

By: Menendez, Hartnett

H.B. No. 748

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a criminal defendant's incompetency to stand trial, to
3 certain related time credits, and to the maximum period allowed for
4 restoration of the defendant to competency.

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

6 SECTION 1. Section 2(a), Article 42.03, Code of Criminal
7 Procedure, is amended to read as follows:

8 (a) In all criminal cases the judge of the court in which the
9 defendant is convicted shall give the defendant credit on the
10 defendant's sentence for the time that the defendant has spent:

11 (1) in jail for the case, including confinement served
12 as described by Article 46B.009 and excluding [~~other than~~]
13 confinement served as a condition of community supervision, from
14 the time of his arrest and confinement until his sentence by the
15 trial court; [~~or~~]

16 (2) in a substance abuse treatment facility operated
17 by the Texas Department of Criminal Justice under Section 493.009,
18 Government Code, or another court-ordered residential program or
19 facility as a condition of deferred adjudication community
20 supervision granted in the case if the defendant successfully
21 completes the treatment program at that facility; or

22 (3) confined in a mental health facility or
23 residential care facility as described by Article 46B.009.

24 SECTION 2. Article 46B.009, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 46B.009. TIME CREDITS. A court sentencing a person
3 convicted of a criminal offense shall credit to the term of the
4 person's sentence each of the following periods for which [~~the~~
5 ~~time~~] the person may be [~~is~~] confined in a mental health facility,
6 residential care facility, or jail:

7 (1) any period of confinement that occurs pending a
8 determination [~~trial~~] under Subchapter C as to the defendant's
9 competency to stand trial; and

10 (2) any period of confinement that occurs between the
11 date of any initial determination of the defendant's incompetency
12 under that subchapter and the date the person is transported to jail
13 following a final judicial determination that the person has been
14 restored to competency.

15 SECTION 3. Article 46B.0095, Code of Criminal Procedure, is
16 amended to read as follows:

17 Art. 46B.0095. MAXIMUM PERIOD OF [~~FACILITY~~] COMMITMENT OR
18 OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM
19 TERM FOR OFFENSE. (a) A defendant may not, under this chapter, be
20 committed to a mental hospital or other inpatient or residential
21 facility, ordered to participate in an outpatient treatment
22 program, or subjected to both inpatient and outpatient treatment
23 for a cumulative period that exceeds the maximum term provided by
24 law for the offense for which the defendant was to be tried, except
25 that if the defendant is charged with a misdemeanor and has been
26 ordered only to participate in an outpatient treatment program
27 under Subchapter D or E, the maximum period of restoration is two

1 years [~~beginning on the date of the initial order for outpatient~~
2 ~~treatment program participation was entered~~].

3 (b) On expiration of the maximum restoration period under
4 Subsection (a), the mental hospital or other inpatient or
5 residential facility or outpatient treatment program provider
6 identified in the most recent order of commitment or order of
7 outpatient treatment program participation under this chapter
8 shall assess the defendant to determine if civil proceedings under
9 Subtitle C or D, Title 7, Health and Safety Code, are appropriate.
10 The [~~the~~] defendant may be confined for an additional period in a
11 mental hospital or other inpatient or residential facility or
12 ordered to participate for an additional period in an outpatient
13 treatment program, as appropriate, only pursuant to civil
14 commitment proceedings.

15 (c) The cumulative period described by Subsection (a):

16 (1) begins on the date the initial order of commitment
17 or initial order for outpatient treatment program participation is
18 entered under this chapter; and

19 (2) includes any time that, following the entry of an
20 order described by Subdivision (1), the defendant is confined in a
21 correctional facility, as defined by Section 1.07, Penal Code,
22 while awaiting:

23 (A) transfer to a mental hospital or other
24 inpatient or residential facility;

25 (B) release on bail to participate in an
26 outpatient treatment program; or

27 (C) a criminal trial following any temporary

1 restoration of the defendant's competency to stand trial.

2 (d) The court may credit to the cumulative period described
3 by Subsection (a):

4 (1) any time that a defendant, following arrest for
5 the offense for which the defendant was to be tried, is confined in
6 a correctional facility, as defined by Section 1.07, Penal Code,
7 before the initial order of commitment or initial order for
8 outpatient treatment program participation is entered under this
9 chapter; and

10 (2) any good conduct time the defendant has been
11 granted under Article 42.032 in relation to the defendant's
12 confinement as described by Subdivision (1).

13 SECTION 4. Article 46B.010, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
16 If a court orders that a defendant charged with a misdemeanor
17 punishable by confinement be committed to a mental hospital or
18 other inpatient or residential facility, participate in an
19 outpatient treatment program, or be subjected to both inpatient and
20 outpatient treatment, [the commitment of or participation in an
21 outpatient treatment program by a defendant who is charged with a
22 misdemeanor punishable by confinement] and the defendant is not
23 tried before the [~~date of~~] expiration of the maximum period of
24 restoration [~~under this chapter as~~] described by Article 46B.0095:

25 (1) on the motion of the attorney representing the
26 state, the court shall dismiss the charge; or

27 (2) on the motion of the attorney representing the

1 defendant, the court shall:

2 (A) set the matter to be heard not later than the
3 10th day after the date of filing of the motion; and

4 (B) dismiss the charge on a finding that the
5 defendant was not tried before the expiration of the maximum period
6 of restoration~~[, the court on the motion of the attorney~~
7 ~~representing the state shall dismiss the charge].~~

8 SECTION 5. Section 574.110(b), Health and Safety Code, is
9 amended to read as follows:

10 (b) An order issued under Section 574.106 for a patient who
11 is returned to a correctional facility, as defined by Section 1.07,
12 Penal Code, to await ~~[awaiting]~~ trial in a criminal proceeding
13 continues to be in effect until the earlier of the following dates,
14 as applicable:

15 (1) the 180th day after the date the defendant was
16 returned to the correctional facility;

17 (2) [expires on] the date the defendant is acquitted,
18 is convicted, or enters a plea of guilty; or

19 (3) the date on which charges in the case are
20 dismissed. ~~[An order continued under this subsection shall be~~
21 ~~reviewed by the issuing court every six months.]~~

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

27 (b) The change in law made by this Act in amending Section

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1 574.110(b), Health and Safety Code, applies only to an order issued
2 under Section 574.106 of that code on or after the effective date of
3 this Act.

4 SECTION 7. This Act takes effect September 1, 2011.