

1-1 By: Duncan S.B. No. 867
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1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 867 By: Hinojosa

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

1-10 relating to procedures regarding criminal defendants who are or may
1-11 be persons with mental illness or mental retardation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 16.22, Code of Criminal Procedure, is
1-14 amended to read as follows:

1-15 Art. 16.22. EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED
1-16 OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Not later
1-17 than 72 hours after receiving evidence or a statement that may
1-18 establish reasonable cause to believe that a defendant committed to
1-19 the sheriff's custody has a mental illness or is a person with
1-20 mental retardation, the sheriff shall notify a magistrate of that
1-21 fact. A defendant's behavior or the result of a prior evaluation
1-22 indicating a need for referral for further mental health or mental
1-23 retardation assessment must be considered in determining whether
1-24 reasonable cause exists to believe the defendant has a mental
1-25 illness or is a person with mental retardation. On a determination
1-26 that there is reasonable cause to believe that the defendant has a
1-27 mental illness or is a person with mental retardation, the
1-28 magistrate, except as provided by Subdivision (2), shall order an
1-29 examination of the defendant by the local mental health or mental
1-30 retardation authority or another [disinterested expert experienced
1-31 and] qualified [in] mental health or mental retardation expert to
1-32 determine whether the defendant has a mental illness as defined by
1-33 Section 571.003, Health and Safety Code, or is a person with mental
1-34 retardation as defined by Section 591.003, Health and Safety Code.

1-35 (2) The magistrate is not required to order an
1-36 examination described by Subdivision (1) if the defendant in the
1-37 year preceding the defendant's applicable date of arrest has been
1-38 evaluated and determined to have a mental illness or to be a person
1-39 with mental retardation by the local mental health or mental
1-40 retardation authority or another mental health or mental
1-41 retardation expert described by Subdivision (1). A court that
1-42 elects to use the results of that evaluation may proceed under
1-43 Subsection (c).

1-44 (3) If the defendant fails or refuses to submit to an
1-45 examination required under Subdivision (1), the magistrate may
1-46 order the defendant to submit to an examination in a mental health
1-47 facility determined to be appropriate by the local mental health or
1-48 mental retardation authority for a reasonable period not to exceed
1-49 21 days. The magistrate may order a defendant to a facility
1-50 operated by the [Texas] Department of State [Mental] Health
1-51 Services or the Department of Aging and Disability Services [and
1-52 Mental Retardation] for examination only on request of the local
1-53 mental health or mental retardation authority and with the consent
1-54 of the head of the facility. If a defendant who has been ordered to
1-55 a facility operated by the [Texas] Department of State [Mental]
1-56 Health Services or the Department of Aging and Disability Services
1-57 [and Mental Retardation] for examination remains in the facility
1-58 for a period exceeding 21 days, the head of that facility shall
1-59 cause the defendant to be immediately transported to the committing
1-60 court and placed in the custody of the sheriff of the county in
1-61 which the committing court is located. That county shall reimburse
1-62 the [Texas Department of Mental Health and Mental Retardation]
1-63 facility for the mileage and per diem expenses of the personnel

2-1 required to transport the defendant calculated in accordance with
 2-2 the state travel regulations in effect at the time.

2-3 (b) A written report of the examination shall be submitted
 2-4 to the magistrate not later than the 30th day after the date of any
 2-5 [within 30 days of the] order of examination issued in a felony case
 2-6 and not later than the 10th day after the date of any order of
 2-7 examination issued in a misdemeanor case, and the magistrate shall
 2-8 provide [furnish] copies of the report to the defense counsel and
 2-9 the prosecuting attorney. The report must [shall] include a
 2-10 description of the procedures used in the examination and the
 2-11 examiner's observations and findings pertaining to:

2-12 (1) whether the defendant is a person who has a mental
 2-13 illness or is a person with mental retardation;

2-14 (2) whether there is clinical evidence to support a
 2-15 belief that the defendant may be incompetent to stand trial and
 2-16 should undergo a complete competency examination under Subchapter
 2-17 B, Chapter 46B; and

2-18 (3) recommended treatment.

2-19 (c) After the court receives the examining expert's report
 2-20 relating to the defendant under Subsection (b) or elects to use the
 2-21 results of an evaluation described by Subsection (a)(2), the court
 2-22 may, as applicable [resume]:

2-23 (1) resume criminal proceedings against the
 2-24 defendant, including any appropriate proceedings related to the
 2-25 defendant's release on personal bond under Article 17.032; or

2-26 (2) resume or initiate competency proceedings, if
 2-27 required, as provided by Chapter 46B or other proceedings affecting
 2-28 the defendant's receipt of appropriate court-ordered mental health
 2-29 or mental retardation services, including proceedings related to
 2-30 the defendant's receipt of outpatient mental health services under
 2-31 Section 574.034, Health and Safety Code.

2-32 (d) Nothing in this article prevents the court from, pending
 2-33 an evaluation of the defendant as described by this article:

2-34 (1) releasing a mentally ill or mentally retarded
 2-35 defendant from custody on personal or surety bond; or

2-36 (2) ordering an examination regarding the defendant's
 2-37 competency to stand trial.

