

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 Article 46.03, Code of Criminal Procedure, is repealed.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. The 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) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the health and human services commissioner.

(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. THE INSANITY DEFENSE. (a) The insanity defense provided by Section 8.01, Penal Code, may be submitted to the jury only if supported by competent evidence.

(b) If the insanity defense is submitted, the trier of facts

1 shall determine and include in the verdict or judgment or both
2 whether the defendant is guilty, not guilty, or not guilty by reason
3 of insanity.

4 (c) The trier of facts must return a verdict of not guilty by
5 reason of insanity if:

6 (1) the prosecution has established beyond a
7 reasonable doubt that the alleged conduct was committed; and

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

11 (d) A defendant who is found not guilty by reason of
12 insanity stands acquitted of the offense charged and may not be
13 considered a person charged with an offense.

14 (e) The court, the attorney for the state, or the attorney
15 for the defendant may not inform a juror or a prospective juror of
16 the consequences to the defendant if a verdict of not guilty by
17 reason of insanity is returned.

18 Art. 46C.003. RAISING THE INSANITY DEFENSE. (a) A
19 defendant planning to offer evidence of the insanity defense must
20 file with the court and the prosecuting attorney a notice of the
21 defendant's intention to offer that evidence.

22 (b) The notice must be filed at least 10 days before the date
23 the case is set for trial, except that:

24 (1) if the court sets a pretrial hearing before the
25 10-day period, the defendant shall give notice at the hearing; and

26 (2) if before the 10-day period the defendant raises
27 the issue of the defendant's incompetency to stand trial, the

1 defendant must at the same time file notice of the defendant's
2 intention to offer evidence of the insanity defense.

3 (c) Unless notice is timely filed under Subsection (b),
4 evidence on the insanity defense is not admissible unless the court
5 finds that good cause exists for failure to give notice.

6 [Articles 46C.004-46C.050 reserved for expansion]

7 SUBCHAPTER B. EXAMINATION OF DEFENDANT

8 Art. 46C.051. APPOINTMENT OF EXPERTS. (a) If notice of
9 intention to raise the insanity defense is filed under Article
10 46C.003, the court may, on its own motion or motion by the
11 defendant, the defendant's counsel, or the prosecuting attorney,
12 appoint one or more disinterested experts to:

13 (1) examine the defendant with regard to the insanity
14 defense; and

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

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

20 (c) If a defendant wishes to be examined by an expert of the
21 defendant's own choice, the court on timely request shall provide
22 the examiner with reasonable opportunity to examine the defendant.

23 Art. 46C.052. EXPERTS: QUALIFICATIONS. (a) The court may
24 appoint qualified psychiatrists or psychologists as experts under
25 this chapter. To qualify for appointment under this subchapter as
26 an expert, a psychiatrist or psychologist must:

27 (1) as appropriate, be a physician licensed in this

1 state or be a psychologist licensed in this state who has a doctoral
2 degree in psychology; and

3 (2) have the following certification or experience or
4 training:

5 (A) as appropriate, certification by:

6 (i) the American Board of Psychiatry and
7 Neurology with added or special qualifications in forensic
8 psychiatry; or

9 (ii) the American Board of Professional
10 Psychology in forensic psychology; or

11 (B) experience or training consisting of:

12 (i) at least 24 hours of specialized
13 forensic training relating to incompetency or insanity
14 evaluations;

15 (ii) for an appointment made before
16 September 1, 2006, at least five years of experience before
17 September 1, 2005, in performing criminal forensic evaluations for
18 courts; or

19 (iii) for an appointment made on or after
20 September 1, 2006, at least five years of experience before
21 September 1, 2005, in performing criminal forensic evaluations for
22 courts and eight or more hours of continuing education relating to
23 forensic evaluations, completed in the 12 months preceding the
24 appointment and documented with the court.

25 (b) In addition to meeting qualifications required by
26 Subsection (a), to be appointed as an expert a psychiatrist or
27 psychologist must have completed six hours of required continuing

1 education in courses in forensic psychiatry or psychology, as
2 appropriate, in either of the reporting periods in the 24 months
3 preceding the appointment.

4 (c) A court may appoint as an expert a psychiatrist or
5 psychologist who does not meet the requirements of Subsections (a)
6 and (b) only if exigent circumstances require the court to base the
7 appointment on professional training or experience of the expert
8 that directly provides the expert with a specialized expertise to
9 examine the defendant that would not ordinarily be possessed by a
10 psychiatrist or psychologist who meets the requirements of
11 Subsections (a) and (b).

12 Art. 46C.053. ORDER COMPELLING DEFENDANT TO SUBMIT TO
13 EXAMINATION. (a) For the purposes described by this chapter, the
14 court may order any defendant to submit to examination, including a
15 defendant who is free on bail. If the defendant fails or refuses to
16 submit to examination, the court may order the defendant to custody
17 for examination for a reasonable period not to exceed 21 days.
18 Custody ordered by the court under this subsection may include
19 custody at a facility operated by the commission.

