

1-1 By: Wentworth S.B. No. 837
1-2 (In the Senate - Filed March 1, 2005; March 10, 2005, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 26, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 26, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 837 By: Wentworth

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

1-10 relating to the insanity defense.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 46.03, Code of Criminal Procedure, is
1-13 repealed.

1-14 SECTION 2. Title 1, Code of Criminal Procedure, is amended
1-15 by adding Chapter 46C to read as follows:

1-16 CHAPTER 46C. INSANITY DEFENSE

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Art. 46C.001. DEFINITIONS. In this chapter:

1-19 (1) "Commissioner" means the commissioner of state
1-20 health services.

1-21 (2) "Department" means the Department of State Health
1-22 Services.

1-23 (3) "Mental illness" has the meaning assigned by
1-24 Section 571.003, Health and Safety Code.

1-25 (4) "Mental retardation" has the meaning assigned by
1-26 Section 591.003, Health and Safety Code.

1-27 (5) "Residential care facility" has the meaning
1-28 assigned by Section 591.003, Health and Safety Code.

1-29 Art. 46C.002. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY
1-30 MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by reason of
1-31 insanity may not be committed to a mental hospital or other
1-32 inpatient or residential care facility or ordered to receive
1-33 outpatient or community-based treatment and supervision under
1-34 Subchapter F for a cumulative period that exceeds the maximum term
1-35 provided by law for the offense for which the acquitted person was
1-36 tried.

1-37 (b) On expiration of that maximum term, the acquitted person
1-38 may be further confined in a mental hospital or other inpatient or
1-39 residential care facility or ordered to receive outpatient or
1-40 community-based treatment and supervision only under civil
1-41 commitment proceedings.

1-42 [Articles 46C.003-46C.050 reserved for expansion]

1-43 SUBCHAPTER B. RAISING THE INSANITY DEFENSE

1-44 Art. 46C.051. NOTICE OF INTENT TO RAISE INSANITY DEFENSE.

1-45 (a) A defendant planning to offer evidence of the insanity defense
1-46 must file with the court a notice of the defendant's intention to
1-47 offer that evidence.

1-48 (b) The notice must:

1-49 (1) contain a certification that a copy of the notice
1-50 has been served on the attorney representing the state; and

1-51 (2) be filed at least 10 days before the date the case
1-52 is set for trial, except as described by Subsections (c) and (d).

1-53 (c) If before the 10-day period the court sets a pretrial
1-54 hearing, the defendant shall give notice at the hearing.

1-55 (d) If before the 10-day period the defendant raises the
1-56 issue of the defendant's incompetency to stand trial, the defendant
1-57 must at the same time file notice of the defendant's intention to
1-58 offer evidence of the insanity defense.

1-59 Art. 46C.052. EFFECT OF FAILURE TO GIVE NOTICE. Unless
1-60 notice is timely filed under Article 46C.051(b), evidence on the
1-61 insanity defense is not admissible unless the court finds that good
1-62 cause exists for failure to give notice.

1-63 [Articles 46C.053-46C.100 reserved for expansion]

2-1 SUBCHAPTER C. COURT-ORDERED EXAMINATION AND REPORT

2-2 Art. 46C.101. APPOINTMENT OF EXPERTS. (a) If notice of
 2-3 intention to raise the insanity defense is filed under Article
 2-4 46C.051, the court may, on its own motion or motion by the
 2-5 defendant, the defendant's counsel, or the attorney representing
 2-6 the state, appoint one or more disinterested experts to:

2-7 (1) examine the defendant with regard to the insanity
 2-8 defense; and

2-9 (2) testify as to the issue of insanity at any trial or
 2-10 hearing involving that issue.

2-11 (b) The court shall advise an expert appointed under this
 2-12 article of the facts and circumstances of the offense with which the
 2-13 defendant is charged and the elements of the insanity defense.

2-14 Art. 46C.102. EXPERTS: QUALIFICATIONS. (a) The court may
 2-15 appoint qualified psychiatrists or psychologists as experts under
 2-16 this chapter. To qualify for appointment under this subchapter as
 2-17 an expert, a psychiatrist or psychologist must:

2-18 (1) as appropriate, be a physician licensed in this
 2-19 state or be a psychologist licensed in this state who has a doctoral
 2-20 degree in psychology; and

2-21 (2) have the following certification or experience or
 2-22 training:

2-23 (A) as appropriate, certification by:

2-24 (i) the American Board of Psychiatry and
 2-25 Neurology with added or special qualifications in forensic
 2-26 psychiatry; or

2-27 (ii) the American Board of Professional
 2-28 Psychology in forensic psychology; or

2-29 (B) experience or training consisting of:

2-30 (i) at least 24 hours of specialized
 2-31 forensic training relating to incompetency or insanity
 2-32 evaluations;

2-33 (ii) at least five years of experience in
 2-34 performing criminal forensic evaluations for courts; and

2-35 (iii) eight or more hours of continuing
 2-36 education relating to forensic evaluations, completed in the 12
 2-37 months preceding the appointment and documented with the court.

2-38 (b) In addition to meeting qualifications required by
 2-39 Subsection (a), to be appointed as an expert a psychiatrist or
 2-40 psychologist must have completed six hours of required continuing
 2-41 education in courses in forensic psychiatry or psychology, as
 2-42 appropriate, in the 24 months preceding the appointment.

