

By: Duncan

S.B. No. 867

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures regarding criminal defendants who are or may
3 be persons with mental illness or mental retardation.

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

5 SECTION 1. Article 16.22, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 16.22. EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED
8 OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Not later
9 than 72 hours after receiving evidence or a statement that may
10 establish reasonable cause to believe that a defendant committed to
11 the sheriff's custody has a mental illness or is a person with
12 mental retardation, the sheriff shall notify a magistrate of that
13 fact. A defendant's behavior or the result of a prior evaluation
14 indicating a need for referral for further mental health or mental
15 retardation assessment must be considered in determining whether
16 reasonable cause exists to believe the defendant has a mental
17 illness or is a person with mental retardation. On a determination
18 that there is reasonable cause to believe that the defendant has a
19 mental illness or is a person with mental retardation, the
20 magistrate, except as provided by Subdivision (2), shall order an
21 examination of the defendant by the local mental health or mental
22 retardation authority or another [~~disinterested expert experienced~~
23 ~~and~~] qualified [~~in~~] mental health or mental retardation expert to
24 determine whether the defendant has a mental illness as defined by

1 Section 571.003, Health and Safety Code, or is a person with mental
2 retardation as defined by Section 591.003, Health and Safety Code.

3 (2) The magistrate is not required to order an
4 examination described by Subdivision (1) if the defendant in the
5 year preceding the defendant's applicable date of arrest has been
6 evaluated and determined to have a mental illness or to be a person
7 with mental retardation by the local mental health or mental
8 retardation authority or another mental health or mental
9 retardation expert described by Subdivision (1). A court that
10 elects to use the results of that evaluation may proceed under
11 Subsection (c).

12 (3) If the defendant fails or refuses to submit to an
13 examination required under Subdivision (1), the magistrate may
14 order the defendant to submit to an examination in a mental health
15 facility determined to be appropriate by the local mental health or
16 mental retardation authority for a reasonable period not to exceed
17 21 days. The magistrate may order a defendant to a facility
18 operated by the [Texas] Department of State [Mental] Health
19 Services or the Department of Aging and Disability Services [and
20 Mental Retardation] for examination only on request of the local
21 mental health or mental retardation authority and with the consent
22 of the head of the facility. If a defendant who has been ordered to
23 a facility operated by the [Texas] Department of State [Mental]
24 Health Services or the Department of Aging and Disability Services
25 [and Mental Retardation] for examination remains in the facility
26 for a period exceeding 21 days, the head of that facility shall
27 cause the defendant to be immediately transported to the committing

1 court and placed in the custody of the sheriff of the county in
2 which the committing court is located. That county shall reimburse
3 the [~~Texas Department of Mental Health and Mental Retardation~~]
4 facility for the mileage and per diem expenses of the personnel
5 required to transport the defendant calculated in accordance with
6 the state travel regulations in effect at the time.

7 (b) A written report of the examination shall be submitted
8 to the magistrate not later than the 30th day after the date of any
9 [~~within 30 days of the~~] order of examination issued in a felony case
10 and not later than the 10th day after the date of any order of
11 examination issued in a misdemeanor case, and the magistrate shall
12 provide [~~furnish~~] copies of the report to the defense counsel and
13 the prosecuting attorney. The report must [~~shall~~] include a
14 description of the procedures used in the examination and the
15 examiner's observations and findings pertaining to:

16 (1) whether the defendant is a person who has a mental
17 illness or is a person with mental retardation;

18 (2) whether there is clinical evidence to support a
19 belief that the defendant may be incompetent to stand trial and
20 should undergo a complete competency examination under Subchapter
21 B, Chapter 46B; and

22 (3) recommended treatment.

23 (c) After the court receives the examining expert's report
24 relating to the defendant under Subsection (b) or elects to use the
25 results of an evaluation described by Subsection (a)(2), the court
26 may, as applicable [~~resume~~]:

27 (1) resume criminal proceedings against the

1 defendant, including any appropriate proceedings related to the
2 defendant's release on personal bond under Article 17.032; or

3 (2) resume or initiate competency proceedings, if
4 required, as provided by Chapter 46B or other proceedings affecting
5 the defendant's receipt of appropriate court-ordered mental health
6 or mental retardation services, including proceedings related to
7 the defendant's receipt of outpatient mental health services under
8 Section 574.034, Health and Safety Code.

