the facility
18 immediately on renewal of the order.

19 (g) If no objection is made, the court may admit into
20 evidence the certificate of medical examination for mental illness.
21 Admitted certificates constitute competent medical or psychiatric
22 testimony, and the court may make its findings solely from the
23 certificate and the detailed request for renewal.

24 (h) A court shall renew the order only if the court finds
25 that the party who requested the renewal has established by clear
26 and convincing evidence that continued mandatory supervision and
27 treatment are appropriate. A renewed order authorizes continued

1 inpatient commitment or outpatient or community-based treatment
2 and supervision for not more than one year.

3 (i) The court, on application for renewal of an order for
4 inpatient or residential care services, may modify the order to
5 provide for outpatient or community-based treatment and
6 supervision if the court finds the acquitted person has established
7 by a preponderance of the evidence that treatment and supervision
8 can be safely and effectively provided as outpatient or
9 community-based treatment and supervision.

10 Art. 46C.262. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED
11 TREATMENT AND SUPERVISION AFTER INPATIENT COMMITMENT. (a) An
12 acquitted person, the head of the facility to which the acquitted
13 person is committed, or the attorney representing the state may
14 request that the court modify an order for inpatient treatment or
15 residential care to order outpatient or community-based treatment
16 and supervision.

17 (b) The court shall hold a hearing on a request made by the
18 head of the facility to which the acquitted person is committed. A
19 hearing under this subsection must be held not later than the 14th
20 day after the date of the request.

21 (c) If a request is made by an acquitted person or the
22 attorney representing the state, the court must act on the request
23 not later than the 14th day after the date of the request. A hearing
24 under this subsection is at the discretion of the court, except that
25 the court shall hold a hearing if the request and any accompanying
26 material provide a basis for believing modification of the order
27 may be appropriate.

1 (d) If a request is made by an acquitted person not later
2 than the 90th day after the date of a hearing on a previous request,
3 the court is not required to act on the request except on the
4 expiration of the order or on the expiration of the 90-day period
5 following the date of the hearing on the previous request.

6 (e) The court shall rule on the request during or as soon as
7 practicable after any hearing on the request but not later than the
8 14th day after the date of the request.

9 (f) The court shall modify the commitment order to direct
10 outpatient or community-based treatment and supervision if at the
11 hearing the acquitted person establishes by a preponderance of the
12 evidence that treatment and supervision can be safely and
13 effectively provided as outpatient or community-based treatment
14 and supervision.

15 Art. 46C.263. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED
16 TREATMENT AND SUPERVISION. (a) The court may order an acquitted
17 person to participate in an outpatient or community-based regimen
18 of treatment and supervision:

19 (1) as an initial matter under Article 46C.253;

20 (2) on renewal of an order of commitment under Article
21 46C.261; or

22 (3) after a period of inpatient treatment or
23 residential care under Article 46C.262.

24 (b) An acquitted person may be ordered to participate in an
25 outpatient or community-based regimen of treatment and supervision
26 only if:

27 (1) the court receives and approves an outpatient or

1 community-based treatment plan that comprehensively provides for
2 the outpatient or community-based treatment and supervision; and

3 (2) the court finds that the outpatient or
4 community-based treatment and supervision provided for by the plan
5 will be available to and provided to the acquitted person.

6 (c) The order may require the person to participate in a
7 prescribed regimen of medical, psychiatric, or psychological care
8 or treatment, and the regimen may include treatment with
9 psychoactive medication.

10 (d) The court may order that supervision of the acquitted
11 person be provided by the facility administrator of a community
12 center that provides mental health or mental retardation services.

13 (e) The court may order the acquitted person to participate
14 in a supervision program funded by the Texas Correctional Office on
15 Offenders with Medical or Mental Impairments.

16 (f) An order under this article must identify the person
17 responsible for administering an ordered regimen of outpatient or
18 community-based treatment and supervision.

