

By: Huffman

S.B. No. 1503

A BILL TO BE ENTITLED

1 AN ACT
2 relating to procedures regarding certain criminal defendants who
3 are or may be persons with mental illness or mental retardation.

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

5 SECTION 1. Article 46B.0095, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 46B.0095. MAXIMUM PERIOD OF FACILITY COMMITMENT OR
8 OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM
9 TERM FOR OFFENSE. (a) A defendant may not, under Subchapter D or E
10 or any other provision of this chapter, be committed to a mental
11 hospital or other inpatient or residential facility, ordered to
12 participate in an outpatient treatment program, or subjected to
13 both inpatient and outpatient treatment for a cumulative period
14 that exceeds the maximum term provided by law for the offense for
15 which the defendant was to be tried, except that if the defendant is
16 charged with a misdemeanor and has been ordered only to participate
17 in an outpatient treatment program under Subchapter D or E, the
18 maximum period of restoration is two years [~~beginning on the date of~~
19 ~~the initial order for outpatient treatment program participation~~
20 ~~was entered~~].

21 (b) On expiration of the maximum restoration period under
22 Subsection (a), the defendant may be confined for an additional
23 period in a mental hospital or other inpatient or residential
24 facility or ordered to participate for an additional period in an

1 outpatient treatment program, as appropriate, only pursuant to
2 civil [~~commitment~~] proceedings under Subtitle C or D, Title 7,
3 Health and Safety Code.

4 (c) The cumulative period described by Subsection (a)
5 begins on the date that, following the entry of the initial order of
6 commitment or initial order for outpatient treatment program
7 participation, the defendant is:

8 (1) transferred to a mental hospital or other
9 inpatient or residential facility; or

10 (2) released on bail to participate in an outpatient
11 treatment program.

12 SECTION 2. The heading to Article 46B.013, Code of Criminal
13 Procedure, is amended to read as follows:

14 Art. 46B.013. USE OF TELEPHONIC CONFERENCING OR ELECTRONIC
15 BROADCAST SYSTEM IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER.

16 SECTION 3. Articles 46B.013(a) and (b), Code of Criminal
17 Procedure, are amended to read as follows:

18 (a) A hearing may be conducted using telephonic
19 conferencing or an electronic broadcast system as permitted by this
20 chapter and in accordance with the other provisions of this code if:

21 (1) written consent to the use of telephonic
22 conferencing or an electronic broadcast system is filed with the
23 court by:

24 (A) the defendant or the attorney representing
25 the defendant; and

26 (B) the attorney representing the state;

27 (2) if applicable, the electronic broadcast system to

1 be used will provide [~~provides~~] for a simultaneous, compressed full
2 motion video, and interactive communication of image and sound
3 between the judge, the attorney representing the state, the
4 attorney representing the defendant, and the defendant;

5 (3) the communication to be made through telephonic
6 conferencing or the electronic broadcast system can be recorded in
7 full as required by Subsection (c); and

8 (4) [~~(3)~~] on request of the defendant or the attorney
9 representing the defendant, the defendant and the attorney
10 representing the defendant are able to communicate privately
11 without being recorded or heard by the judge or the attorney
12 representing the state.

13 (b) On the motion of the defendant, the attorney
14 representing the defendant, or the attorney representing the state
15 or on the court's own motion, the court shall [~~may~~] terminate an
16 appearance made through telephonic conferencing or an electronic
17 broadcast system at any time during the appearance and require an
18 appearance by the defendant in open court.

19 SECTION 4. Article 46B.022(a), Code of Criminal Procedure,
20 is amended to read as follows:

21 (a) To qualify for appointment under this subchapter as an
22 expert, a psychiatrist or psychologist must:

23 (1) as appropriate, be a physician licensed in this
24 state or be a psychologist licensed in this state who has a doctoral
25 degree in psychology; and

26 (2) have the following certification [~~or experience~~]
27 or training:

1 (A) as appropriate, certification by:

2 (i) the American Board of Psychiatry and
3 Neurology with added or special qualifications in forensic
4 psychiatry; or

5 (ii) the American Board of Professional
6 Psychology in forensic psychology; or

7 (B) [~~experience or~~] training consisting of[+]

8 [~~(i)~~] at least 24 hours of specialized
9 forensic training relating to incompetency or insanity
10 evaluations[+]

11 [~~(ii) for an appointment made before
12 January 1, 2005, at least five years of experience before January 1,
13 2004, in performing criminal forensic evaluations for courts, or~~

14 [~~(iii) for an appointment made on or after
15 January 1, 2005, at least five years of experience before January 1,
16 2004, in performing criminal forensic evaluations for courts and
17 eight or more hours of continuing education relating to forensic
18 evaluations, completed in the 12 months preceding the appointment
19 and documented with the court].~~

20 SECTION 5. Article 46B.025(c), Code of Criminal Procedure,
21 is amended to read as follows:

22 (c) An expert's report may not state the expert's opinion on
23 the defendant's competency or incompetency based only on a refusal
24 by the defendant to communicate information in good faith. The
25 report may not state the expert's opinion on the defendant's sanity
26 at the time of the alleged offense, if in the opinion of the expert
27 the defendant is incompetent to proceed.