9 (d) Nothing in this article prevents the court from, pending
10 an evaluation of the defendant as described by this article:

11 (1) releasing a mentally ill or mentally retarded
12 defendant from custody on personal or surety bond; or

13 (2) ordering an examination regarding the defendant's
14 competency to stand trial.

15 SECTION 2. Subchapter A, Chapter 46B, Code of Criminal
16 Procedure, is amended by amending Articles 46B.009 and 46B.010 and
17 by adding Article 46B.0095 to read as follows:

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

23 [~~b~~] ~~A defendant may not be committed to a mental hospital~~
24 ~~or other in-patient or residential facility under this chapter for~~
25 ~~a cumulative period that exceeds the maximum term provided by law~~
26 ~~for the offense for which the defendant was to be tried. On~~
27 ~~expiration of that maximum term, the defendant may be confined for~~

1 ~~an additional period in a mental hospital or other in-patient or~~
2 ~~residential facility only pursuant to civil commitment~~
3 ~~proceedings.]~~

4 Art. 46B.0095. MAXIMUM PERIOD OF FACILITY COMMITMENT OR
5 OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM
6 TERM FOR OFFENSE. (a) A defendant may not, under this chapter, be
7 committed to a mental hospital or other inpatient or residential
8 facility, ordered to participate in an outpatient treatment
9 program, or subjected to both inpatient and outpatient treatment
10 for a cumulative period that exceeds the maximum term provided by
11 law for the offense for which the defendant was to be tried, except
12 that if the defendant is charged with a misdemeanor and has been
13 ordered only to participate in an outpatient treatment program
14 under Subchapter D or E, the maximum period of restoration is two
15 years beginning on the date of the initial order for outpatient
16 treatment program participation was entered.

17 (b) On expiration of the maximum restoration period under
18 Subsection (a), the defendant may be confined for an additional
19 period in a mental hospital or other inpatient or residential
20 facility or ordered to participate for an additional period in an
21 outpatient treatment program, as appropriate, only pursuant to
22 civil commitment proceedings.

23 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
24 If a court orders the commitment of or participation in an
25 outpatient treatment program by [commits] a defendant who is
26 charged with a misdemeanor punishable by confinement and the
27 defendant is not tried before the date of expiration of the maximum

1 period of restoration under this chapter as described by Article
2 46B.0095 [~~second anniversary of the date on which the order of~~
3 ~~commitment was entered~~], the court on the motion of the attorney
4 representing the state shall dismiss the charge.

5 SECTION 3. Article 46B.072, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 46B.072. RELEASE ON BAIL. (a) Subject to conditions
8 reasonably related to assuring public safety and the effectiveness
9 of the defendant's treatment, if [~~If~~] the court determines that a
10 defendant found incompetent to stand trial is not a danger to others
11 and may be safely treated on an outpatient basis with [~~for~~] the
12 specific objective [~~purpose~~] of attaining competency to stand trial
13 and if an appropriate outpatient treatment program is available for
14 the defendant, the court:

15 (1) may release [~~the defendant~~] on bail a defendant
16 found incompetent to stand trial with respect to a felony or may
17 continue the defendant's release on bail; and

18 (2) shall release on bail a defendant found
19 incompetent to stand trial with respect to a misdemeanor or shall
20 continue the defendant's release on bail [~~, subject to conditions~~
21 ~~reasonably related to assuring public safety and the effectiveness~~
22 ~~of the defendant's treatment~~].

23 (b) The court shall order a defendant released on bail under
24 Subsection (a) to participate in an outpatient treatment program
25 for a period not to exceed 120 days.

26 (c) Notwithstanding Subsection (a), the court may order a
27 defendant to participate in an outpatient treatment program under

1 this article only if:

2 (1) the court receives and approves a comprehensive
3 plan that:

4 (A) provides for the treatment of the defendant
5 for purposes of competency restoration; and

6 (B) identifies the person who will be responsible
7 for providing that treatment to the defendant; and

8 (2) the court finds that the treatment proposed by the
9 plan will be available to and will be provided to the defendant.

10 (d) An order issued under this article may require the
11 defendant to participate in:

12 (1) as appropriate, an outpatient treatment program
13 administered by a community center or an outpatient treatment
14 program administered by any other entity that provides outpatient
15 competency restoration services; and

16 (2) an appropriate prescribed regimen of medical,
17 psychiatric, or psychological care or treatment, including care or
18 treatment involving the administration of psychoactive medication,
19 including those required under 46B.086.