19 (g) In determining whether an acquitted person should be
20 ordered to receive outpatient or community-based treatment and
21 supervision rather than inpatient care or residential treatment,
22 the court shall have as its primary concern the protection of
23 society.

24 Art. 46C.264. LOCATION OF COURT-ORDERED OUTPATIENT OR
25 COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court may
26 order the outpatient or community-based treatment and supervision
27 to be provided in any appropriate county where the necessary

1 resources are available.

2 (b) This article does not supersede any requirement under
3 the other provisions of this subchapter to obtain the consent of a
4 treatment and supervision provider to administer the court-ordered
5 outpatient or community-based treatment and supervision.

6 Art. 46C.265. SUPERVISORY RESPONSIBILITY FOR OUTPATIENT OR
7 COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The person
8 responsible for administering a regimen of outpatient or
9 community-based treatment and supervision shall:

10 (1) monitor the condition of the acquitted person; and

11 (2) determine whether the acquitted person is
12 complying with the regimen of treatment and supervision.

13 (b) The person responsible for administering a regimen of
14 outpatient or community-based treatment and supervision shall
15 notify the court ordering that treatment and supervision and the
16 attorney representing the state if the person:

17 (1) fails to comply with the regimen; and

18 (2) becomes likely to cause serious harm to another.

19 Art. 46C.266. MODIFICATION OR REVOCATION OF ORDER FOR
20 OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The
21 court, on its own motion or the motion of any interested person and
22 after notice to the acquitted person and a hearing, may modify or
23 revoke court-ordered outpatient or community-based treatment and
24 supervision.

25 (b) At the hearing, the court without a jury shall determine
26 whether the state has established clear and convincing evidence
27 that:

1 (1) the acquitted person failed to comply with the
2 regimen in a manner or under circumstances indicating the person
3 will become likely to cause serious harm to another if the person is
4 provided continued outpatient or community-based treatment and
5 supervision; or

6 (2) the acquitted person has become likely to cause
7 serious harm to another if provided continued outpatient or
8 community-based treatment and supervision.

9 (c) On a determination under Subsection (b), the court may
10 take any appropriate action, including:

11 (1) revoking court-ordered outpatient or
12 community-based treatment and supervision and ordering the person
13 committed for inpatient or residential care; or

14 (2) imposing additional or more stringent terms on
15 continued outpatient or community-based treatment.

16 (d) An acquitted person who is the subject of a proceeding
17 under this article is entitled to representation by counsel in the
18 proceeding.

19 (e) The court shall set a date for a hearing under this
20 article that is not later than the seventh day after the applicable
21 motion was filed. The court may grant one or more continuances of
22 the hearing on the motion of a party or of the court and for good
23 cause shown.

24 Art. 46C.267. DETENTION PENDING PROCEEDINGS TO MODIFY OR
25 REVOKE ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND
26 SUPERVISION. (a) The state or the head of the facility or other
27 person responsible for administering a regimen of outpatient or

1 community-based treatment and supervision may file a sworn
2 application with the court for the detention of an acquitted person
3 receiving court-ordered outpatient or community-based treatment
4 and supervision. The application must state that the person meets
5 the criteria of Article 46C.266 and provide a detailed explanation
6 of that statement.

7 (b) If the court determines that the application
8 establishes probable cause to believe the order for outpatient or
9 community-based treatment and supervision should be revoked, the
10 court shall issue an order to an on-duty peace officer authorizing
11 the acquitted person to be taken into custody and brought before the
12 court.

13 (c) An acquitted person taken into custody under an order of
14 detention shall be brought before the court without unnecessary
15 delay.

16 (d) When an acquitted person is brought before the court,
17 the court shall determine whether there is probable cause to
18 believe that the order for outpatient or community-based treatment
19 and supervision should be revoked. On a finding that probable cause
20 for revocation exists, the court shall order the person held in
21 protective custody pending a determination of whether the order
22 should be revoked.

