

By: Duncan

S.B. No. 867

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to procedures regarding certain criminal defendants who  
3 are or may 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 to determine  
24 whether the defendant has a mental illness as defined by Section

1 571.003, 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 disinterested expert described by  
9 Subdivision (1). A court that elects to use the results of that  
10 evaluation may proceed under Subsection (c).

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

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

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

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

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

21 (3) recommended treatment.

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

26 (1) criminal proceedings against the defendant,  
27 including proceedings related to the defendant's release on

1 personal bond under Article 17.032; or

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

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

11 Art. 46B.009. TIME CREDITS. [~~(a)~~] A court sentencing a  
12 person convicted of a criminal offense shall credit to the term of  
13 the person's sentence the time the person is confined in a mental  
14 health facility, residential care facility, or jail pending trial  
15 under Subchapter C.

16 [~~(b) A defendant may not be committed to a mental hospital  
17 or other in-patient or residential facility under this chapter for  
18 a cumulative period that exceeds the maximum term provided by law  
19 for the offense for which the defendant was to be tried. On  
20 expiration of that maximum term, the defendant may be confined for  
21 an additional period in a mental hospital or other in-patient or  
22 residential facility only pursuant to civil commitment  
23 proceedings.]~~

24 Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY  
25 MAXIMUM TERM FOR OFFENSE. A defendant may not be committed to a  
26 mental hospital or other inpatient or residential facility under  
27 this chapter for a cumulative period that exceeds the maximum term

1 provided by law for the offense for which the defendant was to be  
2 tried. On expiration of that maximum term, the defendant may be  
3 confined for an additional period in a mental hospital or other  
4 inpatient or residential facility only pursuant to civil commitment  
5 proceedings.

6 SECTION 3. Article 46B.079(b), Code of Criminal Procedure,  
7 is amended to read as follows:

8 (b) A defendant committed under this subchapter whose term  
9 of commitment has not yet expired shall be returned to the  
10 committing court as soon as practicable after the 10th [~~15th~~] day  
11 following the date on which the parties receive service on any  
12 report filed under Article 46B.080(b) regarding the defendant's  
13 ability to attain competency, except that, if a party objects to the  
14 findings of the report and the issue is set for a hearing under  
15 Article 46B.084, the defendant may not be returned to the  
16 committing court earlier than 72 hours before the date the hearing  
17 is scheduled.

18 SECTION 4. Article 46B.082(b), Code of Criminal Procedure,  
19 is amended to read as follows:

20 (b) If a defendant committed to a [~~maximum security unit of~~  
21 ~~a~~] facility of the department has not been transported from the  
22 facility [~~unit~~] before the 10th [~~15th~~] day after the date on which  
23 the court received notification under Article 46B.080(a), the head  
24 of that facility shall cause the defendant to be promptly  
25 transported to the committing court and placed in the custody of the  
26 sheriff of the county in which the committing court is located. The  
27 county in which the committing court is located shall reimburse the

1 department for the mileage and per diem expenses of the personnel  
2 required to transport the defendant, calculated in accordance with  
3 rates provided in the General Appropriations Act for state  
4 employees.

5 SECTION 5. Article 46B.084(c), Code of Criminal Procedure,  
6 is amended to read as follows:

7 (c) The hearing shall be held not later than the 20th day  
8 after [~~within 30 days following~~] the date of objection unless  
9 continued for good cause for a period not to exceed 20 [~~30~~] days.

10 SECTION 6. Subchapter E, Chapter 46B, Code of Criminal  
11 Procedure, is amended by adding Article 46B.1035 to read as  
12 follows:

13 Art. 46B.1035. APPLICATION OF OTHER LAW. (a) In  
14 proceedings conducted under this subchapter for a defendant  
15 described by Article 46B.102(a):

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

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

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

24 (b) In proceedings conducted under this subchapter for a  
25 defendant described by Article 46B.103(a):

26 (1) an application to have the defendant declared a  
27 person with mental retardation may not be required;

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

3           (3) appeals from the criminal court proceedings are to  
4 the court of appeals as in the proceedings for commitment to a  
5 residential care facility under Subtitle D, Title 7, Health and  
6 Safety Code.

7           SECTION 7. Section 571.018(a), Health and Safety Code, is  
8 amended to read as follows:

9           (a) The costs for a hearing or proceeding under this  
10 subtitle, other than a hearing regarding the court-ordered  
11 administration of psychoactive medication to a person awaiting  
12 trial or acquitted in a criminal case as described by Section  
13 574.107, shall be paid by:

14           (1) the county that initiates emergency detention  
15 procedures under Subchapter A or B, Chapter 573; or

16           (2) if no emergency detention procedures are  
17 initiated, the county that accepts an application for court-ordered  
18 mental health services, issues an order for protective custody, or  
19 issues an order for temporary mental health services.

20           SECTION 8. Section 574.107, Health and Safety Code, is  
21 amended to read as follows:

22           Sec. 574.107. COSTS. The costs for a hearing [~~hearings~~]  
23 under this subchapter shall be paid in accordance with Sections  
24 571.017 and 571.018, except that the county in which the applicable  
25 criminal charges are pending or were adjudicated shall pay the  
26 costs of a hearing that is held under Section 574.106 to evaluate  
27 the court-ordered administration of psychoactive medication to:

1           (1) a patient ordered to receive inpatient mental  
2 health services as described by Section 574.106(a)(1) after having  
3 been acquitted of an offense by reason of insanity; or

4           (2) a patient awaiting trial and ordered to receive  
5 inpatient mental health services as described by Section  
6 574.106(a)(2).

7           SECTION 9. Article 46B.103(d), Code of Criminal Procedure,  
8 is repealed.

9           SECTION 10. (a) Except as provided by Subsection (b) of  
10 this section, the change in law made by this Act applies only to a  
11 defendant charged with an offense committed on or after the  
12 effective date of this Act. A defendant charged with an offense  
13 committed before the effective date of this Act is covered by the  
14 law in effect when the offense was committed, and the former law is  
15 continued in effect for that purpose. For purposes of this section,  
16 an offense was committed before the effective date of this Act if  
17 any element of the offense was committed before that date.

18           (b) The change in law made by this Act in amending Sections  
19 571.018(a) and 574.107, Health and Safety Code, applies only to a  
20 hearing under Section 574.106, Health and Safety Code, that  
21 commences on or after the effective date of this Act. A hearing  
22 under Section 574.106, Health and Safety Code, that commences  
23 before the effective date of this Act is covered by the law in  
24 effect when the hearing commenced, and the former law is continued  
25 in effect for this purpose.

26           SECTION 11. This Act takes effect September 1, 2007.