2-38 SECTION 2. Subchapter A, Chapter 46B, Code of Criminal
 2-39 Procedure, is amended by amending Articles 46B.009 and 46B.010 and
 2-40 by adding Article 46B.0095 to read as follows:

2-41 Art. 46B.009. TIME CREDITS. ~~[(a)]~~ A court sentencing a
 2-42 person convicted of a criminal offense shall credit to the term of
 2-43 the person's sentence the time the person is confined in a mental
 2-44 health facility, residential care facility, or jail pending trial
 2-45 under Subchapter C.

2-46 ~~[(b) A defendant may not be committed to a mental hospital~~
 2-47 ~~or other in-patient or residential facility under this chapter for~~
 2-48 ~~a cumulative period that exceeds the maximum term provided by law~~
 2-49 ~~for the offense for which the defendant was to be tried. On~~
 2-50 ~~expiration of that maximum term, the defendant may be confined for~~
 2-51 ~~an additional period in a mental hospital or other in-patient or~~
 2-52 ~~residential facility only pursuant to civil commitment~~
 2-53 ~~proceedings.]~~

2-54 Art. 46B.0095. MAXIMUM PERIOD OF FACILITY COMMITMENT OR
 2-55 OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM
 2-56 TERM FOR OFFENSE. (a) A defendant may not, under this chapter, be
 2-57 committed to a mental hospital or other inpatient or residential
 2-58 facility, ordered to participate in an outpatient treatment
 2-59 program, or subjected to both inpatient and outpatient treatment
 2-60 for a cumulative period that exceeds the maximum term provided by
 2-61 law for the offense for which the defendant was to be tried, except
 2-62 that if the defendant is charged with a misdemeanor and has been
 2-63 ordered only to participate in an outpatient treatment program
 2-64 under Subchapter D or E, the maximum period of restoration is two
 2-65 years beginning on the date of the initial order for outpatient
 2-66 treatment program participation was entered.

2-67 (b) On expiration of the maximum restoration period under
 2-68 Subsection (a), the defendant may be confined for an additional
 2-69 period in a mental hospital or other inpatient or residential

3-1 facility or ordered to participate for an additional period in an
 3-2 outpatient treatment program, as appropriate, only pursuant to
 3-3 civil commitment proceedings.

3-4 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
 3-5 If a court orders the commitment of or participation in an
 3-6 outpatient treatment program by ~~[commits]~~ a defendant who is
 3-7 charged with a misdemeanor punishable by confinement and the
 3-8 defendant is not tried before the date of expiration of the maximum
 3-9 period of restoration under this chapter as described by Article
 3-10 46B.0095 ~~[second anniversary of the date on which the order of~~
 3-11 ~~commitment was entered]~~, the court on the motion of the attorney
 3-12 representing the state shall dismiss the charge.

3-13 SECTION 3. Article 46B.072, Code of Criminal Procedure, is
 3-14 amended to read as follows:

3-15 Art. 46B.072. RELEASE ON BAIL. (a) Subject to conditions
 3-16 reasonably related to assuring public safety and the effectiveness
 3-17 of the defendant's treatment, if ~~[if]~~ the court determines that a
 3-18 defendant found incompetent to stand trial is not a danger to others
 3-19 and may be safely treated on an outpatient basis with ~~[for]~~ the
 3-20 specific objective ~~[purpose]~~ of attaining competency to stand trial
 3-21 and if an appropriate outpatient treatment program is available for
 3-22 the defendant, the court:

3-23 (1) may release ~~[the defendant]~~ on bail a defendant
 3-24 found incompetent to stand trial with respect to a felony or may
 3-25 continue the defendant's release on bail; and

3-26 (2) shall release on bail a defendant found
 3-27 incompetent to stand trial with respect to a misdemeanor or shall
 3-28 continue the defendant's release on bail~~[, subject to conditions~~
 3-29 ~~reasonably related to assuring public safety and the effectiveness~~
 3-30 ~~of the defendant's treatment]~~.

3-31 (b) The court shall order a defendant released on bail under
 3-32 Subsection (a) to participate in an outpatient treatment program
 3-33 for a period not to exceed 120 days.

3-34 (c) Notwithstanding Subsection (a), the court may order a
 3-35 defendant to participate in an outpatient treatment program under
 3-36 this article only if:

3-37 (1) the court receives and approves a comprehensive
 3-38 plan that:

3-39 (A) provides for the treatment of the defendant
 3-40 for purposes of competency restoration; and

3-41 (B) identifies the person who will be responsible
 3-42 for providing that treatment to the defendant; and

3-43 (2) the court finds that the treatment proposed by the
 3-44 plan will be available to and will be provided to the defendant.

3-45 (d) An order issued under this article may require the
 3-46 defendant to participate in:

3-47 (1) as appropriate, an outpatient treatment program
 3-48 administered by a community center or an outpatient treatment
 3-49 program administered by any other entity that provides outpatient
 3-50 competency restoration services; and

3-51 (2) an appropriate prescribed regimen of medical,
 3-52 psychiatric, or psychological care or treatment, including care or
 3-53 treatment involving the administration of psychoactive medication,
 3-54 including those required under 46B.086.