2-43 (c) A court may appoint as an expert a psychiatrist or
 2-44 psychologist who does not meet the requirements of Subsections (a)
 2-45 and (b) only if exigent circumstances require the court to base the
 2-46 appointment on professional training or experience of the expert
 2-47 that directly provides the expert with a specialized expertise to
 2-48 examine the defendant that would not ordinarily be possessed by a
 2-49 psychiatrist or psychologist who meets the requirements of
 2-50 Subsections (a) and (b).

2-51 Art. 46C.103. COMPETENCY TO STAND TRIAL: CONCURRENT
 2-52 APPOINTMENT. (a) An expert appointed under this subchapter to
 2-53 examine the defendant with regard to the insanity defense also may
 2-54 be appointed by the court to examine the defendant with regard to
 2-55 the defendant's competency to stand trial under Chapter 46B, if the
 2-56 expert files with the court separate written reports concerning the
 2-57 defendant's competency to stand trial and the insanity defense.

2-58 (b) Notwithstanding Subsection (a), an expert is not
 2-59 required to file separate written reports under this article if in
 2-60 the opinion of the expert the defendant is incompetent to proceed.

2-61 Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO
 2-62 EXAMINATION. (a) For the purposes described by this chapter, the
 2-63 court may order any defendant to submit to examination, including a
 2-64 defendant who is free on bail. If the defendant fails or refuses to
 2-65 submit to examination, the court may order the defendant to custody
 2-66 for examination for a reasonable period not to exceed 21 days.
 2-67 Custody ordered by the court under this subsection may include
 2-68 custody at a facility operated by the department.

2-69 (b) If a defendant who has been ordered to a facility

operated by the department for examination remains in the facility for a period that exceeds 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel rules in effect at that time.

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

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

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

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

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

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

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

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

Art. 46C.107. EXAMINATION BY EXPERT OF DEFENDANT'S CHOICE. If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

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

SUBCHAPTER D. DETERMINATION OF ISSUE OF DEFENDANT'S SANITY

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

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

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

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

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

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

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

Art. 46C.153. GENERAL PROVISIONS RELATING TO DETERMINATION OF SANITY ISSUE BY JUDGE OR JURY. (a) The judge or jury shall determine that a defendant is not guilty by reason of insanity if:

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

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

(b) The parties may, with the consent of the judge, agree to

4-1 both:

4-2 (1) dismissal of the indictment or information on the
 4-3 ground that the defendant was insane; and

4-4 (2) entry of a judgment of dismissal due to the
 4-5 defendant's insanity.

4-6 (c) An entry of judgment under Subsection (b)(2) has the
 4-7 same effect as a judgment stating that the defendant has been found
 4-8 not guilty by reason of insanity.

4-9 Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF
 4-10 ACQUITTAL. The court, the attorney representing the state, or the
 4-11 attorney for the defendant may not inform a juror or a prospective
 4-12 juror of the consequences to the defendant if a verdict of not
 4-13 guilty by reason of insanity is returned.

4-14 Art. 46C.155. FINDING OF NOT GUILTY BY REASON OF INSANITY
 4-15 CONSIDERED ACQUITTAL. (a) Except as provided by Subsection (b), a
 4-16 defendant who is found not guilty by reason of insanity stands
 4-17 acquitted of the offense charged and may not be considered a person
 4-18 charged with an offense.

4-19 (b) A defendant who is found not guilty by reason of
 4-20 insanity is not considered to be acquitted for purposes of Chapter
 4-21 55.

4-22 Art. 46C.156. JUDGMENT. (a) In each case in which the
 4-23 insanity defense is raised, the judgment must reflect whether the
 4-24 defendant was found guilty, not guilty, or not guilty by reason of
 4-25 insanity.

4-26 (b) If the defendant was found not guilty by reason of
 4-27 insanity, the judgment must specify the offense of which the
 4-28 defendant was found not guilty.

4-29 (c) If the defendant was found not guilty by reason of
 4-30 insanity, the judgment must reflect the finding made under Article
 4-31 46C.157.

4-32 Art. 46C.157. DETERMINATION REGARDING DANGEROUS CONDUCT OF
 4-33 ACQUITTED PERSON. If a defendant is found not guilty by reason of
 4-34 insanity, the court immediately shall determine whether the offense
 4-35 of which the person was acquitted involved conduct that:

4-36 (1) caused serious bodily injury to another person;
 4-37 (2) placed another person in imminent danger of
 4-38 serious bodily injury; or

4-39 (3) consisted of a threat of serious bodily injury to
 4-40 another person through the use of a deadly weapon.

4-41 Art. 46C.158. CONTINUING JURISDICTION OF DANGEROUS
 4-42 ACQUITTED PERSON. If the court finds that the offense of which the
 4-43 person was acquitted involved conduct that caused serious bodily
 4-44 injury to another person, placed another person in imminent danger
 4-45 of serious bodily injury, or consisted of a threat of serious bodily
 4-46 injury to another person through the use of a deadly weapon, the
 4-47 court retains jurisdiction over the acquitted person until either:

4-48 (1) the court discharges the person and terminates its
 4-49 jurisdiction under Article 46C.268; or

4-50 (2) the cumulative total period of
 4-51 institutionalization and outpatient or community-based treatment
 4-52 and supervision under the court's jurisdiction equals the maximum
 4-53 term provided by law for the offense of which the person was
 4-54 acquitted by reason of insanity and the court's jurisdiction is
 4-55 automatically terminated under Article 46C.269.

