

By: Van de Putte

S.B. No. 1279

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures occurring after a determination of a  
3 defendant's incompetency to stand trial.

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

5 SECTION 1. Article 46B.001, Code of Criminal Procedure, is  
6 amended by adding Subdivision (10) to read as follows:

7 (10) "Correctional facility" means a facility  
8 operated by or on behalf of a county for the confinement of  
9 individuals arrested for, charged with, or convicted of a criminal  
10 offense. The term includes a county jail.

11 SECTION 2. Subchapter D, Chapter 46B, Code of Criminal  
12 Procedure, is amended to read as follows:

13 SUBCHAPTER D. PROCEDURES AFTER DETERMINATION OF INCOMPETENCY

14 Art. 46B.071. OPTIONS ON DETERMINATION OF  
15 INCOMPETENCY. On a determination that a defendant is incompetent  
16 to stand trial, the court shall:

17 (1) commit the defendant to a facility or detain the  
18 defendant in a correctional facility under Article 46B.073; or

19 (2) release the defendant on bail under Article  
20 46B.072.

21 Art. 46B.072. RELEASE ON BAIL. If the court determines that  
22 a defendant found incompetent to stand trial is not a danger to  
23 others and may be safely treated on an outpatient basis for the  
24 purpose of attaining competency to stand trial, the court may

1 release the defendant on bail or continue the defendant's release  
2 on bail, subject to conditions reasonably related to assuring  
3 public safety and the effectiveness of the defendant's treatment.

4 Art. 46B.073. COMMITMENT OR DETENTION FOR RESTORATION TO  
5 COMPETENCY. (a) This article applies only to a defendant not  
6 released on bail.

7 (b) Except as otherwise provided by this article, the ~~[The]~~  
8 court shall commit a defendant described by Subsection (a) to a  
9 mental health facility or residential care facility for a period  
10 not to exceed 120 days for further examination and treatment toward  
11 the specific objective of restoring ~~[attaining]~~ competency to stand  
12 trial.

13 (b-1) For a period not to exceed 120 days, the court may  
14 detain a defendant in a correctional facility and require the  
15 defendant to participate in a competency restoration program  
16 provided in that facility if:

17 (1) the correctional facility has sufficient space  
18 that is:

19 (A) separate from the space used by the general  
20 population in the facility; and

21 (B) reserved as the location of a competency  
22 restoration program provided in the facility;

23 (2) the competency restoration program provided in the  
24 correctional facility will be administered by the local mental  
25 health authority or local mental retardation authority or services  
26 for the program will be provided by a community mental health center  
27 or mental retardation center, as considered appropriate by the

1 sheriff; and

2 (3) the defendant will be maintained in the reserved  
3 location separate from the general population during the  
4 defendant's participation in the competency restoration program.

5 (c) If the defendant is charged with an offense listed in  
6 Article 17.032(a) or the indictment alleges an affirmative finding  
7 under Section 3g(a)(2), Article 42.12, the court shall enter an  
8 order committing the defendant to the maximum security unit of any  
9 facility designated by the department, to an agency of the United  
10 States operating a mental hospital, or to a Department of Veterans  
11 Affairs hospital.

12 (d) If the defendant is not charged with an offense listed  
13 in Article 17.032(a) and the indictment does not allege an  
14 affirmative finding under Section 3g(a)(2), Article 42.12, the  
15 court shall enter an order:

16 (1) committing the defendant to a mental health  
17 facility or residential care facility determined to be appropriate  
18 by the local mental health authority or local mental retardation  
19 authority; or

20 (2) detaining the defendant in a correctional facility  
21 and requiring the defendant to participate in a competency  
22 restoration program provided in the facility.

23 Art. 46B.074. COMPETENT TESTIMONY REQUIRED. (a) A  
24 defendant may be committed or detained as provided by [~~to a mental~~  
25 ~~health facility or residential care facility under~~] this subchapter  
26 only on competent medical or psychiatric testimony provided by an  
27 expert qualified under Article 46B.022.

1 (b) The court may allow an expert to substitute the expert's  
2 report under Article 46B.025 for any testimony by the expert that  
3 may be required under this article.