3-55 SECTION 4. Subsections (c) and (d), Article 46B.073, Code
 3-56 of Criminal Procedure, are amended to read as follows:

3-57 (c) If the defendant is charged with an offense listed in
 3-58 Article 17.032(a), other than an offense listed in Article
 3-59 17.032(a)(6), or the indictment alleges an affirmative finding
 3-60 under Section 3g(a)(2), Article 42.12, the court shall enter an
 3-61 order committing the defendant to the maximum security unit of any
 3-62 facility designated by the department, to an agency of the United
 3-63 States operating a mental hospital, or to a Department of Veterans
 3-64 Affairs hospital.

3-65 (d) If the defendant is not charged with an offense
 3-66 described by Subsection (c) ~~[listed in Article 17.032(a)]~~ and the
 3-67 indictment does not allege an affirmative finding under Section 3g
 3-68 (a)(2), Article 42.12, the court shall enter an order committing
 3-69 the defendant to a mental health facility or residential care

4-1 facility determined to be appropriate by the local mental health
4-2 authority or local mental retardation authority.

4-3 SECTION 5. Articles 46B.075 and 46B.076, Code of Criminal
4-4 Procedure, are amended to read as follows:

4-5 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR
4-6 OUTPATIENT TREATMENT PROGRAM. An [A commitment] order issued under
4-7 Article 46B.072 or 46B.073 ~~[this subchapter]~~ must place the
4-8 defendant in the custody of the sheriff for transportation to the
4-9 facility or outpatient treatment program, as applicable, in which
4-10 the defendant is to receive treatment for purposes of competency
4-11 restoration ~~[be confined]~~.

4-12 Art. 46B.076. COURT'S ORDER. (a) If the defendant is found
4-13 incompetent to stand trial, not later than the date of the order of
4-14 commitment or of release on bail, as applicable, the court shall
4-15 send a copy of the order to the facility of the department to which
4-16 the defendant is committed or the outpatient treatment program to
4-17 which the defendant is released ~~[not later than the date the~~
4-18 ~~defendant is committed to the facility]~~. The court shall also
4-19 provide to the facility or outpatient treatment program copies of
4-20 the following made available to the court during the incompetency
4-21 trial:

- 4-22 (1) reports of each expert;
- 4-23 (2) psychiatric, psychological, or social work
- 4-24 reports that relate to the mental condition of the defendant;
- 4-25 (3) documents provided by the attorney representing
- 4-26 the state or the attorney representing the defendant that relate to
- 4-27 the defendant's current or past mental condition;
- 4-28 (4) copies of the indictment or information and any
- 4-29 supporting documents used to establish probable cause in the case;
- 4-30 (5) the defendant's criminal history record; and
- 4-31 (6) the addresses of the attorney representing the
- 4-32 state and the attorney representing the defendant.

4-33 (b) The court shall order that the transcript of all medical
4-34 testimony received by the jury or court be promptly prepared by the
4-35 court reporter and forwarded to the proper facility or outpatient
4-36 treatment program.

4-37 SECTION 6. Subsection (a), Article 46B.077, Code of
4-38 Criminal Procedure, is amended to read as follows:

4-39 (a) The facility to which the defendant is committed or the
4-40 outpatient treatment program to which the defendant is released on
4-41 bail shall:

- 4-42 (1) develop an individual program of treatment;
- 4-43 (2) assess and evaluate whether the defendant will
- 4-44 obtain competency in the foreseeable future; and
- 4-45 (3) report to the court and to the local mental health
- 4-46 authority or to the local mental retardation authority on the
- 4-47 defendant's progress toward achieving competency.

4-48 SECTION 7. Articles 46B.078 through 46B.083, Code of
4-49 Criminal Procedure, are amended to read as follows:

4-50 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
4-51 charges pending against a defendant are dismissed, the ~~[committing]~~
4-52 court that issued the order under Article 46B.072 or 46B.073 shall
4-53 send a copy of the order of dismissal to the sheriff of the county in
4-54 which the ~~[committing]~~ court is located and to the head of the
4-55 facility or the provider of the outpatient treatment program, as
4-56 appropriate ~~[in which the defendant is held]~~. On receipt of the
4-57 copy of the order, the facility or outpatient treatment program
4-58 shall discharge the defendant into the care of the sheriff for
4-59 transportation in the manner described by Article 46B.082.

4-60 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of
4-61 the facility or the provider of the outpatient treatment program,
4-62 as appropriate, not later than the 15th day before the date on which
4-63 a restoration period is to expire, shall notify the applicable
4-64 court that the restoration period is about to expire.

4-65 (b) The head of the facility or outpatient treatment program
4-66 provider shall promptly notify the court when the head of the
4-67 facility or outpatient treatment program provider believes that:

- 4-68 (1) the defendant has attained competency to stand
4-69 trial; or

5-1 (2) the defendant will not attain competency in the
5-2 foreseeable future.