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

1 the state travel rules in effect at that time.

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

5 Art. 46C.054. REPORTS SUBMITTED BY EXPERTS. (a) A written
6 report of the examination shall be submitted to the court not later
7 than the 30th day after the date of the order of examination. The
8 court shall provide copies of the report to the defense counsel and
9 the prosecuting attorney.

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

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

15 (1) whether the defendant is presently a person with a
16 mental illness and requires court-ordered mental health services
17 under Chapter 574, Health and Safety Code; or

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

20 Art. 46C.055. COMPENSATION OF EXPERTS. (a) The appointed
21 experts shall be paid by the county in which the indictment was
22 returned or information was filed.

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

1 examination of the defendant.

2 Art. 46C.056. COMPETENCY TO STAND TRIAL: CONCURRENT
3 APPOINTMENT. An expert appointed under this subchapter to examine
4 the defendant with regard to the insanity defense also may be
5 appointed by the court to examine the defendant with regard to the
6 defendant's competency to stand trial under Chapter 46B, if the
7 expert files with the court separate written reports concerning the
8 defendant's competency to stand trial and the insanity defense.

9 [Articles 46C.057-46C.100 reserved for expansion]

10 SUBCHAPTER C. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF
11 INSANITY: DETERMINATION REGARDING VIOLENCE OF CONDUCT

12 Art. 46C.101. DETERMINATION REGARDING VIOLENCE OF CONDUCT.
13 If a defendant is found not guilty by reason of insanity in the
14 trial of an offense, the court shall determine whether the conduct
15 committed by the acquitted person involved an act, attempt, or
16 threat of serious bodily injury to another person.

17 Art. 46C.102. DISPOSITION: NONVIOLENT CONDUCT. (a) If the
18 court determines that the person did not commit an act, attempt, or
19 threat of serious bodily injury to another person, the court shall
20 determine whether there is evidence to support a finding that the
21 person is a person with a mental illness or with mental retardation.

22 (b) If the court determines that there is evidence to
23 support a finding of mental illness or mental retardation, the
24 court shall enter an order transferring the person to the
25 appropriate court for civil commitment proceedings to determine
26 whether the person should receive court-ordered mental health
27 services under Chapter 574, Health and Safety Code, or be committed

1 to a residential care facility to receive mental retardation
2 services under Chapter 593, Health and Safety Code. The court may
3 also order the person:

4 (1) detained in jail or any other suitable place
5 pending the prompt initiation and prosecution of appropriate civil
6 proceedings by the attorney for the state or other person
7 designated by the court; or

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

11 (c) Notwithstanding Subsection (b), a person placed in a
12 commission facility pending civil hearing as described by this
13 article may be detained only with the consent of the head of the
14 facility and pursuant to an Order of Protective Custody issued
15 under Subtitle C, Title 7, Health and Safety Code.

16 (d) If the court does not detain or place the person under
17 Subsection (b), the court shall release the person.

18 Art. 46C.103. DISPOSITION: VIOLENT CONDUCT. (a) If a
19 defendant is found not guilty by reason of insanity in the trial of
20 an offense and the court determines that the acquitted person
21 committed an act, attempt, or threat of serious bodily injury to
22 another person, the trial court may transfer the acquitted person
23 to the appropriate court for civil commitment proceedings on
24 receipt of that court's written consent to the transfer. A trial
25 court that transfers a person to the appropriate court for civil
26 commitment proceedings shall order the person detained in jail or
27 other suitable place pending the initiation of appropriate civil

1 proceedings.

2 (b) A trial court that does not transfer a person to the
3 appropriate court for civil commitment proceedings as described by
4 Subsection (a) shall retain jurisdiction over the person and shall
5 proceed as provided by Subchapters D and E.

6 [Articles 46C.104-46C.150 reserved for expansion]

7 SUBCHAPTER D. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF

8 INSANITY: COMMITMENT BY TRIAL COURT

9 Art. 46C.151. COMMITMENT TO MAXIMUM SECURITY UNIT. A trial
10 court that retains jurisdiction over a person as permitted by
11 Article 46C.103 shall order the person to be committed to the
12 maximum security unit of any facility designated by the commission
13 until the person is eligible for:

14 (1) release under Subchapter E; or

15 (2) transfer to a nonsecurity unit of a facility under
16 Article 46C.152.

17 Art. 46C.152. TRANSFER TO NONSECURITY UNIT. (a) Unless the
18 person is determined to be manifestly dangerous by a review board
19 within the commission, not later than the 60th day after the date
20 the person arrives at the maximum security unit, the person shall be
21 transferred to a nonsecurity unit of a facility designated by the
22 commission.