23 (e) An acquitted person may be detained under an order for
24 protective custody for a period not to exceed 72 hours, excluding
25 Saturdays, Sundays, legal holidays, and the period prescribed by
26 Section 574.025(b), Health and Safety Code, for an extreme
27 emergency.

1 (f) This subchapter does not affect the power of a peace
2 officer to take an acquitted person into custody under Section
3 573.001, Health and Safety Code.

4 Art. 46C.268. ADVANCE DISCHARGE OF ACQUITTED PERSON AND
5 TERMINATION OF JURISDICTION. (a) An acquitted person, the head of
6 the facility to which the acquitted person is committed, the person
7 responsible for providing the outpatient or community-based
8 treatment and supervision, or the state may request that the court
9 discharge an acquitted person from inpatient commitment or
10 outpatient or community-based treatment and supervision.

11 (b) Not later than the 14th day after the date of the
12 request, the court shall hold a hearing on a request made by the
13 head of the facility to which the acquitted person is committed or
14 the person responsible for providing the outpatient or
15 community-based treatment and supervision.

16 (c) If a request is made by an acquitted person, the court
17 must act on the request not later than the 14th day after the date of
18 the request. A hearing under this subsection is at the discretion
19 of the court, except that the court shall hold a hearing if the
20 request and any accompanying material indicate that modification of
21 the order may be appropriate.

22 (d) If a request is made by an acquitted person not later
23 than the 90th day after the date of a hearing on a previous request,
24 the court is not required to act on the request except on the
25 expiration of the order or on the expiration of the 90-day period
26 following the date of the hearing on the previous request.

27 (e) The court shall rule on the request during or shortly

1 after any hearing that is held and in any case not later than the
2 14th day after the date of the request.

3 (f) The court shall discharge the acquitted person from all
4 court-ordered commitment and treatment and supervision and
5 terminate the court's jurisdiction over the person if the court
6 finds that the acquitted person has established by a preponderance
7 of the evidence that:

8 (1) the acquitted person does not have a severe mental
9 illness or mental retardation; or

10 (2) the acquitted person is not likely to cause
11 serious harm to another because of any severe mental illness or
12 mental retardation.

13 Art. 46C.269. TERMINATION OF COURT'S JURISDICTION.

14 (a) The jurisdiction of the court over a person covered by this
15 subchapter automatically terminates on the date when the cumulative
16 total period of institutionalization and outpatient or
17 community-based treatment and supervision imposed under this
18 subchapter equals the maximum term of imprisonment provided by law
19 for the offense of which the person was acquitted by reason of
20 insanity.

21 (b) On the termination of the court's jurisdiction under
22 this article, the person must be discharged from any inpatient
23 treatment or residential care or outpatient or community-based
24 treatment and supervision ordered under this subchapter.

25 (c) An inpatient or residential care facility to which a
26 person has been committed under this subchapter or a person
27 responsible for administering a regimen of outpatient or

1 community-based treatment and supervision under this subchapter
2 must notify the court not later than the 30th day before the court's
3 jurisdiction over the person ends under this article.

4 (d) This subchapter does not affect whether a person may be
5 ordered to receive care or treatment under Subtitle C or D, Title 7,
6 Health and Safety Code.

7 Art. 46C.270. APPEALS. (a) An acquitted person may appeal
8 a judgment reflecting an acquittal by reason of insanity on the
9 basis of the following:

10 (1) a finding that the acquitted person committed the
11 offense; or

12 (2) a finding that the offense on which the
13 prosecution was based involved conduct that:

14 (A) caused serious bodily injury to another
15 person;

16 (B) placed another person in imminent danger of
17 serious bodily injury; or

18 (C) consisted of a threat of serious bodily
19 injury to another person through the use of a deadly weapon.