20 SECTION 4. Subsections (c) and (d), Article 46B.073, Code
21 of Criminal Procedure, are amended to read as follows:

22 (c) If the defendant is charged with an offense listed in
23 Article 17.032(a), other than an offense listed in Article
24 17.032(a)(6), or the indictment alleges an affirmative finding
25 under Section 3g(a)(2), Article 42.12, the court shall enter an
26 order committing the defendant to the maximum security unit of any
27 facility designated by the department, to an agency of the United

1 States operating a mental hospital, or to a Department of Veterans
2 Affairs hospital.

3 (d) If the defendant is not charged with an offense
4 described by Subsection (c) [listed in Article 17.032(a)] and the
5 indictment does not allege an affirmative finding under Section 3g
6 (a)(2), Article 42.12, the court shall enter an order committing
7 the defendant to a mental health facility or residential care
8 facility determined to be appropriate by the local mental health
9 authority or local mental retardation authority.

10 SECTION 5. Articles 46B.075 and 46B.076, Code of Criminal
11 Procedure, are amended to read as follows:

12 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR
13 OUTPATIENT TREATMENT PROGRAM. An [A commitment] order issued under
14 Article 46B.072 or 46B.073 [this subchapter] must place the
15 defendant in the custody of the sheriff for transportation to the
16 facility or outpatient treatment program, as applicable, in which
17 the defendant is to receive treatment for purposes of competency
18 restoration [be confined].

19 Art. 46B.076. COURT'S ORDER. (a) If the defendant is found
20 incompetent to stand trial, not later than the date of the order of
21 commitment or of release on bail, as applicable, the court shall
22 send a copy of the order to the facility of the department to which
23 the defendant is committed or the outpatient treatment program to
24 which the defendant is released [not later than the date the
25 defendant is committed to the facility]. The court shall also
26 provide to the facility or outpatient treatment program copies of
27 the following made available to the court during the incompetency

1 trial:

2 (1) reports of each expert;

3 (2) psychiatric, psychological, or social work
4 reports that relate to the mental condition of the defendant;

5 (3) documents provided by the attorney representing
6 the state or the attorney representing the defendant that relate to
7 the defendant's current or past mental condition;

8 (4) copies of the indictment or information and any
9 supporting documents used to establish probable cause in the case;

10 (5) the defendant's criminal history record; and

11 (6) the addresses of the attorney representing the
12 state and the attorney representing the defendant.

13 (b) The court shall order that the transcript of all medical
14 testimony received by the jury or court be promptly prepared by the
15 court reporter and forwarded to the proper facility or outpatient
16 treatment program.

17 SECTION 6. Subsection (a), Article 46B.077, Code of
18 Criminal Procedure, is amended to read as follows:

19 (a) The facility to which the defendant is committed or the
20 outpatient treatment program to which the defendant is released on
21 bail shall:

22 (1) develop an individual program of treatment;

23 (2) assess and evaluate whether the defendant will
24 obtain competency in the foreseeable future; and

25 (3) report to the court and to the local mental health
26 authority or to the local mental retardation authority on the
27 defendant's progress toward achieving competency.

1 SECTION 7. Articles 46B.078 through 46B.083, Code of
2 Criminal Procedure, are amended to read as follows:

3 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
4 charges pending against a defendant are dismissed, the ~~[committing]~~
5 court that issued the order under Article 46B.072 or 46B.073 shall
6 send a copy of the order of dismissal to the sheriff of the county in
7 which the ~~[committing]~~ court is located and to the head of the
8 facility or the provider of the outpatient treatment program, as
9 appropriate [in which the defendant is held]. On receipt of the
10 copy of the order, the facility or outpatient treatment program
11 shall discharge the defendant into the care of the sheriff for
12 transportation in the manner described by Article 46B.082.

13 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of
14 the facility or the provider of the outpatient treatment program,
15 as appropriate, not later than the 15th day before the date on which
16 a restoration period is to expire, shall notify the applicable
17 court that the restoration period is about to expire.

18 (b) The head of the facility or outpatient treatment program
19 provider shall promptly notify the court when the head of the
20 facility or outpatient treatment program provider believes that:

21 (1) the defendant has attained competency to stand
22 trial; or

23 (2) the defendant will not attain competency in the
24 foreseeable future.