4 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY. An [~~A~~  
5 ~~commitment~~] order issued under Article 46B.073 [~~this subchapter~~]  
6 must place the defendant in the custody of the sheriff for  
7 transportation to the facility or correctional facility in which  
8 the defendant is to receive treatment for purposes of competency  
9 restoration [~~be confined~~].

10 Art. 46B.076. COURT'S ORDER. (a) If the defendant is found  
11 incompetent to stand trial, not later than the date of the order of  
12 commitment or detention, as applicable, the court shall send a copy  
13 of the order to the facility to which the defendant is committed or  
14 detained [~~not later than the date the defendant is committed to the~~  
15 ~~facility~~]. The court shall also provide to the applicable facility  
16 copies of the following made available to the court during the  
17 incompetency trial:

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

1 state and the attorney representing the defendant.

2 (b) The court shall order that the transcript of all medical  
3 testimony received by the jury or court be promptly prepared by the  
4 court reporter and forwarded to the applicable [~~proper~~] facility.

5 Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The  
6 facility to which the defendant is committed or the competency  
7 restoration program provider in the correctional facility in which  
8 the defendant is detained, as applicable, shall:

9 (1) develop an individual program of treatment;

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

12 (3) report to the court and to appropriate [~~the~~] local  
13 mental health [~~authority~~] or [~~to the local~~] mental retardation  
14 entities [~~authority~~] on the defendant's progress toward achieving  
15 competency.

16 (b) If the defendant is committed to an inpatient mental  
17 health facility or to a residential care facility or is detained in  
18 a correctional facility under this subchapter, the mental health or  
19 residential care facility or the competency restoration program  
20 provider in the correctional facility, as applicable, shall report  
21 to the court at least once during the [~~commitment~~] period for  
22 competency restoration specified by the court under Article 46B.072  
23 or 46B.073. If the defendant is released to a treatment program not  
24 provided by an inpatient mental health facility or a residential  
25 care facility or in a correctional facility, the treatment program  
26 shall report to the court:

27 (1) not later than the 14th day after the date on which

1 the defendant's treatment begins; and

2 (2) until the defendant is no longer released to the  
3 treatment program, at least once during each 30-day period  
4 following the date of the report required by Subdivision (1).

5 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the  
6 charges pending against a defendant are dismissed, the applicable  
7 ~~[committing]~~ court that entered an order of commitment or detention  
8 under Section 46B.073 shall send a copy of the order of dismissal to  
9 the sheriff of the county in which that ~~[the committing]~~ court is  
10 located and to the head of the facility or the administrator of a  
11 competency restoration program in a correctional facility, as  
12 appropriate ~~[in which the defendant is held]~~. On receipt of the  
13 copy of the order, the facility or correctional facility shall  
14 discharge the defendant into the care of the sheriff for  
15 transportation in the manner described by Article 46B.082.

16 Art. 46B.079. RETURN TO ~~[COMMITTING]~~ COURT. (a) A  
17 defendant committed or detained under this subchapter shall be  
18 returned to the applicable ~~[committing]~~ court for a hearing as soon  
19 as practicable after the date of expiration of ~~[on which]~~ the period  
20 for restoration specified by the court under Article 46B.072 or  
21 46B.073 ~~[defendant's term of commitment expires]~~.

22 (b) A defendant committed or detained under this subchapter  
23 whose restoration period ~~[term of commitment]~~ has not yet expired  
24 shall be returned to the ~~[committing]~~ court as soon as practicable  
25 after the 15th day following the date on which the parties receive  
26 service on any report filed under Article 46B.080(b) regarding the  
27 defendant's ability to attain competency, except that, if a party

1 objects to the findings of the report and the issue is set for a  
2 hearing under Article 46B.084, the defendant may not be returned to  
3 the ~~[committing]~~ court earlier than 72 hours before the date the  
4 hearing is scheduled.