5-3 (c) When the head of the facility or outpatient treatment
5-4 program provider gives notice to the court under Subsection (a) or
5-5 (b), the head of the facility or outpatient treatment program
5-6 provider also shall file a final report with the court stating the
5-7 reason for the proposed discharge under this chapter and including
5-8 a list of the types and dosages of medications with which the
5-9 defendant was treated for mental illness while in the facility or
5-10 participating in the outpatient treatment program. To enable any
5-11 objection to the findings of the report to be made in a timely
5-12 manner under Article 46B.084(a), the court shall provide copies of
5-13 the report to the attorney representing the defendant and the
5-14 attorney representing the state.

5-15 (d) If the head of the facility or outpatient treatment
5-16 program provider notifies the court that the initial restoration
5-17 period is about to expire, the notice may contain a request for an
5-18 extension of the period for an additional period of 60 days and an
5-19 explanation for the basis of the request [RETURN TO COMMITTING
5-20 COURT. (a) A defendant committed under this subchapter shall be
5-21 returned to the committing court as soon as practicable after the
5-22 date on which the defendant's term of commitment expires].

5-23 [~~(b) A defendant committed under this subchapter whose term~~
5-24 ~~of commitment has not yet expired shall be returned to the~~
5-25 ~~committing court as soon as practicable after the 15th day~~
5-26 ~~following the date on which the parties received service on any~~
5-27 ~~report filed under Article 46B.080(b) regarding the defendant's~~
5-28 ~~ability to attain competency, except that, if a party objects to the~~
5-29 ~~findings of the report and the issue is set for a hearing under~~
5-30 ~~Article 46B.084, the defendant may not be returned to the~~
5-31 ~~committing court earlier than 72 hours before the date the hearing~~
5-32 ~~is scheduled.]~~

5-33 Art. 46B.080. EXTENSION OF ORDER. (a) On a request of the
5-34 head of a facility or a treatment program provider that is made
5-35 under Article 46B.079(d) and notwithstanding any other provision of
5-36 this subchapter, the court may enter an order extending the initial
5-37 restoration period for an additional period of 60 days.

5-38 (b) The court may enter an order under Subsection (a) only
5-39 if the court determines that, on the basis of information provided
5-40 by the head of the facility or the treatment program provider:

5-41 (1) the defendant has not attained competency; and
5-42 (2) an extension of the restoration period will likely
5-43 enable the facility or program to restore the defendant to
5-44 competency.

5-45 (c) The court may grant only one extension under this
5-46 article for a period of restoration ordered under this subchapter
5-47 [NOTICE TO COMMITTING COURT. (a) The head of a facility to which a
5-48 defendant has been committed under this subchapter, not later than
5-49 the 14th day before the date on which a commitment order is to
5-50 expire, shall notify the committing court that the term of the
5-51 commitment is about to expire.

5-52 [~~(b) The head of the facility to which a defendant has been~~
5-53 ~~committed under this subchapter shall promptly notify the~~
5-54 ~~committing court when the head of the facility is of the opinion~~
5-55 ~~that:~~

5-56 [~~(1) the defendant has attained competency to stand~~
5-57 ~~trial; or~~

5-58 [~~(2) the defendant will not attain competency in the~~
5-59 ~~foreseeable future.~~

5-60 [~~(c) When the head of the facility gives notice to the court~~
5-61 ~~under Subsection (a) or (b), the head of the facility also shall~~
5-62 ~~file a final report with the court stating the reason for the~~
5-63 ~~proposed discharge under this chapter and including a list of the~~
5-64 ~~types and dosages of medications with which the defendant was~~
5-65 ~~treated for mental illness while in the facility. The court shall~~
5-66 ~~provide copies of the report to the attorney representing the~~
5-67 ~~defendant and the attorney representing the state.~~

5-68 [~~(d) If the head of the facility to which the defendant has~~
5-69 ~~been committed notifies the court that the commitment order is~~

6-1 ~~about to expire, the notice may contain a request for an extension~~
 6-2 ~~of the commitment order for a period of 60 days and an explanation~~
 6-3 ~~for the basis of the request].~~

6-4 Art. 46B.081. RETURN TO COURT. Subject to Article
 6-5 46B.082(b), a defendant committed or released on bail under this
 6-6 subchapter shall be returned to the applicable court as soon as
 6-7 practicable after notice to the court is provided under Article
 6-8 46B.079, but not later than the date of expiration of the period for
 6-9 restoration specified by the court under Article 46B.072 or 46B.073
 6-10 ~~[EXTENSION OF COMMITMENT ORDER. (a) On the request of the head of~~
 6-11 ~~a facility made under Article 46B.080(d), the court may enter an~~
 6-12 ~~order extending the term of the commitment order for a period of 60~~
 6-13 ~~days.~~

6-14 ~~[(b) The court may enter an order under Subsection (a) only~~
 6-15 ~~if the court determines that, on the basis of information provided~~
 6-16 ~~by the head of the facility:~~

6-17 ~~[(1) the defendant has not attained competency; and~~
 6-18 ~~[(2) an extension of the term of the commitment order~~
 6-19 ~~will likely enable the facility to restore the defendant to~~
 6-20 ~~competency.~~

6-21 ~~[(c) the court may grant only one extension under this~~
 6-22 ~~article for the term of a defendant's commitment order].~~

6-23 Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) On
 6-24 notification from the [committing] court under Article 46B.078, the
 6-25 sheriff of the county in which the [committing] court is located or
 6-26 the sheriff's designee shall transport the defendant to the
 6-27 [committing] court.

