

By: Coleman

H.B. No. 2159

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 commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts [~~conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was 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, redesignated as Articles 46C.302, 46C.303, and 46C.304, Code of Criminal Procedure, respectively, and amended to read as follows:

1 Art. 46C.302 [~~46C.002~~]. MAXIMUM PERIOD OF COMMITMENT
2 DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by
3 reason of insanity may not be committed to a mental hospital or
4 other inpatient or residential care facility or ordered to receive
5 outpatient or community-based treatment and supervision under
6 Subchapter F or under former Article 46.03, as applicable, for a
7 cumulative period that exceeds the maximum term provided by law for
8 the offense for which the acquitted person was tried.

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

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

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

27 (c) If a request is made by an acquitted person, the court

1 must act on the request not later than the 14th day after the date of
2 the request. A hearing under this subsection is at the discretion
3 of the court, except that the court shall hold a hearing if the
4 request and any accompanying material indicate that modification of
5 the order may be appropriate.

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

11 (e) The court shall rule on the request during or shortly
12 after any hearing that is held and in any case not later than the
13 14th day after the date of the request.

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

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

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

24 Art. 46C.304 [~~46C.269~~]. TERMINATION OF COURT'S
25 JURISDICTION. (a) The jurisdiction of the court over a person
26 acquitted by reason of insanity [~~covered by this subchapter~~]
27 automatically terminates on the date when the cumulative total

1 period of institutionalization and outpatient or community-based
2 treatment and supervision imposed under Subchapter F or under
3 former Article 46.03, as applicable, [~~this subchapter~~] equals the
4 maximum term of imprisonment provided by law for the offense of
5 which the person was acquitted [~~by reason of insanity~~].

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

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

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

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

23 Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF
24 ACQUITTAL. The court shall provide instruction to the jury to
25 inform the jury of [~~, the attorney representing the state, or the~~
26 ~~attorney for the defendant may not inform a juror or a prospective~~
27 ~~juror of] the consequences to the defendant if a verdict of not~~

1 guilty by reason of insanity is returned, in substantially the form
2 as follows:

3 "Under the law applicable in this case, if you find the
4 defendant not guilty by reason of insanity, you will be discharged
5 and the court will determine the disposition of the defendant.

6 "If the court finds that the offense of which the defendant
7 was acquitted involved conduct that caused serious bodily injury to
8 another person, placed another person in imminent danger of serious
9 bodily injury, or consisted of a threat of serious bodily injury to
10 another person through the use of a deadly weapon, the court must
11 commit the defendant to a maximum-security inpatient facility for a
12 mental health evaluation for a period not to exceed 30 days. Based
13 upon that evaluation, the defendant may receive continuing mental
14 health supervision or treatment for a period not to exceed the
15 maximum term of confinement for the offense of which the person was
16 acquitted, to be reviewed at least annually by the court, or upon
17 request of the defendant, the state, the head of a facility to which
18 the defendant is committed, or the person responsible for providing
19 outpatient or community-based treatment and supervision. If the
20 defendant has not been discharged by the court from mental health
21 supervision or treatment before the expiration of that maximum
22 term, upon the expiration of that maximum term the defendant must be
23 discharged from the criminal jurisdiction of this court. The
24 defendant may be further confined or treated after that time only
25 under civil commitment proceedings outside the criminal
26 jurisdiction of this court.

27 "If the court finds that the offense of which the defendant

1 was acquitted did not involve the dangerous conduct specified
2 above, then the court must determine whether the defendant is a
3 person with mental illness or mental retardation. If the court
4 finds that the defendant is a person with mental illness or mental
5 retardation, then the court must transfer the defendant for civil
6 mental health commitment proceedings outside the criminal
7 jurisdiction of this court. If the court does not find the defendant
8 to be a person with mental illness or mental retardation, then the
9 defendant must be discharged.

10 "It cannot accurately be predicted how the criminal and civil
11 commitment laws might be applied if the defendant is found not
12 guilty by reason of insanity because the application of these laws
13 will depend upon decisions made by the courts and mental health
14 authorities regarding the defendant's mental health needs.
15 Therefore, you may consider the existence of the criminal and civil
16 commitment laws described herein, but you are not to consider the
17 extent to which those laws may be applied to this defendant in
18 reaching your verdict."

19 SECTION 5. Article 46C.158, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 46C.158. CONTINUING JURISDICTION OF DANGEROUS
22 ACQUITTED PERSON. If the court finds that the offense of which the
23 person was acquitted involved conduct that caused serious bodily
24 injury to another person, placed another person in imminent danger
25 of serious bodily injury, or consisted of a threat of serious bodily
26 injury to another person through the use of a deadly weapon, the
27 court retains jurisdiction over the acquitted person until either:

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

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

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

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

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

16 (2) a proceeding for renewal of an order under Article
17 46C.261;

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

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

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

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

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

3 (2) modification of the order to direct outpatient or
4 community-based treatment and supervision is governed by Article
5 46C.262; and

6 (3) discharge is governed by Article 46C.303
7 [~~46C.268~~].

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

10 (b) Either the acquitted person or the state may appeal
11 from:

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

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

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

19 (4) an order modifying or revoking an Order for
20 Outpatient or Community-Based Treatment and Supervision entered
21 under Article 46C.266 or refusing a request to modify or revoke that
22 order; or

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

26 SECTION 9. (a) Except as provided by Subsection (b) of this
27 section, the change in law made by this Act applies to a defendant

1 acquitted of an offense committed before, on, or after the
2 effective date of this Act.

3 (b) The change in law made by this Act in amending Section
4 8.01(a), Penal Code, and Article 46C.154, Code of Criminal
5 Procedure, applies only to a defendant acquitted of an offense
6 committed on or after the effective date of this Act. A defendant
7 acquitted of an offense committed before the effective date of this
8 Act is covered by the law in effect when the offense was committed,
9 and the former law is continued in effect for that purpose. For
10 purposes of this subsection, an offense was committed before the
11 effective date of this Act if any element of the offense occurred
12 before that date.

13 SECTION 10. This Act takes effect September 1, 2011.