25 (c) When the head of the facility or outpatient treatment
26 program provider gives notice to the court under Subsection (a) or
27 (b), the head of the facility or outpatient treatment program

1 provider also shall file a final report with the court stating the
2 reason for the proposed discharge under this chapter and including
3 a list of the types and dosages of medications with which the
4 defendant was treated for mental illness while in the facility or
5 participating in the outpatient treatment program. To enable any
6 objection to the findings of the report to be made in a timely
7 manner under Article 46B.084(a), the court shall provide copies of
8 the report to the attorney representing the defendant and the
9 attorney representing the state.

10 (d) If the head of the facility or outpatient treatment
11 program provider notifies the court that the initial restoration
12 period is about to expire, the notice may contain a request for an
13 extension of the period for an additional period of 60 days and an
14 explanation for the basis of the request [~~RETURN TO COMMITTING~~
15 ~~COURT. (a) A defendant committed under this subchapter shall be~~
16 ~~returned to the committing court as soon as practicable after the~~
17 ~~date on which the defendant's term of commitment expires].~~

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

1 Art. 46B.080. EXTENSION OF ORDER. (a) On a request of the
2 head of a facility or a treatment program provider that is made
3 under Article 46B.079(d) and notwithstanding any other provision of
4 this subchapter, the court may enter an order extending the initial
5 restoration period for an additional period of 60 days.

6 (b) The court may enter an order under Subsection (a) only
7 if the court determines that, on the basis of information provided
8 by the head of the facility or the treatment program provider:

9 (1) the defendant has not attained competency; and

10 (2) an extension of the restoration period will likely
11 enable the facility or program to restore the defendant to
12 competency.

13 (c) The court may grant only one extension under this
14 article for a period of restoration ordered under this subchapter
15 ~~[NOTICE TO COMMITTING COURT. (a) The head of a facility to which a~~
16 ~~defendant has been committed under this subchapter, not later than~~
17 ~~the 14th day before the date on which a commitment order is to~~
18 ~~expire, shall notify the committing court that the term of the~~
19 ~~commitment is about to expire.~~

20 ~~[(b) The head of the facility to which a defendant has been~~
21 ~~committed under this subchapter shall promptly notify the~~
22 ~~committing court when the head of the facility is of the opinion~~
23 ~~that:~~

24 ~~[(1) the defendant has attained competency to stand~~
25 ~~trial, or~~

26 ~~[(2) the defendant will not attain competency in the~~
27 ~~foreseeable future.~~

1 ~~[(c) When the head of the facility gives notice to the court~~
2 ~~under Subsection (a) or (b), the head of the facility also shall~~
3 ~~file a final report with the court stating the reason for the~~
4 ~~proposed discharge under this chapter and including a list of the~~
5 ~~types and dosages of medications with which the defendant was~~
6 ~~treated for mental illness while in the facility. The court shall~~
7 ~~provide copies of the report to the attorney representing the~~
8 ~~defendant and the attorney representing the state.~~

9 ~~[(d) If the head of the facility to which the defendant has~~
10 ~~been committed notifies the court that the commitment order is~~
11 ~~about to expire, the notice may contain a request for an extension~~
12 ~~of the commitment order for a period of 60 days and an explanation~~
13 ~~for the basis of the request].~~

14 Art. 46B.081. RETURN TO COURT. Subject to Article
15 46B.082(b), a defendant committed or released on bail under this
16 subchapter shall be returned to the applicable court as soon as
17 practicable after notice to the court is provided under Article
18 46B.079, but not later than the date of expiration of the period for
19 restoration specified by the court under Article 46B.072 or 46B.073
20 ~~[EXTENSION OF COMMITMENT ORDER. (a) On the request of the head of~~
21 ~~a facility made under Article 46B.080(d), the court may enter an~~
22 ~~order extending the term of the commitment order for a period of 60~~
23 ~~days.~~

24 ~~[(b) The court may enter an order under Subsection (a) only~~
25 ~~if the court determines that, on the basis of information provided~~
26 ~~by the head of the facility:~~

27 ~~[(1) the defendant has not attained competency; and~~

1 ~~[(2) an extension of the term of the commitment order~~
2 ~~will likely enable the facility to restore the defendant to~~
3 ~~competency.~~

4 ~~[(c) the court may grant only one extension under this~~
5 ~~article for the term of a defendant's commitment order].~~

6 Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) On
7 notification from the [~~committing~~] court under Article 46B.078, the
8 sheriff of the county in which the [~~committing~~] court is located or
9 the sheriff's designee shall transport the defendant to the
10 [~~committing~~] court.