6-28 (b) If before the 15th day after the date on which the court
 6-29 received notification under Article 46B.079 a defendant committed
 6-30 to a [maximum security unit of a] facility of the department or
 6-31 ordered to participate in an outpatient treatment program has not
 6-32 been transported to the court that issued the order under Article
 6-33 46B.072 or 46B.073, as applicable [from the unit before the 15th day
 6-34 after the date on which the court received notification under
 6-35 Article 46B.080(a)], the head of the [that] facility to which the
 6-36 defendant is committed or the provider of the outpatient treatment
 6-37 program in which the defendant is participating shall cause the
 6-38 defendant to be promptly transported to the [committing] court and
 6-39 placed in the custody of the sheriff of the county in which the
 6-40 [committing] court is located. The county in which the
 6-41 [committing] court is located shall reimburse the department for
 6-42 the mileage and per diem expenses of the personnel required to
 6-43 transport the defendant, calculated in accordance with rates
 6-44 provided in the General Appropriations Act for state employees.

6-45 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED BY
 6-46 FACILITY HEAD OR OUTPATIENT TREATMENT PROGRAM PROVIDER. (a) If
 6-47 the head of the facility or outpatient treatment program provider
 6-48 believes that the defendant is a person with mental illness and
 6-49 meets the criteria for court-ordered [inpatient] mental health
 6-50 services under Subtitle C, Title 7, Health and Safety Code, the head
 6-51 of the facility or the outpatient treatment program provider shall
 6-52 have submitted to the court a certificate of medical examination
 6-53 for mental illness.

6-54 (b) If the head of the facility or the outpatient treatment
 6-55 program provider believes [is of the opinion] that the defendant is
 6-56 a person with mental retardation, the head of the facility or the
 6-57 outpatient treatment program provider shall have submitted to the
 6-58 court an affidavit stating the conclusions reached as a result of
 6-59 the examination.

6-60 SECTION 8. Subsections (a) and (b-1), Article 46B.084, Code
 6-61 of Criminal Procedure, are amended to read as follows:

6-62 (a) On the return of a defendant to the [committing] court,
 6-63 the court shall make a determination with regard to the defendant's
 6-64 competency to stand trial. The court may make the determination
 6-65 based solely on the report filed under Article 46B.079(c)
 6-66 [46B.080(c)], unless any party objects in writing or in open court
 6-67 to the findings of the report not later than the 15th day after the
 6-68 date on which the court received notification under Article 46B.079
 6-69 [report is served on the parties]. The court shall make the

7-1 determination not later than the 20th day after the date on which
 7-2 the court received notification under Article 46B.079, regardless
 7-3 of whether a party objects to the report as described by this
 7-4 subsection and the issue is set for hearing under Subsection (b).

7-5 (b-1) If the hearing is before the court, the hearing may be
 7-6 conducted by means of an electronic broadcast system as provided by
 7-7 Article 46B.013. Notwithstanding any other provision of this
 7-8 chapter, the defendant is not required to be returned to the
 7-9 [~~committing~~] court with respect to any hearing that is conducted
 7-10 under this article in the manner described by this subsection.

7-11 SECTION 9. Articles 46B.085 and 46B.086, Code of Criminal
 7-12 Procedure, are amended to read as follows:

7-13 Art. 46B.085. SUBSEQUENT RESTORATION PERIODS [COMMITMENTS]
 7-14 AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may
 7-15 order only one initial period of restoration [~~commitment~~] and one
 7-16 extension under this subchapter in connection with the same
 7-17 offense.

7-18 (b) After an initial restoration period [~~a commitment~~] and
 7-19 an extension are ordered as described by Subsection (a), any
 7-20 subsequent court orders for treatment must be issued under
 7-21 Subchapter E or F.

7-22 Art. 46B.086. COURT-ORDERED MEDICATIONS. (a) This article
 7-23 applies only to a defendant:

7-24 (1) who is determined under this chapter to be
 7-25 incompetent to stand trial;

7-26 (2) for whom an inpatient mental health facility,
 7-27 residential care facility, or outpatient treatment program
 7-28 provider has prepared a continuity of care plan [~~has been prepared~~
 7-29 ~~by a facility~~] that requires the defendant to take psychoactive
 7-30 medications; and

7-31 (3) who, after a hearing held under Section 574.106,
 7-32 Health and Safety Code, has been found not to meet the criteria
 7-33 prescribed by Sections 574.106(a) and (a-1), Health and Safety
 7-34 code, for court-ordered administration of psychoactive
 7-35 medications; or

7-36 (4) who is subject to Article 46B.072.