23 (b) The commissioner shall appoint a review board of five
24 members, including one psychiatrist licensed to practice medicine
25 in this state and two persons who work directly with persons with
26 mental illnesses or with mental retardation, to determine whether
27 the person is manifestly dangerous and, as a result of the danger

1 the person presents, requires continued placement in a maximum
2 security unit.

3 (c) If the superintendent of the facility at which the
4 maximum security unit is located disagrees with the determination,
5 the matter shall be referred to the commissioner. The commissioner
6 shall decide whether the person is manifestly dangerous.

7 Art. 46C.153. EXAMINATION; REPORT. The court shall order
8 that an examination of the person's present mental condition be
9 conducted and that a report be filed with the court.

10 Art. 46C.154. HEARING. (a) Not later than the 30th day
11 after the date of the acquittal order, a hearing shall take place to
12 determine if the person acquitted by reason of insanity:

13 (1) is presently a person with a mental illness or with
14 mental retardation; and

15 (2) meets the criteria for involuntary commitment as
16 provided by Subtitle C or D, Title 7, Health and Safety Code, as
17 applicable.

18 (b) The trial court shall conduct the hearing in the same
19 manner as a hearing on an application for involuntary commitment
20 under Subtitle C or D, Title 7, Health and Safety Code, as
21 applicable.

22 (c) If the court finds that the acquitted person meets the
23 criteria for involuntary commitment, the court shall order that
24 person to be committed to a mental hospital or other appropriate
25 facility, as designated by the commission, for a period not to
26 exceed 90 days. The court may order the acquitted person to
27 participate in a prescribed regimen of medical, psychiatric, or

1 psychological care or treatment on an out-patient basis as
2 permitted by Article 46C.156.

3 (d) If the court finds that the person acquitted by reason
4 of insanity does not meet the criteria for involuntary commitment,
5 the court shall order that person's immediate release.

6 Art. 46C.155. TRANSCRIPT; DOCUMENTATION. The court shall
7 issue an order that:

8 (1) a transcript of all medical testimony received in
9 the criminal proceedings and the commitment proceedings be prepared
10 as soon as possible by the court reporters; and

11 (2) the transcript, together with a statement of the
12 facts and circumstances surrounding the alleged offense, accompany
13 the person to the mental hospital or other appropriate facility.

14 Art. 46C.156. OUT-PATIENT SUPERVISION. The court may order
15 the acquitted person to participate in a prescribed regimen of
16 medical, psychiatric, or psychological care or treatment on an
17 out-patient basis if:

18 (1) at the time of the evaluation under Article
19 46C.153 before the hearing on involuntary commitment under Article
20 46C.154, the report of the person's present mental condition
21 includes a statement that, while the person acquitted by reason of
22 insanity meets the criteria for involuntary commitment, the
23 person's prescribed regimen of medical, psychiatric, or
24 psychological treatment or care can be provided on an out-patient
25 basis; and

26 (2) the court finds that the requirements of
27 Subdivision (1) are met.

1 [Articles 46C.157-46C.200 reserved for expansion]

2 SUBCHAPTER E. REVIEW OF COMMITMENT OR TERMS OF COMMITMENT

3 Art. 46C.201. JUDICIAL RELEASE. A person acquitted by
4 reason of insanity and committed to a mental hospital or other
5 appropriate facility under Article 46C.154 may be released only by
6 order of the committing court in accordance with the procedures
7 provided by this subchapter.

8 Art. 46C.202. FACILITY RECOMMENDATION FOR RELEASE,
9 CONTINUED IN-PATIENT SUPERVISION, OR OUT-PATIENT SUPERVISION. (a)
10 If at any time before the expiration of a commitment order the
11 superintendent of the facility to which the acquitted person is
12 committed determines that the person has recovered from the
13 person's mental condition to the extent that the person no longer
14 meets the criteria for involuntary commitment, or that the person
15 continues to meet those criteria but the treatment or care of the
16 person can be provided on an out-patient basis as described by
17 Article 46C.156, the superintendent shall promptly file a
18 certificate to that effect with the clerk of the court that ordered
19 the commitment.

20 (b) If the superintendent of the facility intends to
21 recommend release, out-patient care, or continued in-patient care
22 on the expiration of a commitment order, at least 14 days before the
23 date of expiration of the order the superintendent must file a
24 certificate to that effect with the clerk of the court that ordered
25 the commitment.

26 (c) The clerk shall notify the district or county attorney
27 on receipt of a certificate described by Subsection (a) or (b).