5 Art. 46B.080. NOTICE TO ~~[COMMITTING]~~ COURT. (a) The head of  
6 an inpatient mental health [a] facility or of a residential care  
7 facility or the administrator of a competency restoration program  
8 in a correctional facility, as appropriate ~~[to which a defendant~~  
9 ~~has been committed under this subchapter]~~, not later than the 14th  
10 day before the date on which a restoration period ~~[commitment~~  
11 ~~order]~~ is to expire, shall notify the applicable ~~[committing]~~ court  
12 that the restoration period ~~[term of the commitment]~~ is about to  
13 expire.

14 (b) The head of the facility or program administrator, as  
15 applicable, ~~[to which a defendant has been committed under this~~  
16 ~~subchapter]~~ shall promptly notify the ~~[committing]~~ court when the  
17 head of the facility or program administrator believes ~~[is of the~~  
18 ~~opinion]~~ that:

19 (1) the defendant has attained competency to stand  
20 trial; or

21 (2) the defendant will not attain competency in the  
22 foreseeable future.

23 (c) When the head of the facility or program administrator  
24 gives notice to the court under Subsection (a) or (b), the head of  
25 the facility or program administrator also shall file a final  
26 report with the court stating the reason for the proposed discharge  
27 under this chapter and including a list of the types and dosages of

1 medications with which the defendant was treated for mental illness  
2 while in the applicable facility. The court shall provide copies of  
3 the report to the attorney representing the defendant and the  
4 attorney representing the state.

5 (d) If the head of the facility or program administrator [~~to~~  
6 ~~which the defendant has been committed~~] notifies the court that the  
7 initial restoration period [~~commitment order~~] is about to expire,  
8 the notice may contain a request for an extension of the period  
9 [~~commitment order~~] for an additional [~~a~~] period of 60 days and an  
10 explanation for the basis of the request.

11 Art. 46B.081. EXTENSION OF [~~COMMITMENT~~] ORDER. (a) On a  
12 [~~the~~] request of the head of a facility or program administrator  
13 that is made under Article 46B.080(d) and notwithstanding any other  
14 provision of this subchapter, the court may enter an order  
15 extending the initial restoration period [~~term of the commitment~~  
16 ~~order~~] for an additional [~~a~~] period of 60 days.

17 (b) The court may enter an order under Subsection (a) only  
18 if the court determines that, on the basis of information provided  
19 by the head of the facility or program administrator:

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

21 (2) an extension of the restoration period [~~term of~~  
22 ~~the commitment order~~] will likely enable the applicable facility to  
23 restore the defendant to competency.

24 (c) The court may grant only one extension under this  
25 article for a period of restoration ordered under this subchapter  
26 [~~the term of a defendant's commitment order~~].

27 Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) On



1 notification from the [~~committing~~] court under Article 46B.078, the  
2 sheriff of the county in which the [~~committing~~] court is located or  
3 the sheriff's designee shall transport the defendant to the  
4 [~~committing~~] court.

5 (b) If a defendant committed to a maximum security unit of a  
6 facility of the department has not been transported from the unit  
7 before the 15th day after the date on which the court received  
8 notification under Article 46B.080(a), the head of that facility  
9 shall cause the defendant to be promptly transported to the  
10 [~~committing~~] court and placed in the custody of the sheriff of the  
11 county in which the [~~committing~~] court is located. The county in  
12 which the [~~committing~~] court is located shall reimburse the  
13 department for the mileage and per diem expenses of the personnel  
14 required to transport the defendant, calculated in accordance with  
15 rates provided in the General Appropriations Act for state  
16 employees.

17 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED  
18 BY FACILITY HEAD OR PROGRAM ADMINISTRATOR. (a) If the head of the  
19 facility or the administrator of a competency restoration program  
20 in a correctional facility believes that the defendant is a person  
21 with mental illness and meets the criteria for court-ordered  
22 inpatient mental health services under Subtitle C, Title 7, Health  
23 and Safety Code, the head of the facility or program administrator,  
24 as applicable, shall have submitted to the court a certificate of  
25 medical examination for mental illness.

26 (b) If the head of the facility or program administrator  
27 believes [~~is of the opinion~~] that the defendant is a person with

1 mental retardation, the head of the facility or program  
2 administrator shall have submitted to the court an affidavit  
3 stating the conclusions reached as a result of the examination.