11 (b) If before the 15th day after the date on which the court
12 received notification under Article 46B.079 a defendant committed
13 to a [~~maximum security unit of a~~] facility of the department or
14 ordered to participate in an outpatient treatment program has not
15 been transported to the court that issued the order under Article
16 46B.072 or 46B.073, as applicable [~~from the unit before the 15th day~~
17 ~~after the date on which the court received notification under~~
18 ~~Article 46B.080(a)~~], the head of the [~~that~~] facility to which the
19 defendant is committed or the provider of the outpatient treatment
20 program in which the defendant is participating shall cause the
21 defendant to be promptly transported to the [~~committing~~] court and
22 placed in the custody of the sheriff of the county in which the
23 [~~committing~~] court is located. The county in which the
24 [~~committing~~] court is located shall reimburse the department for
25 the mileage and per diem expenses of the personnel required to
26 transport the defendant, calculated in accordance with rates
27 provided in the General Appropriations Act for state employees.

1 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED BY
2 FACILITY HEAD OR OUTPATIENT TREATMENT PROGRAM PROVIDER. (a) If
3 the head of the facility or outpatient treatment program provider
4 believes that the defendant is a person with mental illness and
5 meets the criteria for court-ordered [~~inpatient~~] mental health
6 services under Subtitle C, Title 7, Health and Safety Code, the head
7 of the facility or the outpatient treatment program provider shall
8 have submitted to the court a certificate of medical examination
9 for mental illness.

10 (b) If the head of the facility or the outpatient treatment
11 program provider believes [~~is of the opinion~~] that the defendant is
12 a person with mental retardation, the head of the facility or the
13 outpatient treatment program provider shall have submitted to the
14 court an affidavit stating the conclusions reached as a result of
15 the examination.

16 SECTION 8. Subsections (a) and (b-1), Article 46B.084, Code
17 of Criminal Procedure, are amended to read as follows:

18 (a) On the return of a defendant to the [~~committing~~] court,
19 the court shall make a determination with regard to the defendant's
20 competency to stand trial. The court may make the determination
21 based solely on the report filed under Article 46B.079(c)
22 [~~46B.080(c)~~], unless any party objects in writing or in open court
23 to the findings of the report not later than the 15th day after the
24 date on which the court received notification under Article 46B.079
25 [~~report is served on the parties~~]. The court shall make the
26 determination not later than the 20th day after the date on which
27 the court received notification under Article 46B.079, regardless

1 of whether a party objects to the report as described by this
2 subsection and the issue is set for hearing under Subsection (b).

3 (b-1) If the hearing is before the court, the hearing may be
4 conducted by means of an electronic broadcast system as provided by
5 Article 46B.013. Notwithstanding any other provision of this
6 chapter, the defendant is not required to be returned to the
7 [~~committing~~] court with respect to any hearing that is conducted
8 under this article in the manner described by this subsection.

9 SECTION 9. Articles 46B.085 and 46B.086, Code of Criminal
10 Procedure, are amended to read as follows:

11 Art. 46B.085. SUBSEQUENT RESTORATION PERIODS [~~COMMITMENTS~~]
12 AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may
13 order only one initial period of restoration [~~commitment~~] and one
14 extension under this subchapter in connection with the same
15 offense.

16 (b) After an initial restoration period [~~a commitment~~] and
17 an extension are ordered as described by Subsection (a), any
18 subsequent court orders for treatment must be issued under
19 Subchapter E or F.

20 Art. 46B.086. COURT-ORDERED MEDICATIONS. (a) This article
21 applies only to a defendant:

22 (1) who is determined under this chapter to be
23 incompetent to stand trial;

24 (2) for whom an inpatient mental health facility,
25 residential care facility, or outpatient treatment program
26 provider has prepared a continuity of care plan [~~has been prepared~~
27 ~~by a facility~~] that requires the defendant to take psychoactive

1 medications; and

2 (3) who, after a hearing held under Section 574.106,
3 Health and Safety Code, has been found not to meet the criteria
4 prescribed by Sections 574.106(a) and (a-1), Health and Safety
5 Code, for court-ordered administration of psychoactive
6 medications; or

7 (4) who is subject to Article 46B.072.