1 Art. 46C.203. JUDICIAL EVALUATION OF COMMITMENT AND
2 POTENTIAL OUT-PATIENT SUPERVISION. (a) On receipt of a
3 certificate under Article 46C.202 or on the expiration of a
4 commitment order, the court:

5 (1) shall order the release of the acquitted person;
6 or

7 (2) on its own motion or on the motion of the district
8 or county attorney, shall hold a hearing to determine whether:

9 (A) the acquitted person continues to meet the
10 criteria for involuntary commitment; and

11 (B) an order should be issued requiring the
12 person to participate in a prescribed regimen of medical,
13 psychiatric, or psychological care or treatment on an out-patient
14 basis as provided by Article 46C.156.

15 (b) A hearing under Subsection (a) must be conducted
16 according to the requirements of Subtitle C or D, Title 7, Health
17 and Safety Code, as applicable, before the expiration of the
18 commitment order.

19 (c) If the court finds that the acquitted person continues
20 to meet the criteria for involuntary commitment and that
21 out-patient supervision is not appropriate, the court shall order
22 that the person be returned to a mental hospital or other
23 appropriate in-patient or residential facility.

24 (d) If the court finds that continued in-patient or
25 residential care is required, the commitment continues until the
26 expiration of the original order, if one is still in effect, or the
27 court shall issue a new commitment order of an appropriate duration

1 as required by Subsection (e).

2 (e) Commitment orders issued subsequent to an initial
3 commitment order under this chapter shall be of an appropriate
4 duration as provided by Subtitle C or D, Title 7, Health and Safety
5 Code, as applicable.

6 Art. 46C.204. MULTIPLE REQUESTS FOR RELEASE OR OUT-PATIENT
7 SUPERVISION. If a hearing on a request for release or out-patient
8 supervision has been held before the expiration of a commitment
9 order, the court is not required to act on a subsequent request
10 until the expiration of:

11 (1) a commitment order; or

12 (2) the 90th day following a hearing on a previous
13 request.

14 Art. 46C.205. JUDICIAL REVIEW OF EXISTING OUT-PATIENT
15 SUPERVISION; MODIFICATION OR REVOCATION. (a) The court may at any
16 time modify or revoke an existing out-patient regimen of medical,
17 psychiatric, or psychological care or treatment according to the
18 requirements of Subtitle C or D, Title 7, Health and Safety Code, as
19 applicable.

20 (b) According to the requirements of Subtitle C or D, Title
21 7, Health and Safety Code, as applicable, the court shall review the
22 continuing need for an out-patient order as follows:

23 (1) for an initial out-patient order, on the
24 expiration of the 90th day following the date of issuance of the
25 order; and

26 (2) for a subsequent out-patient order, not less than
27 once during each 12-month period following the date of issuance of

1 that subsequent order.

2 Art. 46C.206. FACILITY RECOMMENDATION REGARDING EXISTING
3 OUT-PATIENT SUPERVISION. (a) The superintendent of the facility
4 or other individual responsible for administering an existing
5 regimen of out-patient care or treatment imposed on an acquitted
6 person under this chapter shall notify the court ordering the
7 out-patient care if:

8 (1) the person fails to comply with that regimen; or

9 (2) the person's condition has deteriorated to an
10 extent that out-patient care is no longer appropriate.

11 (b) On notice under Subsection (a) or on other probable
12 cause to believe that the person has failed to comply with the
13 prescribed regimen of medical, psychiatric, or psychological care
14 or treatment, the person may be taken into custody and brought
15 without unnecessary delay before the court having jurisdiction over
16 the person.

17 (c) The court shall determine, after a hearing, whether the
18 person should be remanded to a suitable facility for protective
19 custody, according to the requirements of Subtitle C or D, Title 7,
20 Health and Safety Code, as applicable, pending a hearing on whether
21 the person continues to meet the criteria for involuntary
22 commitment and whether the out-patient order should be modified or
23 revoked.

24 Art. 46C.207. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY
25 MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by reason of
26 insanity may not be committed to a mental hospital or other
27 in-patient or residential facility under Subchapter D or this

1 subchapter for a cumulative period that exceeds the maximum term
2 provided by law for the offense for which the acquitted person was
3 tried.

4 (b) On expiration of that maximum term, the acquitted person
5 may be further confined in a mental hospital or other in-patient or
6 residential facility only pursuant to civil commitment
7 proceedings.

8 SECTION 3. Section 576.025(a), Health and Safety Code, is
9 amended to read as follows:

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

13 (1) the patient is having a medication-related
14 emergency;

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

18 (3) the refusing patient's representative authorized
19 by law to consent on behalf of the patient has consented to the
20 administration;

21 (4) the administration of the medication regardless of
22 the patient's refusal is authorized by an order issued under
23 Section 574.106; or

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

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

1 (B) Chapter 55, Family Code.

2 SECTION 4. The change in law made by this Act applies only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 covered by the law in effect when the offense was committed, and the
6 former law is continued in effect for that purpose. For purposes of
7 this section, an offense was committed before the effective date of
8 this Act if any element of the offense was committed before that
9 date.

10 SECTION 5. This Act takes effect September 1, 2005.