4-56 Art. 46C.159. PROCEEDINGS REGARDING NONDANGEROUS ACQUITTED
 4-57 PERSON. If the court finds that the offense of which the person was
 4-58 acquitted did not involve conduct that caused serious bodily injury
 4-59 to another person, placed another person in imminent danger of
 4-60 serious bodily injury, or consisted of a threat of serious bodily
 4-61 injury to another person through the use of a deadly weapon, the
 4-62 court shall proceed under Subchapter E.

4-63 Art. 46C.160. FURTHER DETENTION OF ACQUITTED PERSON.
 4-64 (a) On a determination by the judge or jury that the defendant is
 4-65 not guilty by reason of insanity, pending further proceedings under
 4-66 this chapter, the court may order the defendant detained in jail or
 4-67 any other suitable place for a period not to exceed 14 days.

4-68 (b) The court may order a defendant detained in a facility
 4-69 of the department or a facility of the Department of Aging and

5-1 Disability Services under this article only with the consent of the
5-2 head of the facility.

5-3 [Articles 46C.161-46C.200 reserved for expansion]
5-4 SUBCHAPTER E. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF
5-5 INSANITY: NO FINDING OF DANGEROUS CONDUCT

5-6 Art. 46C.201. DISPOSITION: NONDANGEROUS CONDUCT. (a) If
5-7 the court determines that the offense of which the person was
5-8 acquitted did not involve conduct that caused serious bodily injury
5-9 to another person, placed another person in imminent danger of
5-10 serious bodily injury, or consisted of a threat of serious bodily
5-11 injury to another person through the use of a deadly weapon, the
5-12 court shall determine whether there is evidence to support a
5-13 finding that the person is a person with a mental illness or with
5-14 mental retardation.

5-15 (b) If the court determines that there is evidence to
5-16 support a finding of mental illness or mental retardation, the
5-17 court shall enter an order transferring the person to the
5-18 appropriate court for civil commitment proceedings to determine
5-19 whether the person should receive court-ordered mental health
5-20 services under Subtitle C, Title 7, Health and Safety Code, or be
5-21 committed to a residential care facility to receive mental
5-22 retardation services under Subtitle D, Title 7, Health and Safety
5-23 Code. The court may also order the person:

5-24 (1) detained in jail or any other suitable place
5-25 pending the prompt initiation and prosecution of appropriate civil
5-26 proceedings by the attorney representing the state or other person
5-27 designated by the court; or

5-28 (2) placed in the care of a responsible person on
5-29 satisfactory security being given for the acquitted person's proper
5-30 care and protection.

5-31 Art. 46C.202. DETENTION OR RELEASE. (a) Notwithstanding
5-32 Article 46C.201(b), a person placed in a department facility or a
5-33 facility of the Department of Aging and Disability Services pending
5-34 civil hearing as described by that subsection may be detained only
5-35 with the consent of the head of the facility and under an Order of
5-36 Protective Custody issued under Subtitle C or D, Title 7, Health and
5-37 Safety Code.

5-38 (b) If the court does not detain or place the person under
5-39 Article 46C.201(b), the court shall release the person.

5-40 [Articles 46C.203-46C.250 reserved for expansion]
5-41 SUBCHAPTER F. DISPOSITION FOLLOWING ACQUITTAL BY
5-42 REASON OF INSANITY: FINDING OF DANGEROUS CONDUCT

5-43 Art. 46C.251. COMMITMENT FOR EVALUATION AND TREATMENT;
5-44 REPORT. (a) The court shall order the acquitted person to be
5-45 committed for evaluation of the person's present mental condition
5-46 and for treatment to the maximum security unit of any facility
5-47 designated by the department. The period of commitment under this
5-48 article may not exceed 30 days.

5-49 (b) The court shall order that:

5-50 (1) a transcript of all medical testimony received in
5-51 the criminal proceeding be prepared as soon as possible by the court
5-52 reporter and the transcript be forwarded to the facility to which
5-53 the acquitted person is committed; and

5-54 (2) the following information be forwarded to the
5-55 facility and, as applicable, to the department or the Department of
5-56 Aging and Disability Services:

5-57 (A) the complete name, race, and gender of the
5-58 person;

5-59 (B) any known identifying number of the person,
5-60 including social security number, driver's license number, or state
5-61 identification number;

5-62 (C) the person's date of birth; and

5-63 (D) the offense of which the person was found not
5-64 guilty by reason of insanity and a statement of the facts and
5-65 circumstances surrounding the alleged offense.

5-66 (c) The court shall order that a report be filed with the
5-67 court under Article 46C.252.

5-68 (d) To determine the proper disposition of the acquitted
5-69 person, the court shall hold a hearing on disposition not later than

6-1 the 30th day after the date of acquittal.

6-2 Art. 46C.252. REPORT AFTER EVALUATION. (a) The report
 6-3 ordered under Article 46C.251 must be filed with the court as soon
 6-4 as practicable before the hearing on disposition but not later than
 6-5 the fourth day before that hearing.

6-6 (b) The report in general terms must describe and explain
 6-7 the procedure, techniques, and tests used in the examination of the
 6-8 person.

6-9 (c) The report must address:

6-10 (1) whether the acquitted person has a mental illness
 6-11 or mental retardation and, if so, whether the mental illness or
 6-12 mental retardation is severe;

6-13 (2) whether as a result of any severe mental illness or
 6-14 mental retardation the acquitted person is likely to cause serious
 6-15 harm to another;

6-16 (3) whether as a result of any impairment the
 6-17 acquitted person is subject to commitment under Subtitle C or D,
 6-18 Title 7, Health and Safety Code;

6-19 (4) prospective treatment and supervision options, if
 6-20 any, appropriate for the acquitted person; and

6-21 (5) whether any required treatment and supervision can
 6-22 be safely and effectively provided as outpatient or community-based
 6-23 treatment and supervision.