7-37 (b) If a defendant described by Subsection (a) refuses to
 7-38 take psychoactive medications as required by the defendant's
 7-39 continuity of care plan, the director of the correctional facility
 7-40 or outpatient treatment provider shall notify the court in which
 7-41 the criminal proceedings are pending of that fact not later than the
 7-42 end of the next business day following the refusal. The court shall
 7-43 promptly notify the attorney representing the state and the
 7-44 attorney representing the defendant of the defendant's refusal.
 7-45 The attorney representing the state may file a written motion to
 7-46 compel medication. The motion to compel medication must be filed
 7-47 not later than the 15th day after the date a judge issues an order
 7-48 stating that the defendant does not meet the criteria for
 7-49 court-ordered administration of psychoactive medications under
 7-50 Section 574.106, Health and Safety Code. The motion to compel
 7-51 medication for a defendant in an outpatient treatment program may
 7-52 be filed at any time.

7-53 (c) The court, after notice and after a hearing held not
 7-54 later than the fifth day after the defendant is returned to the
 7-55 committing court, may authorize the director of a correctional
 7-56 facility or the program provider, as applicable, to have the
 7-57 medication administered to the defendant, by reasonable force if
 7-58 necessary.

7-59 (d) [~~(e)~~] The court may issue an order under this article
 7-60 only if the order is supported by the testimony of two physicians,
 7-61 one of whom is the physician at or with the applicable correctional
 7-62 facility or outpatient treatment program who is prescribing the
 7-63 medication as a component of the defendant's continuity of care
 7-64 plan and another who is not otherwise involved in proceedings
 7-65 against the defendant. The court may require either or both
 7-66 physicians to examine the defendant and report on the examination
 7-67 to the court.

7-68 (e) [~~(d)~~] The court may issue an order under this article if
 7-69 the court finds by clear and convincing evidence that:

8-1 (1) the prescribed medication is medically
8-2 appropriate, is in the best medical interest of the defendant, and
8-3 does not present side effects that cause harm to the defendant that
8-4 is greater than the medical benefit to the defendant;

8-5 (2) the state has a clear and compelling interest in
8-6 the defendant obtaining and maintaining competency to stand trial;

8-7 (3) no other less invasive means of obtaining and
8-8 maintaining the defendant's competency exists; and

8-9 (4) the prescribed medication will not unduly
8-10 prejudice the defendant's rights or use of defensive theories at
8-11 trial.

8-12 (f) ~~(e)~~ A statement made by a defendant to a physician
8-13 during an examination under Subsection (d) ~~(e)~~ may not be
8-14 admitted against the defendant in any criminal proceeding, other
8-15 than at:

8-16 (1) a hearing on the defendant's incompetency; or

8-17 (2) any proceeding at which the defendant first
8-18 introduces into evidence the contents of the statement.

8-19 SECTION 10. Article 46B.102, Code of Criminal Procedure, is
8-20 amended to read as follows:

8-21 Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS.

8-22 (a) If it appears to the court that the defendant may be a person
8-23 with mental illness, the court shall hold a hearing to determine
8-24 whether the defendant should be court-ordered to mental health
8-25 services under Subtitle C, Title 7, Health and Safety Code
8-26 ~~[committed to a mental health facility]~~.

8-27 (b) Proceedings for commitment of the defendant to
8-28 court-ordered mental health services ~~[a mental health facility]~~ are
8-29 governed by Subtitle C, Title 7, Health and Safety Code, to the
8-30 extent that Subtitle C applies and does not conflict with this
8-31 chapter, except that the criminal court shall conduct the
8-32 proceedings whether or not the criminal court is also the county
8-33 court.

8-34 (c) If the court enters an order committing the defendant to
8-35 a mental health facility, the defendant shall be:

8-36 (1) treated in conformity with Subtitle C, Title 7,
8-37 Health and Safety Code, except as otherwise provided by this
8-38 chapter; and

8-39 (2) released in conformity with Article 46B.107.

8-40 (d) In proceedings conducted under this subchapter for a
8-41 defendant described by Subsection (a):

8-42 (1) an application for court-ordered temporary or
8-43 extended mental health services may not be required;

8-44 (2) the provisions of Subtitle C, Title 7, Health and
8-45 Safety Code, relating to notice of hearing do not apply; and

8-46 (3) appeals from the criminal court proceedings are to
8-47 the court of appeals as in the proceedings for court-ordered
8-48 inpatient mental health services under Subtitle C, Title 7, Health
8-49 and Safety Code.

8-50 SECTION 11. Subsection (d), Article 46B.103, Code of
8-51 Criminal Procedure, is amended to read as follows:

8-52 (d) In the proceedings conducted under this subchapter for a
8-53 defendant described by Subsection (a):

8-54 (1) an application ~~[for court-ordered temporary or~~
8-55 ~~extended mental health services or]~~ to have the defendant declared
8-56 a person with mental retardation may not be required;

8-57 (2) the provisions of Subtitle ~~[Subtitles C and]~~ D,
8-58 Title 7, Health and Safety Code, relating to notice of hearing do
8-59 not apply; and

8-60 (3) appeals from the criminal court proceedings are to
8-61 the court of appeals as in the proceedings for ~~[court-ordered~~
8-62 ~~inpatient mental health services under Subtitle C, Title 7, Health~~
8-63 ~~and Safety Code, or for]~~ commitment to a residential care facility
8-64 under Subtitle D, Title 7, Health and Safety Code.