8 (b) If a defendant described by Subsection (a) refuses to
9 take psychoactive medications as required by the defendant's
10 continuity of care plan, the director of the correctional facility
11 or outpatient treatment provider shall notify the court in which
12 the criminal proceedings are pending of that fact not later than the
13 end of the next business day following the refusal. The court shall
14 promptly notify the attorney representing the state and the
15 attorney representing the defendant of the defendant's refusal.
16 The attorney representing the state may file a written motion to
17 compel medication. The motion to compel medication must be filed
18 not later than the 15th day after the date a judge issues an order
19 stating that the defendant does not meet the criteria for
20 court-ordered administration of psychoactive medications under
21 Section 574.106, Health and Safety Code. The motion to compel
22 medication for a defendant in an outpatient treatment program may
23 be filed at any time.

24 (c) The court, after notice and after a hearing held not
25 later than the fifth day after the defendant is returned to the
26 committing court, may authorize the director of a correctional
27 facility or the program provider, as applicable, to have the

1 medication administered to the defendant, by reasonable force if
2 necessary.

3 (d) [~~(e)~~] The court may issue an order under this article
4 only if the order is supported by the testimony of two physicians,
5 one of whom is the physician at or with the applicable correctional
6 facility or outpatient treatment program who is prescribing the
7 medication as a component of the defendant's continuity of care
8 plan and another who is not otherwise involved in proceedings
9 against the defendant. The court may require either or both
10 physicians to examine the defendant and report on the examination
11 to the court.

12 (e) [~~(d)~~] The court may issue an order under this article if
13 the court finds by clear and convincing evidence that:

14 (1) the prescribed medication is medically
15 appropriate, is in the best medical interest of the defendant, and
16 does not present side effects that cause harm to the defendant that
17 is greater than the medical benefit to the defendant;

18 (2) the state has a clear and compelling interest in
19 the defendant obtaining and maintaining competency to stand trial;

20 (3) no other less invasive means of obtaining and
21 maintaining the defendant's competency exists; and

22 (4) the prescribed medication will not unduly
23 prejudice the defendant's rights or use of defensive theories at
24 trial.

25 (f) [~~(e)~~] A statement made by a defendant to a physician
26 during an examination under Subsection (d) [~~(e)~~] may not be
27 admitted against the defendant in any criminal proceeding, other

1 than at:

2 (1) a hearing on the defendant's incompetency; or

3 (2) any proceeding at which the defendant first
4 introduces into evidence the contents of the statement.

5 SECTION 10. Article 46B.102, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS.

8 (a) If it appears to the court that the defendant may be a person
9 with mental illness, the court shall hold a hearing to determine
10 whether the defendant should be court-ordered to mental health
11 services under Subtitle C, Title 7, Health and Safety Code
12 ~~[committed to a mental health facility]~~.

13 (b) Proceedings for commitment of the defendant to
14 court-ordered mental health services ~~[a mental health facility]~~ are
15 governed by Subtitle C, Title 7, Health and Safety Code, to the
16 extent that Subtitle C applies and does not conflict with this
17 chapter, except that the criminal court shall conduct the
18 proceedings whether or not the criminal court is also the county
19 court.

20 (c) If the court enters an order committing the defendant to
21 a mental health facility, the defendant shall be:

22 (1) treated in conformity with Subtitle C, Title 7,
23 Health and Safety Code, except as otherwise provided by this
24 chapter; and

25 (2) released in conformity with Article 46B.107.

26 (d) In proceedings conducted under this subchapter for a
27 defendant described by Subsection (a):

1 (1) an application for court-ordered temporary or
2 extended mental health services may not be required;

3 (2) the provisions of Subtitle C, Title 7, Health and
4 Safety Code, relating to notice of hearing do not apply; and

5 (3) appeals from the criminal court proceedings are to
6 the court of appeals as in the proceedings for court-ordered
7 inpatient mental health services under Subtitle C, Title 7, Health
8 and Safety Code.

9 SECTION 11. Subsection (d), Article 46B.103, Code of
10 Criminal Procedure, is amended to read as follows:

11 (d) In the proceedings conducted under this subchapter for a
12 defendant described by Subsection (a):

13 (1) an application [~~for court-ordered temporary or~~
14 ~~extended mental health services or~~] to have the defendant declared
15 a person with mental retardation may not be required;

16 (2) the provisions of Subtitle [~~Subtitles C and~~] D,
17 Title 7, Health and Safety Code, relating to notice of hearing do
18 not apply; and

19 (3) appeals from the criminal court proceedings are to
20 the court of appeals as in the proceedings for [~~court-ordered~~
21 ~~inpatient mental health services under Subtitle C, Title 7, Health~~
22 ~~and Safety Code, or for~~] commitment to a residential care facility
23 under Subtitle D, Title 7, Health and Safety Code.

