

By: Ellis

S.B. No. 168

A BILL TO BE ENTITLED

AN ACT

relating to the insanity defense in a criminal case.

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

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

(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not appreciate [~~know~~] that his conduct was legally or morally wrong.

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

SUBCHAPTER G. PROVISIONS APPLICABLE TO PERSONS ACQUITTED

BY REASON OF INSANITY UNDER THIS CHAPTER OR PRIOR LAW

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

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

Art. 46C.302 [~~46C.002~~]. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by

1 reason of insanity may not be committed to a mental hospital or
2 other inpatient or residential care facility or ordered to receive
3 outpatient or community-based treatment and supervision under
4 Subchapter F or under former Article 46.03, as applicable, for a
5 cumulative period that exceeds the maximum term provided by law for
6 the offense for which the acquitted person was tried.

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

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

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

25 (c) If a request is made by an acquitted person, the court
26 must act on the request not later than the 14th day after the date of
27 the request. A hearing under this subsection is at the discretion

1 of the court, except that the court shall hold a hearing if the
2 request and any accompanying material indicate that modification of
3 the order may be appropriate.

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

9 (e) The court shall rule on the request during or shortly
10 after any hearing that is held and in any case not later than the
11 14th day after the date of the request.

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

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

19 (2) the acquitted person is not likely to cause
20 serious harm to another because of any severe mental illness or
21 mental retardation.

22 Art. 46C.304 [~~46C.269~~]. TERMINATION OF COURT'S
23 JURISDICTION. (a) The jurisdiction of the court over a person
24 acquitted by reason of insanity [~~covered by this subchapter~~]
25 automatically terminates on the date when the cumulative total
26 period of institutionalization and outpatient or community-based
27 treatment and supervision imposed under Subchapter F or under

1 former Article 46.03, as applicable, [~~this subchapter~~] equals the
2 maximum term of imprisonment provided by law for the offense of
3 which the person was acquitted [~~by reason of insanity~~].

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

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

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

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

21 Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF
22 ACQUITTAL. The court shall instruct the jury on [~~the attorney~~
23 ~~representing the state, or the attorney for the defendant may not~~
24 ~~inform a juror or a prospective juror of~~] the consequences to the
25 defendant if a verdict of not guilty by reason of insanity is
26 returned.

27 SECTION 5. Article 46C.158, Code of Criminal Procedure, is

1 amended to read as follows:

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

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

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

17 SECTION 6. Article 46C.255(a), Code of Criminal Procedure,
18 is amended to read as follows:

19 (a) The following proceedings under this chapter must be
20 before the court, and the underlying matter determined by the
21 court, unless the acquitted person or the state requests a jury
22 trial or the court on its own motion sets the matter for jury trial:

23 (1) a hearing under Article 46C.253;

24 (2) a proceeding for renewal of an order under Article
25 46C.261;

26 (3) a proceeding on a request for modification or
27 revocation of an order under Article 46C.266; and

1 (4) a proceeding seeking discharge of an acquitted
2 person under Article 46C.303 [~~46C.268~~].

3 SECTION 7. Article 46C.259, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 46C.259. STATUS OF COMMITTED PERSON. If an acquitted
6 person is committed under this subchapter, the person's status as a
7 patient or resident is governed by Subtitle C or D, Title 7, Health
8 and Safety Code, except that:

9 (1) transfer to a nonsecure unit is governed by
10 Article 46C.260;

11 (2) modification of the order to direct outpatient or
12 community-based treatment and supervision is governed by Article
13 46C.262; and

14 (3) discharge is governed by Article 46C.303
15 [~~46C.268~~].

16 SECTION 8. Article 46C.270(b), Code of Criminal Procedure,
17 is amended to read as follows:

18 (b) Either the acquitted person or the state may appeal
19 from:

20 (1) an Order of Commitment to Inpatient Treatment or
21 Residential Care entered under Article 46C.256;

22 (2) an Order to Receive Outpatient or Community-Based
23 Treatment and Supervision entered under Article 46C.257 or 46C.262;

24 (3) an order renewing or refusing to renew an Order for
25 Inpatient Commitment or Outpatient or Community-Based Treatment
26 and Supervision entered under Article 46C.261;

27 (4) an order modifying or revoking an Order for

1 Outpatient or Community-Based Treatment and Supervision entered
2 under Article 46C.266 or refusing a request to modify or revoke that
3 order; or

4 (5) an order discharging an acquitted person under
5 Article 46C.303 [~~46C.268~~] or denying a request for discharge of an
6 acquitted person.

7 SECTION 9. (a) Except as provided by Subsection (b) of this
8 section, the change in law made by this Act applies to a defendant
9 acquitted of an offense committed before, on, or after the
10 effective date of this Act.

11 (b) The change in law made by this Act in amending Section
12 8.01(a), Penal Code, and Article 46C.154, Code of Criminal
13 Procedure, applies only to a defendant acquitted of an offense
14 committed on or after the effective date of this Act. A defendant
15 acquitted of an offense committed before the effective date of this
16 Act is covered by the law in effect when the offense was committed,
17 and the former law is continued in effect for that purpose. For
18 purposes of this subsection, an offense was committed before the
19 effective date of this Act if any element of the offense was
20 committed before that date.

21 SECTION 10. This Act takes effect September 1, 2009.