8-65 SECTION 12. Article 46B.104, Code of Criminal Procedure, is
8-66 amended to read as follows:

8-67 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
8-68 VIOLENCE. A defendant committed to a facility as a result of
8-69 proceedings initiated under this chapter shall be committed to the

9-1 maximum security unit of any facility designated by the department
9-2 if:

9-3 (1) the defendant is charged with an offense listed in
9-4 Article 17.032(a), other than an offense listed in Article
9-5 17.032(a)(6); or

9-6 (2) the indictment charging the offense alleges an
9-7 affirmative finding under Section 3g(a)(2), Article 42.12.

9-8 SECTION 13. Article 46B.106, Code of Criminal Procedure, is
9-9 amended to read as follows:

9-10 Art. 46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF
9-11 VIOLENCE. (a) A defendant committed to a facility as a result of
9-12 the proceedings initiated under this chapter, other than a
9-13 defendant described by Article 46B.104, shall be committed to:

9-14 (1) a facility designated by the department; or

9-15 (2) an outpatient treatment program [~~local mental~~
9-16 ~~health authority or local mental retardation authority to serve the~~
9-17 ~~catchment area in which the committing court is located~~].

9-18 (b) A facility or outpatient treatment program may not
9-19 refuse to accept a placement ordered under this article on the
9-20 grounds that criminal charges against the defendant are pending.

9-21 SECTION 14. Article 46B.107, Code of Criminal Procedure, is
9-22 amended to read as follows:

9-23 Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT.

9-24 (a) The release from the department, an outpatient treatment
9-25 program, or a facility of a defendant committed under this chapter
9-26 is subject to disapproval by the committing court if the court or
9-27 the attorney representing the state has notified the head of the
9-28 facility or outpatient treatment provider, as applicable, to which
9-29 the defendant has been committed that a criminal charge remains
9-30 pending against the defendant.

9-31 (b) If the head of the facility or outpatient treatment
9-32 provider to which a defendant has been committed under this chapter
9-33 determines that the defendant should be released from the facility,
9-34 the head of the facility or outpatient treatment provider shall
9-35 notify the committing court and the sheriff of the county from which
9-36 the defendant was committed in writing of the release not later than
9-37 the 14th day before the date on which the facility or outpatient
9-38 treatment provider intends to release the defendant.

9-39 (c) The head of the facility or outpatient treatment
9-40 provider shall provide with the notice a written statement that
9-41 states an opinion on as to whether the defendant to be released has
9-42 attained competency to stand trial.

9-43 (d) The court may, on motion of the attorney representing
9-44 the state or on its own motion, hold a hearing to determine whether
9-45 release is appropriate under the applicable criteria in Subtitle C
9-46 or D, Title 7, Health and Safety Code. The court may conduct the
9-47 hearing:

9-48 (1) at the facility; or

9-49 (2) by means of an electronic broadcast system as
9-50 provided by Article 46B.013.

9-51 (e) If the court determines that release is not appropriate,
9-52 the court shall enter an order directing the head of the facility or
9-53 the outpatient treatment provider to not release the defendant.

9-54 (f) If an order is entered under Subsection (e), any
9-55 subsequent proceeding to release the defendant is subject to this
9-56 article.

9-57 SECTION 15. Article 46B.108, Code of Criminal Procedure, is
9-58 amended to read as follows:

9-59 Art. 46B.108. REDETERMINATION OF COMPETENCY. (a) If
9-60 criminal charges against a defendant found incompetent to stand
9-61 trial have not been dismissed, the trial court at any time may
9-62 determine whether the defendant has been restored to competency.

9-63 (b) An inquiry into restoration of competency under this
9-64 subchapter may be made at the request of the head of the mental
9-65 health facility, outpatient treatment provider, or residential
9-66 care facility to which the defendant has been committed, the
9-67 defendant, the attorney representing the defendant, or the attorney
9-68 representing the state, or may be made on the court's own motion.

9-69 SECTION 16. Article 46B.109, Code of Criminal Procedure, is

10-1 amended to read as follows:

10-2 Art. 46B.109. REQUEST BY HEAD OF FACILITY OR OUTPATIENT
 10-3 TREATMENT PROVIDER. (a) The head of a facility or outpatient
 10-4 treatment provider to which a defendant has been committed as a
 10-5 result of a finding of incompetency to stand trial may request the
 10-6 court to determine that the defendant has been restored to
 10-7 competency.

10-8 (b) The head of the facility or outpatient treatment
 10-9 provider shall provide with the request a written statement that in
 10-10 their [the] opinion [of the head of the facility] the defendant is
 10-11 competent to stand trial.

10-12 SECTION 17. Article 46B.113, Code of Criminal Procedure, is
 10-13 amended to read as follows:

10-14 Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT
 10-15 AGREEMENT. (a) The court shall hold a hearing on a request by the
 10-16 head of a facility or outpatient treatment provider to which a
 10-17 defendant has been committed as a result of a finding of
 10-18 incompetency to stand trial to determine whether the defendant has
 10-19 been restored to competency.