24 SECTION 12. Article 46B.104, Code of Criminal Procedure, is
25 amended to read as follows:

26 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
27 VIOLENCE. A defendant committed to a facility as a result of

1 proceedings initiated under this chapter shall be committed to the
2 maximum security unit of any facility designated by the department
3 if:

4 (1) the defendant is charged with an offense listed in
5 Article 17.032(a), other than an offense listed in Article
6 17.032(a)(6); or

7 (2) the indictment charging the offense alleges an
8 affirmative finding under Section 3g(a)(2), Article 42.12.

9 SECTION 13. Article 46B.106, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF
12 VIOLENCE. (a) A defendant committed to a facility as a result of
13 the proceedings initiated under this chapter, other than a
14 defendant described by Article 46B.104, shall be committed to:

15 (1) a facility designated by the department; or
16 (2) an outpatient treatment program [~~local mental~~
17 ~~health authority or local mental retardation authority to serve the~~
18 ~~catchment area in which the committing court is located~~].

19 (b) A facility or outpatient treatment program may not
20 refuse to accept a placement ordered under this article on the
21 grounds that criminal charges against the defendant are pending.

22 SECTION 14. Article 46B.107, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT.
25 (a) The release from the department, an outpatient treatment
26 program, or a facility of a defendant committed under this chapter
27 is subject to disapproval by the committing court if the court or

1 the attorney representing the state has notified the head of the
2 facility or outpatient treatment provider, as applicable, to which
3 the defendant has been committed that a criminal charge remains
4 pending against the defendant.

5 (b) If the head of the facility or outpatient treatment
6 provider to which a defendant has been committed under this chapter
7 determines that the defendant should be released from the facility,
8 the head of the facility or outpatient treatment provider shall
9 notify the committing court and the sheriff of the county from which
10 the defendant was committed in writing of the release not later than
11 the 14th day before the date on which the facility or outpatient
12 treatment provider intends to release the defendant.

13 (c) The head of the facility or outpatient treatment
14 provider shall provide with the notice a written statement that
15 states an opinion on as to whether the defendant to be released has
16 attained competency to stand trial.

17 (d) The court may, on motion of the attorney representing
18 the state or on its own motion, hold a hearing to determine whether
19 release is appropriate under the applicable criteria in Subtitle C
20 or D, Title 7, Health and Safety Code. The court may conduct the
21 hearing:

22 (1) at the facility; or

23 (2) by means of an electronic broadcast system as
24 provided by Article 46B.013.

25 (e) If the court determines that release is not appropriate,
26 the court shall enter an order directing the head of the facility or
27 the outpatient treatment provider to not release the defendant.

1 (f) If an order is entered under Subsection (e), any
2 subsequent proceeding to release the defendant is subject to this
3 article.

4 SECTION 15. Article 46B.108, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 46B.108. REDETERMINATION OF COMPETENCY. (a) If
7 criminal charges against a defendant found incompetent to stand
8 trial have not been dismissed, the trial court at any time may
9 determine whether the defendant has been restored to competency.

10 (b) An inquiry into restoration of competency under this
11 subchapter may be made at the request of the head of the mental
12 health facility, outpatient treatment provider, or residential
13 care facility to which the defendant has been committed, the
14 defendant, the attorney representing the defendant, or the attorney
15 representing the state, or may be made on the court's own motion.

16 SECTION 16. Article 46B.109, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 46B.109. REQUEST BY HEAD OF FACILITY OR OUTPATIENT
19 TREATMENT PROVIDER. (a) The head of a facility or outpatient
20 treatment provider to which a defendant has been committed as a
21 result of a finding of incompetency to stand trial may request the
22 court to determine that the defendant has been restored to
23 competency.

24 (b) The head of the facility or outpatient treatment
25 provider shall provide with the request a written statement that in
26 their ~~the~~ opinion ~~[of the head of the facility]~~ the defendant is
27 competent to stand trial.

