

By: Coleman

H.B. No. 2795

A BILL TO BE ENTITLED

AN ACT

relating to the insanity defense in a criminal case.

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

SECTION 1. Section 8.01(a), Penal Code, is amended to read as follows:

(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor:

(1) [ ] as a result of severe mental disease or defect, did not appreciate [know] that the actor's [his] conduct was legally or morally wrong; or

(2) lacked the substantial capacity to appreciate that the actor's conduct was legally or morally wrong.

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

SUBCHAPTER G. PROVISIONS APPLICABLE TO PERSONS ACQUITTED

BY REASON OF INSANITY UNDER THIS CHAPTER OR PRIOR LAW

Art. 46C.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person acquitted by reason of insanity under this chapter or under former Article 46.03, as that article existed before September 1, 2005.

SECTION 3. Articles 46C.002, 46C.268, and 46C.269, Code of Criminal Procedure, are transferred to Subchapter G, Chapter 46C, Code of Criminal Procedure, as added by this Act, renumbered as Articles 46C.302, 46C.303, and 46C.304, respectively, and amended

1 to read as follows:

2 Art. 46C.302 [~~46C.002~~]. MAXIMUM PERIOD OF COMMITMENT  
3 DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by  
4 reason of insanity may not be committed to a mental hospital or  
5 other inpatient or residential care facility or ordered to receive  
6 outpatient or community-based treatment and supervision under  
7 Subchapter F or under former Article 46.03, as applicable, for a  
8 cumulative period that exceeds the maximum term provided by law for  
9 the offense for which the acquitted person was tried.

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

15 Art. 46C.303 [~~46C.268~~]. ADVANCE DISCHARGE OF ACQUITTED  
16 PERSON AND TERMINATION OF JURISDICTION. (a) A [~~An acquitted~~]  
17 person acquitted by reason of insanity, the head of the facility to  
18 which the acquitted person is committed, the person responsible for  
19 providing the outpatient or community-based treatment and  
20 supervision, or the state may request that the court discharge an  
21 acquitted person from inpatient commitment or outpatient or  
22 community-based treatment and supervision.

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

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

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

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

15 (f) The court shall discharge the acquitted person from all  
16 court-ordered commitment and treatment and supervision and  
17 terminate the court's jurisdiction over the person if the court  
18 finds that the acquitted person has established by a preponderance  
19 of the evidence that:

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

22 (2) the acquitted person is not likely to cause  
23 serious harm to another because of any severe mental illness or  
24 mental retardation.

25 Art. 46C.304 [~~46C.269~~]. TERMINATION OF COURT'S  
26 JURISDICTION. (a) The jurisdiction of the court over a person  
27 acquitted by reason of insanity [~~covered by this subchapter~~]

1 automatically terminates on the date when the cumulative total  
2 period of institutionalization and outpatient or community-based  
3 treatment and supervision imposed under Subchapter F or under  
4 former Article 46.03, as applicable, [~~this subchapter~~] equals the  
5 maximum term of imprisonment provided by law for the offense of  
6 which the person was acquitted [~~by reason of insanity~~].

7 (b) On the termination of the court's jurisdiction under  
8 this article, the acquitted person must be discharged from any  
9 inpatient treatment or residential care or outpatient or  
10 community-based treatment and supervision ordered under Subchapter  
11 F or under former Article 46.03, as applicable [~~this subchapter~~].

12 (c) The [~~An~~] inpatient or residential care facility to which  
13 the acquitted [~~a~~] person has been committed [~~under this~~  
14 ~~subchapter~~] or the [~~a~~] person responsible for administering a  
15 regimen of outpatient or community-based treatment and supervision  
16 [~~under this subchapter~~] must notify the court not later than the  
17 30th day before the court's jurisdiction over the acquitted person  
18 ends under this article.

19 (d) This article [~~subchapter~~] does not affect whether a  
20 person may be ordered to receive care or treatment under Subtitle C  
21 or D, Title 7, Health and Safety Code.

22 SECTION 4. Article 46C.154, Code of Criminal Procedure, is  
23 amended to read as follows:

24 Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF  
25 ACQUITTAL. The court shall instruct the jury on [~~7, the attorney~~  
26 ~~representing the state, or the attorney for the defendant may not~~  
27 ~~inform a juror or a prospective juror of] the consequences to the~~

1 defendant if a verdict of not guilty by reason of insanity is  
2 returned.

3 SECTION 5. Article 46C.158, Code of Criminal Procedure, is  
4 amended to read as follows:

5 Art. 46C.158. CONTINUING JURISDICTION OF DANGEROUS  
6 ACQUITTED PERSON. If the court finds that the offense of which the  
7 person was acquitted involved conduct that caused serious bodily  
8 injury to another person, placed another person in imminent danger  
9 of serious bodily injury, or consisted of a threat of serious bodily  
10 injury to another person through the use of a deadly weapon, the  
11 court retains jurisdiction over the acquitted person until either:

12 (1) the court discharges the person and terminates its  
13 jurisdiction under Article 46C.303 [~~46C.268~~]; or

14 (2) the cumulative total period of  
15 institutionalization and outpatient or community-based treatment  
16 and supervision under the court's jurisdiction equals the maximum  
17 term provided by law for the offense of which the person was  
18 acquitted by reason of insanity and the court's jurisdiction is  
19 automatically terminated under Article 46C.304 [~~46C.269~~].

20 SECTION 6. (a) Except as provided by Subsection (b) of this  
21 section, the change in law made by this Act applies to a defendant  
22 acquitted of an offense committed before, on, or after the  
23 effective date of this Act.

24 (b) The change in law made by this Act in amending Section  
25 8.01(a), Penal Code, and Article 46C.154, Code of Criminal  
26 Procedure, applies only to a defendant acquitted of an offense  
27 committed on or after the effective date of this Act. A defendant

1 acquitted of an offense committed before the effective date of this  
2 Act is covered by the law in effect when the offense was committed,  
3 and the former law is continued in effect for that purpose. For  
4 purposes of this subsection, an offense was committed before the  
5 effective date of this Act if any element of the offense was  
6 committed before that date.

7 SECTION 7. This Act takes effect September 1, 2007.