6-24 Art. 46C.253. HEARING ON DISPOSITION. (a) The hearing on
 6-25 disposition shall be conducted in the same manner as a hearing on an
 6-26 application for involuntary commitment under Subtitle C or D, Title
 6-27 7, Health and Safety Code, except that the use of a jury is governed
 6-28 by Article 46C.255.

6-29 (b) At the hearing, the court shall address:

6-30 (1) whether the person acquitted by reason of insanity
 6-31 has a severe mental illness or mental retardation;

6-32 (2) whether as a result of any mental illness or mental
 6-33 retardation the person is likely to cause serious harm to another;
 6-34 and

6-35 (3) whether appropriate treatment and supervision for
 6-36 any mental illness or mental retardation rendering the person
 6-37 dangerous to another can be safely and effectively provided as
 6-38 outpatient or community-based treatment and supervision.

6-39 (c) The court shall order the acquitted person committed for
 6-40 inpatient treatment or residential care under Article 46C.256 if
 6-41 the grounds required for that order are established.

6-42 (d) The court shall order the acquitted person to receive
 6-43 outpatient or community-based treatment and supervision under
 6-44 Article 46C.257 if the grounds required for that order are
 6-45 established.

6-46 (e) The court shall order the acquitted person transferred
 6-47 to an appropriate court for proceedings under Subtitle C or D, Title
 6-48 7, Health and Safety Code, if the state fails to establish the
 6-49 grounds required for an order under Article 46C.256 or 46C.257 but
 6-50 the evidence provides a reasonable basis for believing the
 6-51 acquitted person is a proper subject for those proceedings.

6-52 (f) The court shall order the acquitted person discharged
 6-53 and immediately released if the evidence fails to establish that
 6-54 disposition under Subsection (c), (d), or (e) is appropriate.

6-55 Art. 46C.254. EFFECT OF STABILIZATION ON TREATMENT REGIMEN.
 6-56 If an acquitted person is stabilized on a treatment regimen,
 6-57 including medication and other treatment modalities, rendering the
 6-58 person no longer likely to cause serious harm to another, inpatient
 6-59 treatment or residential care may be found necessary to protect the
 6-60 safety of others only if:

6-61 (1) the person would become likely to cause serious
 6-62 harm to another if the person fails to follow the treatment regimen
 6-63 on an Order to Receive Outpatient or Community-Based Treatment and
 6-64 Supervision; and

6-65 (2) under an Order to Receive Outpatient or
 6-66 Community-Based Treatment and Supervision either:

6-67 (A) the person is likely to fail to comply with an
 6-68 available regimen of outpatient community-based treatment, as
 6-69 determined by the person's insight into the need for medication,

7-1 the number, severity, and controllability of side effects, the
 7-2 availability of support and treatment programs for the person from
 7-3 community members, and other appropriate considerations; or

7-4 (B) a regimen of outpatient or community-based
 7-5 treatment will not be available to the person.

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

7-11 (1) a hearing under Article 46C.253;

7-12 (2) a proceeding for renewal of an order under Article
 7-13 46C.261;

7-14 (3) a proceeding on a request for modification or
 7-15 revocation of an order under Article 46C.266; and

7-16 (4) a proceeding seeking discharge of an acquitted
 7-17 person under Article 46C.268.

7-18 (b) The following proceedings may not be held before a jury:

7-19 (1) a proceeding to determine outpatient or
 7-20 community-based treatment and supervision under Article 46C.262;
 7-21 or

7-22 (2) a proceeding to determine modification or
 7-23 revocation of outpatient or community-based treatment and
 7-24 supervision under Article 46C.267.

7-25 (c) If a hearing is held before a jury and the jury
 7-26 determines that the person has a mental illness or mental
 7-27 retardation and is likely to cause serious harm to another, the
 7-28 court shall determine whether inpatient treatment or residential
 7-29 care is necessary to protect the safety of others.

7-30 Art. 46C.256. ORDER OF COMMITMENT TO INPATIENT TREATMENT OR
 7-31 RESIDENTIAL CARE. (a) The court shall order the acquitted person
 7-32 committed to a mental hospital or other appropriate facility for
 7-33 inpatient treatment or residential care if the state establishes by
 7-34 clear and convincing evidence that:

7-35 (1) the person has a severe mental illness or mental
 7-36 retardation;

7-37 (2) the person, as a result of that mental illness or
 7-38 mental retardation, is likely to cause serious bodily injury to
 7-39 another if the person is not provided with treatment and
 7-40 supervision; and

7-41 (3) inpatient treatment or residential care is
 7-42 necessary to protect the safety of others.

7-43 (b) In determining whether inpatient treatment or
 7-44 residential care has been proved necessary, the court shall
 7-45 consider whether the evidence shows both that:

7-46 (1) an adequate regimen of outpatient or
 7-47 community-based treatment will be available to the person; and

7-48 (2) the person will follow that regimen.

7-49 (c) The order of commitment to inpatient treatment or
 7-50 residential care expires on the 181st day following the date the
 7-51 order is issued but is subject to renewal as provided by Article
 7-52 46C.261.