20 (b) Either the acquitted person or the state may appeal
21 from:

22 (1) an Order of Commitment to Inpatient Treatment or
23 Residential Care entered under Article 46C.256;

24 (2) an Order to Receive Outpatient or Community-Based
25 Treatment and Supervision entered under Article 46C.257 or 46C.262;

26 (3) an order renewing or refusing to renew an Order for
27 Inpatient Commitment or Outpatient or Community-Based Treatment

1 and Supervision entered under Article 46C.261;

2 (4) an order modifying or revoking an Order for
3 Outpatient or Community-Based Treatment and Supervision entered
4 under Article 46C.266 or refusing a request to modify or revoke that
5 order; or

6 (5) an order discharging an acquitted person under
7 Article 46C.268 or denying a request for discharge of an acquitted
8 person.

9 (c) An appeal under this subchapter may not be considered
10 moot solely due to the expiration of an order on which the appeal is
11 based.

12 SECTION 3. Subchapter A, Chapter 533, Health and Safety
13 Code, is amended by adding Section 533.0095 to read as follows:

14 Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION
15 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
16 executive commissioner of the Health and Human Services Commission
17 by rule shall require the department to collect information and
18 maintain current records regarding a person found not guilty of an
19 offense by reason of insanity under Chapter 46C, Code of Criminal
20 Procedure, who is:

21 (1) ordered by a court to receive inpatient mental
22 health services under Chapter 574 or under Chapter 46C, Code of
23 Criminal Procedure;

24 (2) committed by a court for long-term placement in a
25 residential care facility under Chapter 593 or under Chapter 46C,
26 Code of Criminal Procedure; or

27 (3) ordered by a court to receive outpatient or

1 community-based treatment and supervision.

2 (b) Information maintained by the department under this
3 section must include the name and address of any facility to which
4 the person is committed, the length of the person's commitment to
5 the facility, and any post-release outcome.

6 (c) The department shall file annually with the presiding
7 officer of each house of the legislature a written report
8 containing the name of each person described by Subsection (a), the
9 name and address of any facility to which the person is committed,
10 the length of the person's commitment to the facility, and any
11 post-release outcome.

12 SECTION 4. Subsection (a), Section 576.025, Health and
13 Safety Code, is amended to read as follows:

14 (a) A person may not administer a psychoactive medication to
15 a patient receiving voluntary or involuntary mental health services
16 who refuses the administration unless:

17 (1) the patient is having a medication-related
18 emergency;

19 (2) the patient is younger than 16 years of age and the
20 patient's parent, managing conservator, or guardian consents to the
21 administration on behalf of the patient;

22 (3) the refusing patient's representative authorized
23 by law to consent on behalf of the patient has consented to the
24 administration;

25 (4) the administration of the medication regardless of
26 the patient's refusal is authorized by an order issued under
27 Section 574.106; or

1 (5) the patient is receiving court-ordered mental
2 health services authorized by an order issued under:

3 (A) Chapter 46B or 46C [~~Article 46.03~~], Code of
4 Criminal Procedure; or

5 (B) Chapter 55, Family Code.

6 SECTION 5. The change in law made by this Act applies only
7 to an offense committed on or after the effective date of this Act.
8 An offense committed before the effective date of this Act is
9 covered by the law in effect when the offense was committed, and the
10 former law is continued in effect for that purpose. For purposes of
11 this section, an offense was committed before the effective date of
12 this Act if any element of the offense was committed before that
13 date.

14 SECTION 6. This Act takes effect September 1, 2005.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 837 (Senate engrossed version) as follows:

(1) In SECTION 2 of the bill, in added Subsection (b), Article 46C.051, Code of Criminal Procedure (page 2, line 19), strike "10" and substitute "20".

(2) In SECTION 2 of the bill, in added Subsection (b), Article 46C.051, Code of Criminal Procedure (page 2, line 20), strike "Subsections (c) and (d)" and substitute "Subsection (c)".

(3) In SECTION 2 of the bill, in added Subsection (c), Article 46C.051, Code of Criminal Procedure (page 2, line 21), strike "10-day" and substitute "20-day".

(4) In SECTION 2 of the bill, in added Article 46C.051, Code of Criminal Procedure (page 2, lines 23-26), strike Subsection (d).

79R17737 EMT-D

Keel