10-20 (b) The court may hold a hearing on a motion to determine
 10-21 whether the defendant has been restored to competency or on the
 10-22 court's decision on its own motion to inquire into restoration of
 10-23 competency, and shall hold a hearing if a motion and any supporting
 10-24 material establish good reason to believe the defendant may have
 10-25 been restored to competency.

10-26 (c) If a court holds a hearing under this article, on the
 10-27 request of the counsel for either party or the motion of the court,
 10-28 a jury shall make the competency determination. If the competency
 10-29 determination will be made by the court rather than a jury, the
 10-30 court may conduct the hearing:

10-31 (1) at the facility; or
 10-32 (2) by means of an electronic broadcast system as
 10-33 provided by Article 46B.013.

10-34 (d) If the head of a facility or outpatient treatment
 10-35 provider to which the defendant was committed as a result of a
 10-36 finding of incompetency to stand trial has provided an opinion that
 10-37 the defendant has regained competency, competency is presumed at a
 10-38 hearing under this subchapter and continuing incompetency must be
 10-39 proved by a preponderance of the evidence.

10-40 (e) If the head of a facility or outpatient treatment
 10-41 provider has not provided an opinion described by Subsection (d),
 10-42 incompetency is presumed at a hearing under this subchapter and the
 10-43 defendant's competency must be proved by a preponderance of the
 10-44 evidence.

10-45 SECTION 18. Article 46B.117, Code of Criminal Procedure, is
 10-46 amended to read as follows:

10-47 Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY.
 10-48 [~~(a)~~] If a defendant under order of commitment to a facility or
 10-49 outpatient treatment program is found to not have been restored to
 10-50 competency to stand trial, the court shall remand the defendant
 10-51 pursuant to that order of commitment, and, if applicable, order the
 10-52 defendant placed in the custody of the sheriff or the sheriff's
 10-53 designee for transportation back to the facility or outpatient
 10-54 treatment program.

10-55 [~~(b) If a defendant not under order of commitment is found~~
 10-56 ~~to not have been restored to competency to stand trial, the court~~
 10-57 ~~shall order the defendant's custody status to remain unchanged.]~~

10-58 SECTION 19. Article 46B.171, Code of Criminal Procedure, is
 10-59 amended to read as follows:

10-60 Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS. (a) The
 10-61 court shall order that:

10-62 (1) a transcript of all medical testimony received in
 10-63 both the criminal proceedings and the civil commitment proceedings
 10-64 under Subchapter E or F be prepared as soon as possible by the court
 10-65 reporters; and

10-66 (2) copies of documents listed in Article 46B.076
 10-67 accompany the defendant to the mental health facility, outpatient
 10-68 treatment program, or residential care facility.

10-69 (b) On the request of the defendant or the attorney

11-1 representing the defendant, a mental health facility, an outpatient
11-2 treatment program, or a residential care facility shall provide to
11-3 the defendant or the attorney copies of the facility's records
11-4 regarding the defendant.

11-5 SECTION 20. Section 574.107, Health and Safety Code, is
11-6 amended to read as follows:

11-7 SEC. 574.107. COSTS. (a) The costs for a hearing
11-8 [~~hearings~~] under this subchapter shall be paid in accordance with
11-9 Sections 571.017 and 571.018.

11-10 (b) The county in which the applicable criminal charges are
11-11 pending or were adjudicated shall pay as provided by Subsection (a)
11-12 the costs of a hearing that is held under Section 574.106 to
11-13 evaluate the court-ordered administration of psychoactive
11-14 medication to:

11-15 (1) a patient ordered to receive inpatient mental
11-16 health services as described by Section 574.106(a)(1) after having
11-17 been determined to be incompetent to stand trial or having been
11-18 acquitted of an offense by reason of insanity; or

11-19 (2) a patient who:
11-20 (A) is awaiting trial after having been
11-21 determined to be competent to stand trial; and
11-22 (B) was ordered to receive inpatient mental
11-23 health services as described by Section 574.106(a)(2).

11-24 SECTION 21. Subsection (c), Article 46B.084, Code of
11-25 Criminal Procedure, is repealed.

11-26 SECTION 22. (a) Except as provided by Subsection (b) of
11-27 this section, the change in law made by this Act applies only to a
11-28 defendant with respect to which any proceeding under Chapter 46B,
11-29 Code of Criminal Procedure, is conducted on or after the effective
11-30 date of this Act.

11-31 (b) The change in law made by this Act in amending Section
11-32 574.107, Health and Safety Code, applies only to a hearing under
11-33 Section 574.106, Health and Safety Code, that commences on or after
11-34 the effective date of this Act. A hearing under Section 574.106,
11-35 Health and Safety Code, that commences before the effective date of
11-36 this Act is covered by the law in effect when the hearing commenced,
11-37 and the former law is continued in effect for this purpose.

11-38 SECTION 23. This Act takes effect September 1, 2007.

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