7-53 Art. 46C.257. ORDER TO RECEIVE OUTPATIENT OR
 7-54 COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court shall
 7-55 order the acquitted person to receive outpatient or community-based
 7-56 treatment and supervision if:

7-57 (1) the state establishes by clear and convincing
 7-58 evidence that the person:

7-59 (A) has a severe mental illness or mental
 7-60 retardation; and

7-61 (B) as a result of that mental illness or mental
 7-62 retardation is likely to cause serious bodily injury to another if
 7-63 the person is not provided with treatment and supervision; and

7-64 (2) the state fails to establish by clear and
 7-65 convincing evidence that inpatient treatment or residential care is
 7-66 necessary to protect the safety of others.

7-67 (b) The order of commitment to outpatient or
 7-68 community-based treatment and supervision expires on the first
 7-69 anniversary of the date the order is issued but is subject to

8-1 renewal as provided by Article 46C.261.

8-2 Art. 46C.258. RESPONSIBILITY OF INPATIENT OR RESIDENTIAL
8-3 CARE FACILITY. (a) The head of the facility to which an acquitted
8-4 person is committed has, during the commitment period, a continuing
8-5 responsibility to determine:

8-6 (1) whether the acquitted person continues to have a
8-7 severe mental illness or mental retardation and is likely to cause
8-8 serious harm to another because of any severe mental illness or
8-9 mental retardation; and

8-10 (2) if so, whether treatment and supervision cannot be
8-11 safely and effectively provided as outpatient or community-based
8-12 treatment and supervision.

8-13 (b) The head of the facility must notify the committing
8-14 court and seek modification of the order of commitment if the head
8-15 of the facility determines that an acquitted person no longer has a
8-16 severe mental illness or mental retardation, is no longer likely to
8-17 cause serious harm to another, or that treatment and supervision
8-18 can be safely and effectively provided as outpatient or
8-19 community-based treatment and supervision.

8-20 Art. 46C.259. STATUS OF COMMITTED PERSON. If an acquitted
8-21 person is committed under this subchapter, the person's status as a
8-22 patient or resident is governed by Subtitle C or D, Title 7, Health
8-23 and Safety Code, except that:

8-24 (1) transfer to a nonsecure unit is governed by
8-25 Article 46C.260;

8-26 (2) modification of the order to direct outpatient or
8-27 community-based treatment and supervision is governed by Article
8-28 46C.262; and

8-29 (3) discharge is governed by Article 46C.268.

8-30 Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NONSECURE
8-31 FACILITY. (a) A person committed to a facility under this
8-32 subchapter shall be committed to the maximum security unit of any
8-33 facility designated by the department.

8-34 (b) A person committed under this subchapter shall be
8-35 transferred to the maximum security unit immediately on the entry
8-36 of the order of commitment.

8-37 (c) Unless the person is determined to be manifestly
8-38 dangerous by a review board within the department, not later than
8-39 the 60th day following the date of the person's arrival at the
8-40 maximum security unit the person shall be transferred to a
8-41 nonsecure unit of a facility designated by the department or the
8-42 Department of Aging and Disability Services, as appropriate.

8-43 (d) The commissioner shall appoint a review board of five
8-44 members, including one psychiatrist licensed to practice medicine
8-45 in this state and two persons who work directly with persons with
8-46 mental illnesses or with mental retardation, to determine whether
8-47 the person is manifestly dangerous and, as a result of the danger
8-48 the person presents, requires continued placement in a maximum
8-49 security unit.

8-50 (e) If the head of the facility at which the maximum
8-51 security unit is located disagrees with the determination, then the
8-52 matter shall be referred to the commissioner. The commissioner
8-53 shall decide whether the person is manifestly dangerous.

8-54 Art. 46C.261. RENEWAL OF ORDERS FOR INPATIENT COMMITMENT OR
8-55 OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) A
8-56 court that orders an acquitted person committed to inpatient
8-57 treatment or orders outpatient or community-based treatment and
8-58 supervision annually shall determine whether to renew the order.

8-59 (b) Not later than the 30th day before the date an order is
8-60 scheduled to expire, the institution to which a person is
8-61 committed, the person responsible for providing outpatient or
8-62 community-based treatment and supervision, or the attorney
8-63 representing the state may file a request that the order be renewed.
8-64 The request must explain in detail the reasons why the person
8-65 requests renewal under this article. A request to renew an order
8-66 committing the person to inpatient treatment must also explain in
8-67 detail why outpatient or community-based treatment and supervision
8-68 is not appropriate.

8-69 (c) The request for renewal must be accompanied by a

9-1 certificate of medical examination for mental illness signed by a
 9-2 physician who examined the person during the 30-day period
 9-3 preceding the date on which the request is filed.

9-4 (d) On the filing of a request for renewal under this
 9-5 article, the court shall:

9-6 (1) set the matter for a hearing; and

9-7 (2) appoint an attorney to represent the person.

9-8 (e) The court shall act on the request for renewal before
 9-9 the order expires.

9-10 (f) If a hearing is held, the person may be transferred from
 9-11 the facility to which the acquitted person was committed to a jail
 9-12 for purposes of participating in the hearing only if necessary but
 9-13 not earlier than 72 hours before the hearing begins. If the order
 9-14 is renewed, the person shall be transferred back to the facility
 9-15 immediately on renewal of the order.

9-16 (g) If no objection is made, the court may admit into
 9-17 evidence the certificate of medical examination for mental illness.
 9-18 Admitted certificates constitute competent medical or psychiatric
 9-19 testimony, and the court may make its findings solely from the
 9-20 certificate and the detailed request for renewal.