1 SECTION 17. Article 46B.113, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT
4 AGREEMENT. (a) The court shall hold a hearing on a request by the
5 head of a facility or outpatient treatment provider to which a
6 defendant has been committed as a result of a finding of
7 incompetency to stand trial to determine whether the defendant has
8 been restored to competency.

9 (b) The court may hold a hearing on a motion to determine
10 whether the defendant has been restored to competency or on the
11 court's decision on its own motion to inquire into restoration of
12 competency, and shall hold a hearing if a motion and any supporting
13 material establish good reason to believe the defendant may have
14 been restored to competency.

15 (c) If a court holds a hearing under this article, on the
16 request of the counsel for either party or the motion of the court,
17 a jury shall make the competency determination. If the competency
18 determination will be made by the court rather than a jury, the
19 court may conduct the hearing:

20 (1) at the facility; or

21 (2) by means of an electronic broadcast system as
22 provided by Article 46B.013.

23 (d) If the head of a facility or outpatient treatment
24 provider to which the defendant was committed as a result of a
25 finding of incompetency to stand trial has provided an opinion that
26 the defendant has regained competency, competency is presumed at a
27 hearing under this subchapter and continuing incompetency must be

1 proved by a preponderance of the evidence.

2 (e) If the head of a facility or outpatient treatment
3 provider has not provided an opinion described by Subsection (d),
4 incompetency is presumed at a hearing under this subchapter and the
5 defendant's competency must be proved by a preponderance of the
6 evidence.

7 SECTION 18. Article 46B.117, Code of Criminal Procedure, is
8 amended to read as follows:

9 Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY.

10 [~~(a)~~] If a defendant under order of commitment to a facility or
11 outpatient treatment program is found to not have been restored to
12 competency to stand trial, the court shall remand the defendant
13 pursuant to that order of commitment, and, if applicable, order the
14 defendant placed in the custody of the sheriff or the sheriff's
15 designee for transportation back to the facility or outpatient
16 treatment program.

17 [~~(b) If a defendant not under order of commitment is found~~
18 ~~to not have been restored to competency to stand trial, the court~~
19 ~~shall order the defendant's custody status to remain unchanged.~~]

20 SECTION 19. Article 46B.171, Code of Criminal Procedure, is
21 amended to read as follows:

22 Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS. (a) The
23 court shall order that:

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

1 (2) copies of documents listed in Article 46B.076
2 accompany the defendant to the mental health facility, outpatient
3 treatment program, or residential care facility.

4 (b) On the request of the defendant or the attorney
5 representing the defendant, a mental health facility, an outpatient
6 treatment program, or a residential care facility shall provide to
7 the defendant or the attorney copies of the facility's records
8 regarding the defendant.

9 SECTION 20. Section 574.107, Health and Safety Code, is
10 amended to read as follows:

11 SEC. 574.107. COSTS. (a) The costs for a hearing
12 [~~hearings~~] under this subchapter shall be paid in accordance with
13 Sections 571.017 and 571.018.

14 (b) The county in which the applicable criminal charges are
15 pending or were adjudicated shall pay as provided by Subsection (a)
16 the costs of a hearing that is held under Section 574.106 to
17 evaluate the court-ordered administration of psychoactive
18 medication to:

19 (1) a patient ordered to receive inpatient mental
20 health services as described by Section 574.106(a)(1) after having
21 been determined to be incompetent to stand trial or having been
22 acquitted of an offense by reason of insanity; or

23 (2) a patient who:

24 (A) is awaiting trial after having been
25 determined to be competent to stand trial; and

26 (B) was ordered to receive inpatient mental
27 health services as described by Section 574.106(a)(2).

1 SECTION 21. Subsection (c), Article 46B.084, Code of
2 Criminal Procedure, is repealed.

3 SECTION 22. (a) Except as provided by Subsection (b) of
4 this section, the change in law made by this Act applies only to a
5 defendant with respect to which any proceeding under Chapter 46B,
6 Code of Criminal Procedure, is conducted on or after the effective
7 date of this Act.

8 (b) The change in law made by this Act in amending Section
9 574.107, Health and Safety Code, applies only to a hearing under
10 Section 574.106, Health and Safety Code, that commences on or after
11 the effective date of this Act. A hearing under Section 574.106,
12 Health and Safety Code, that commences before the effective date of
13 this Act is covered by the law in effect when the hearing commenced,
14 and the former law is continued in effect for this purpose.

15 SECTION 23. This Act takes effect September 1, 2007.