4 Art. 46B.084. PROCEEDINGS ON RETURN OF DEFENDANT TO COURT.

5 (a) On the return of a defendant to the [~~committing~~] court for a  
6 hearing, the court shall make a determination with regard to the  
7 defendant's competency to stand trial. The court may make the  
8 determination based solely on the report filed under Article  
9 46B.080(c), unless any party objects in writing or in open court to  
10 the findings of the report not later than the 15th day after the  
11 date on which the report is served on the parties.

12 (b) If a party objects under Subsection (a), the issue shall  
13 be set for a hearing. The hearing is before the court, except that  
14 on motion by the defendant, the defense counsel, the prosecuting  
15 attorney, or the court, the hearing shall be held before a jury.

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

22 (c) The hearing shall be held within 30 days following the  
23 date of objection unless continued for good cause for a period not  
24 to exceed 30 days.

25 (d) If the defendant is found competent to stand trial,  
26 criminal proceedings against the defendant may be resumed.

27 (e) If the defendant is found incompetent to stand trial and

1 if all charges pending against the defendant are not dismissed, the  
2 court shall proceed under Subchapter E.

3 (f) If the defendant is found incompetent to stand trial and  
4 if all charges pending against the defendant are dismissed, the  
5 court shall proceed under Subchapter F.

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

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

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

17 (1) who is determined under this chapter to be  
18 incompetent to stand trial;

19 (2) for whom an inpatient mental health facility,  
20 residential care facility, or competency restoration program  
21 provider in a correctional facility has prepared a continuity of  
22 care plan [~~has been prepared by a facility~~] that requires the  
23 defendant to take psychoactive medications; and

24 (3) who, after a hearing held under Section 574.106,  
25 Health and Safety Code, has been found not to meet the criteria  
26 prescribed by Sections 574.106(a) and (a-1), Health and Safety  
27 Code, for court-ordered administration of psychoactive

1 medications.

2 (b) If a defendant described by Subsection (a) refuses to  
3 take psychoactive medications as required by the defendant's  
4 continuity of care plan, the head of the inpatient mental health  
5 facility or residential care facility or the competency restoration  
6 program provider, as applicable, [~~director of the correctional~~  
7 ~~facility]~~ shall notify the court in which the criminal proceedings  
8 are pending of that fact not later than the end of the next business  
9 day following the date the head or the provider receives notice of  
10 that refusal. The court shall promptly notify the attorney  
11 representing the state and the attorney representing the defendant  
12 of the defendant's refusal. The attorney representing the state  
13 may file a written motion to compel medication. The motion to  
14 compel medication must be filed not later than the 15th day after  
15 the date a judge issues an order stating that the defendant does not  
16 meet the criteria for court-ordered administration of psychoactive  
17 medications under Section 574.106, Health and Safety Code. The  
18 court, after notice and after a hearing held not later than the  
19 fifth day after the date the defendant is returned to the committing  
20 court or, for a defendant who is detained in a correctional  
21 facility, the date that the motion to compel medication was filed,  
22 may authorize the head of the [~~director of a correctional~~] facility  
23 or the program provider, as applicable, to have the medication  
24 administered to the defendant, by reasonable force if necessary.

25 (c) The court may issue an order under this article only if  
26 the order is supported by the testimony of two physicians, one of  
27 whom is the physician at or with the applicable [~~correctional~~]

1 facility or program who is prescribing the medication as a  
2 component of the defendant's continuity of care plan and another  
3 who is not otherwise involved in proceedings against the defendant.  
4 The court may require either or both physicians to examine the  
5 defendant and report on the examination to the court.

6 (d) The court may issue an order under this article if the  
7 court finds by clear and convincing evidence that:

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

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

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

16 (4) the prescribed medication will not unduly  
17 prejudice the defendant's rights or use of defensive theories at  
18 trial.

19 (e) A statement made by a defendant to a physician during an  
20 examination under Subsection (c) may not be admitted against the  
21 defendant in any criminal proceeding, other than at:

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

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

25 SECTION 3. The change in law made by this Act applies only  
26 to a defendant charged with an offense committed on or after the  
27 effective date of this Act. A defendant charged with an offense

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

6 SECTION 4. This Act takes effect September 1, 2007.