9-21 (h) A court shall renew the order only if the court finds
 9-22 that the party who requested the renewal has established by clear
 9-23 and convincing evidence that continued mandatory supervision and
 9-24 treatment are appropriate. A renewed order authorizes continued
 9-25 inpatient commitment or outpatient or community-based treatment
 9-26 and supervision for not more than one year.

9-27 (i) The court, on application for renewal of an order for
 9-28 inpatient or residential care services, may modify the order to
 9-29 provide for outpatient or community-based treatment and
 9-30 supervision if the court finds the acquitted person has established
 9-31 by a preponderance of the evidence that treatment and supervision
 9-32 can be safely and effectively provided as outpatient or
 9-33 community-based treatment and supervision.

9-34 Art. 46C.262. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED
 9-35 TREATMENT AND SUPERVISION AFTER INPATIENT COMMITMENT. (a) An
 9-36 acquitted person, the head of the facility to which the acquitted
 9-37 person is committed, or the attorney representing the state may
 9-38 request that the court modify an order for inpatient treatment or
 9-39 residential care to order outpatient or community-based treatment
 9-40 and supervision.

9-41 (b) The court shall hold a hearing on a request made by the
 9-42 head of the facility to which the acquitted person is committed. A
 9-43 hearing under this subsection must be held not later than the 14th
 9-44 day after the date of the request.

9-45 (c) If a request is made by an acquitted person or the
 9-46 attorney representing the state, the court must act on the request
 9-47 not later than the 14th day after the date of the request. A hearing
 9-48 under this subsection is at the discretion of the court, except that
 9-49 the court shall hold a hearing if the request and any accompanying
 9-50 material provide a basis for believing modification of the order
 9-51 may be appropriate.

9-52 (d) If a request is made by an acquitted person not later
 9-53 than the 90th day after the date of a hearing on a previous request,
 9-54 the court is not required to act on the request except on the
 9-55 expiration of the order or on the expiration of the 90-day period
 9-56 following the date of the hearing on the previous request.

9-57 (e) The court shall rule on the request during or as soon as
 9-58 practicable after any hearing on the request but not later than the
 9-59 14th day after the date of the request.

9-60 (f) The court shall modify the commitment order to direct
 9-61 outpatient or community-based treatment and supervision if at the
 9-62 hearing the acquitted person establishes by a preponderance of the
 9-63 evidence that treatment and supervision can be safely and
 9-64 effectively provided as outpatient or community-based treatment
 9-65 and supervision.

9-66 Art. 46C.263. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED
 9-67 TREATMENT AND SUPERVISION. (a) The court may order an acquitted
 9-68 person to participate in an outpatient or community-based regimen
 9-69 of treatment and supervision:

10-1 (1) as an initial matter under Article 46C.253;
10-2 (2) on renewal of an order of commitment under Article
10-3 46C.261; or
10-4 (3) after a period of inpatient treatment or
10-5 residential care under Article 46C.262.

10-6 (b) An acquitted person may be ordered to participate in an
10-7 outpatient or community-based regimen of treatment and supervision
10-8 only if:

10-9 (1) the court receives and approves an outpatient or
10-10 community-based treatment plan that comprehensively provides for
10-11 the outpatient or community-based treatment and supervision; and

10-12 (2) the court finds that the outpatient or
10-13 community-based treatment and supervision provided for by the plan
10-14 will be available to and provided to the acquitted person.

10-15 (c) The order may require the person to participate in a
10-16 prescribed regimen of medical, psychiatric, or psychological care
10-17 or treatment, and the regimen may include treatment with
10-18 psychoactive medication.

10-19 (d) The court may order that supervision of the acquitted
10-20 person be provided by the appropriate community supervision and
10-21 corrections department or the facility administrator of a community
10-22 center that provides mental health or mental retardation services.

10-23 (e) The court may order the acquitted person to participate
10-24 in a supervision program funded by the Texas Correctional Office on
10-25 Offenders with Medical or Mental Impairments.

10-26 (f) An order under this article must identify the person
10-27 responsible for administering an ordered regimen of outpatient or
10-28 community-based treatment and supervision.

10-29 (g) In determining whether an acquitted person should be
10-30 ordered to receive outpatient or community-based treatment and
10-31 supervision rather than inpatient care or residential treatment,
10-32 the court shall have as its primary concern the protection of
10-33 society.

10-34 Art. 46C.264. LOCATION OF COURT-ORDERED OUTPATIENT OR
10-35 COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court may
10-36 order the outpatient or community-based treatment and supervision
10-37 to be provided in any appropriate county where the necessary
10-38 resources are available.

10-39 (b) This article does not supersede any requirement under
10-40 the other provisions of this subchapter to obtain the consent of a
10-41 treatment and supervision provider to administer the court-ordered
10-42 outpatient or community-based treatment and supervision.

10-43 Art. 46C.265. SUPERVISORY RESPONSIBILITY FOR OUTPATIENT OR
10-44 COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The person
10-45 responsible for administering a regimen of outpatient or
10-46 community-based treatment and supervision shall:

10-47 (1) monitor the condition of the acquitted person; and
10-48 (2) determine whether the acquitted person is
10-49 complying with the regimen of treatment and supervision.

10-50 (b) The person responsible for administering a regimen of
10-51 outpatient or community-based treatment and supervision shall
10-52 notify the court ordering that treatment and supervision and the
10-53 attorney representing the state if the person:

10-54 (1) fails to comply with the regimen; and
10-55 (2) becomes likely to cause serious harm to another.

10-56 Art. 46C.266. MODIFICATION OR REVOCATION OF ORDER FOR
10-57 OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The
10-58 court, on its own motion or the motion of any interested person and
10-59 after notice to the acquitted person and a hearing, may modify or
10-60 revoke court-ordered outpatient or community-based treatment and
10-61 supervision.

10-62 (b) At the hearing, the court without a jury shall determine
10-63 whether the state has established clear and convincing evidence
10-64 that:

10-65 (1) the acquitted person failed to comply with the
10-66 regimen in a manner or under circumstances indicating the person
10-67 will become likely to cause serious harm to another if the person is
10-68 provided continued outpatient or community-based treatment and
10-69 supervision; or

11-1 (2) the acquitted person has become likely to cause
 11-2 serious harm to another if provided continued outpatient or
 11-3 community-based treatment and supervision.

11-4 (c) On a determination under Subsection (b), the court may
 11-5 take any appropriate action, including:

11-6 (1) revoking court-ordered outpatient or
 11-7 community-based treatment and supervision and ordering the person
 11-8 committed for inpatient or residential care; or

11-9 (2) imposing additional or more stringent terms on
 11-10 continued outpatient or community-based treatment.

11-11 (d) An acquitted person who is the subject of a proceeding
 11-12 under this article is entitled to representation by counsel in the
 11-13 proceeding.

11-14 (e) The court shall set a date for a hearing under this
 11-15 article that is not later than the seventh day after the applicable
 11-16 motion was filed. The court may grant one or more continuances of
 11-17 the hearing on the motion of a party or of the court and for good
 11-18 cause shown.

11-19 Art. 46C.267. DETENTION PENDING PROCEEDINGS TO MODIFY OR
 11-20 REVOKE ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND
 11-21 SUPERVISION. (a) The state or the head of the facility or other
 11-22 person responsible for administering a regimen of outpatient or
 11-23 community-based treatment and supervision may file a sworn
 11-24 application with the court for the detention of an acquitted person
 11-25 receiving court-ordered outpatient or community-based treatment
 11-26 and supervision. The application must state that the person meets
 11-27 the criteria of Article 46C.256(b) and provide a detailed
 11-28 explanation of that statement.

11-29 (b) If the court determines that the application
 11-30 establishes probable cause to believe the order for outpatient or
 11-31 community-based treatment and supervision should be revoked, the
 11-32 court shall issue an order to an on-duty peace officer authorizing
 11-33 the acquitted person to be taken into custody and brought before the
 11-34 court.

11-35 (c) An acquitted person taken into custody under an order of
 11-36 detention shall be brought before the court without unnecessary
 11-37 delay.

11-38 (d) When an acquitted person is brought before the court,
 11-39 the court shall determine whether there is probable cause to
 11-40 believe that the order for outpatient or community-based treatment
 11-41 and supervision should be revoked. On a finding that probable cause
 11-42 for revocation exists, the court shall order the person held in
 11-43 protective custody pending a determination of whether the order
 11-44 should be revoked.

11-45 (e) An acquitted person may be detained under an order for
 11-46 protective custody for a period not to exceed 72 hours, excluding
 11-47 Saturdays, Sundays, legal holidays, and the period prescribed by
 11-48 Section 574.025(b), Health and Safety Code, for an extreme
 11-49 emergency.

11-50 (f) This subchapter does not affect the power of a peace
 11-51 officer to take an acquitted person into custody under Section
 11-52 573.001, Health and Safety Code.

11-53 Art. 46C.268. ADVANCE DISCHARGE OF ACQUITTED PERSON AND
 11-54 TERMINATION OF JURISDICTION. (a) An acquitted person, the head of
 11-55 the facility to which the acquitted person is committed, the person
 11-56 responsible for providing the outpatient or community-based
 11-57 treatment and supervision, or the state may request that the court
 11-58 discharge an acquitted person from inpatient commitment or
 11-59 outpatient or community-based treatment and supervision.

11-60 (b) Not later than the 14th day after the date of the
 11-61 request, the court shall hold a hearing on a request made by the
 11-62 head of the facility to which the acquitted person is committed or
 11-63 the person responsible for providing the outpatient or
 11-64 community-based treatment and supervision.

11-65 (c) If a request is made by an acquitted person, the court
 11-66 must act on the request not later than the 14th day after the date of
 11-67 the request. A hearing under this subsection is at the discretion
 11-68 of the court, except that the court shall hold a hearing if the
 11-69 request and any accompanying material indicate that modification of

12-1 the order may be appropriate.

12-2 (d) If a request is made by an acquitted person not later
 12-3 than the 90th day after the date of a hearing on a previous request,
 12-4 the court is not required to act on the request except on the
 12-5 expiration of the order or on the expiration of the 90-day period
 12-6 following the date of the hearing on the previous request.

12-7 (e) The court shall rule on the request during or shortly
 12-8 after any hearing that is held and in any case not later than the
 12-9 14th day after the date of the request.

12-10 (f) The court shall discharge the acquitted person from all
 12-11 court-ordered commitment and treatment and supervision and
 12-12 terminate the court's jurisdiction over the person if the court
 12-13 finds that the acquitted person has established by a preponderance
 12-14 of the evidence that:

12-15 (1) the acquitted person does not have a severe mental
 12-16 illness or mental retardation; or

12-17 (2) the acquitted person is not likely to cause
 12-18 serious harm to another because of any severe mental illness or
 12-19 mental retardation.

12-20 Art. 46C.269. TERMINATION OF COURT'S JURISDICTION.

12-21 (a) The jurisdiction of the court over a person covered by this
 12-22 subchapter automatically terminates on the date when the cumulative
 12-23 total period of institutionalization and outpatient or
 12-24 community-based treatment and supervision imposed under this
 12-25 subchapter equals the maximum term of imprisonment provided by law
 12-26 for the offense of which the person was acquitted by reason of
 12-27 insanity.

12-28 (b) On the termination of the court's jurisdiction under
 12-29 this article, the person must be discharged from any inpatient
 12-30 treatment or residential care or outpatient or community-based
 12-31 treatment and supervision ordered under this subchapter.

12-32 (c) An inpatient or residential care facility to which a
 12-33 person has been committed under this subchapter or a person
 12-34 responsible for administering a regimen of outpatient or
 12-35 community-based treatment and supervision under this subchapter
 12-36 must notify the court not later than the 30th day before the court's
 12-37 jurisdiction over the person ends under this article.

12-38 (d) This subchapter does not affect whether a person may be
 12-39 ordered to receive care or treatment under Subtitle C or D, Title 7,
 12-40 Health and Safety Code.

12-41 Art. 46C.270. APPEALS. (a) An acquitted person may appeal
 12-42 a judgment reflecting an acquittal by reason of insanity on the
 12-43 basis of the following:

12-44 (1) a finding that the acquitted person committed the
 12-45 offense; or

12-46 (2) a finding that the offense on which the
 12-47 prosecution was based involved conduct that:

12-48 (A) caused serious bodily injury to another
 12-49 person;

12-50 (B) placed another person in imminent danger of
 12-51 serious bodily injury; or

12-52 (C) consisted of a threat of serious bodily
 12-53 injury to another person through the use of a deadly weapon.

12-54 (b) Either the acquitted person or the state may appeal
 12-55 from:

12-56 (1) an Order of Commitment to Inpatient Treatment or
 12-57 Residential Care entered under Article 46C.256;

12-58 (2) an Order to Receive Outpatient or Community-Based
 12-59 Treatment and Supervision entered under Article 46C.257 or 46C.262;

12-60 (3) an order renewing or refusing to renew an Order for
 12-61 Inpatient Commitment or Outpatient or Community-Based Treatment
 12-62 and Supervision entered under Article 46C.261;

12-63 (4) an order modifying or revoking an Order for
 12-64 Outpatient or Community-Based Treatment and Supervision entered
 12-65 under Article 46C.266 or refusing a request to modify or revoke that
 12-66 order; or

12-67 (5) an order discharging an acquitted person under
 12-68 Article 46C.268 or denying a request for discharge of an acquitted
 12-69 person.

13-1 (c) An appeal under this subchapter may not be considered
13-2 moot solely due to the expiration of an order on which the appeal is
13-3 based.

13-4 SECTION 3. Subchapter A, Chapter 533, Health and Safety
13-5 Code, is amended by adding Section 533.0095 to read as follows:

13-6 Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION
13-7 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
13-8 executive commissioner of the Health and Human Services Commission
13-9 by rule shall require the department to collect information and
13-10 maintain current records regarding a person found not guilty of an
13-11 offense by reason of insanity under Chapter 46C, Code of Criminal
13-12 Procedure, who is:

13-13 (1) ordered by a court to receive inpatient mental
13-14 health services under Chapter 574;

13-15 (2) committed by a court for long-term placement in a
13-16 residential care facility under Chapter 593; or

13-17 (3) ordered by a court to receive outpatient or
13-18 community-based treatment and supervision.

13-19 (b) Information maintained by the department under this
13-20 section must include the name and address of the facility to which
13-21 the defendant is committed.

13-22 SECTION 4. Subsection (a), Section 576.025, Health and
13-23 Safety Code, is amended to read as follows:

13-24 (a) A person may not administer a psychoactive medication to
13-25 a patient receiving voluntary or involuntary mental health services
13-26 who refuses the administration unless:

13-27 (1) the patient is having a medication-related
13-28 emergency;

13-29 (2) the patient is younger than 16 years of age and the
13-30 patient's parent, managing conservator, or guardian consents to the
13-31 administration on behalf of the patient;

13-32 (3) the refusing patient's representative authorized
13-33 by law to consent on behalf of the patient has consented to the
13-34 administration;

13-35 (4) the administration of the medication regardless of
13-36 the patient's refusal is authorized by an order issued under
13-37 Section 574.106; or

13-38 (5) the patient is receiving court-ordered mental
13-39 health services authorized by an order issued under:

13-40 (A) Chapter 46B or 46C [~~Article 46.03~~], Code of
13-41 Criminal Procedure; or

13-42 (B) Chapter 55, Family Code.

13-43 SECTION 5. The change in law made by this Act applies only
13-44 to an offense committed on or after the effective date of this Act.
13-45 An offense committed before the effective date of this Act is
13-46 covered by the law in effect when the offense was committed, and the
13-47 former law is continued in effect for that purpose. For purposes of
13-48 this section, an offense was committed before the effective date of
13-49 this Act if any element of the offense was committed before that
13-50 date.

13-51 SECTION 6. This Act takes effect September 1, 2005.

13-52 * * * * *