1 SECTION 6. Article 46B.051, Code of Criminal Procedure, is
2 amended by adding Subsection (d) to read as follows:

3 (d) The trial must be conducted not later than the 15th day
4 after the date that the last report of an expert, from among all of
5 the experts involved in examining the defendant, is submitted to
6 the court.

7 SECTION 7. Article 46B.079(a), Code of Criminal Procedure,
8 is amended to read as follows:

9 (a) The head of the facility or the provider of the
10 outpatient treatment program, as appropriate, not later than the
11 15th day before the date on which the initial [a] restoration period
12 is to expire, shall notify the applicable court that the
13 [~~restoration~~] period is about to expire.

14 SECTION 8. Article 46B.080(b), Code of Criminal Procedure,
15 is amended to read as follows:

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

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

20 (2) an extension of the initial restoration period may
21 [~~will likely~~] enable the facility or program to restore the
22 defendant to competency within the period of the extension.

23 SECTION 9. Article 46B.080(c), Code of Criminal Procedure,
24 is redesignated as Article 46B.0805, Code of Criminal Procedure,
25 and amended to read as follows:

26 Art. 46B.0805. SECOND EXTENSION PERMITTED IN CERTAIN
27 CIRCUMSTANCES. [~~(c)~~] The court may grant a second [~~only one~~]

1 extension with respect to [~~under this article for~~] a period of
2 restoration ordered under this subchapter only if the court
3 determines that:

- 4 (1) the defendant has not attained competency; and
5 (2) a second extension may enable the facility or
6 program to restore the defendant to competency within the period of
7 the extension.

8 SECTION 10. Article 46B.083, Code of Criminal Procedure, is
9 amended by adding Subsection (c) to read as follows:

10 (c) For each extension period ordered under this
11 subchapter, the court may request the submission of an additional
12 certificate or affidavit by the head of the facility or outpatient
13 treatment program provider, as applicable.

14 SECTION 11. Article 46B.084(b-1), Code of Criminal
15 Procedure, is amended to read as follows:

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

23 SECTION 12. Article 46B.085, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 46B.085. SUBSEQUENT RESTORATION PERIODS AND
26 EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may order
27 only one initial period of restoration and two extensions [~~one~~

1 ~~extension~~] under this subchapter in connection with the same
2 offense.

3 (b) After an initial restoration period and one or two
4 extensions [~~an extension~~] are ordered as described by Subsection
5 (a), any subsequent court orders for treatment must be issued under
6 Subchapter E or F.

7 SECTION 13. Article 46B.107(d), Code of Criminal Procedure,
8 is amended to read as follows:

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

14 (1) at the facility; or

15 (2) by means of telephonic conferencing or an
16 electronic broadcast system as provided by Article 46B.013.

17 SECTION 14. Article 46B.113(c), Code of Criminal Procedure,
18 is amended to read as follows:

19 (c) If a court holds a hearing under this article, on the
20 request of the counsel for either party or the motion of the court,
21 a jury shall make the competency determination. If the competency
22 determination will be made by the court rather than a jury, the
23 court may conduct the hearing:

24 (1) at the facility; or

25 (2) by means of telephonic conferencing or an
26 electronic broadcast system as provided by Article 46B.013.

27 SECTION 15. Article 46B.114, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the
3 hearing is not conducted at the facility to which the defendant has
4 been committed under this chapter or conducted by means of
5 telephonic conferencing or an electronic broadcast system as
6 described by Article 46B.013 [~~this subchapter~~], an order setting a
7 hearing to determine whether the defendant has been restored to
8 competency shall direct that, as soon as practicable but not
9 earlier than 72 hours before the date the hearing is scheduled, the
10 defendant be placed in the custody of the sheriff of the county in
11 which the committing court is located or the sheriff's designee for
12 transportation to the court. The sheriff or the sheriff's designee
13 may not take custody of the defendant under this article until 72
14 hours before the date the hearing is scheduled.

15 SECTION 16. Article 46B.115(c), Code of Criminal Procedure,
16 is amended to read as follows:

17 (c) If the competency determination will be made by the
18 court, the court may conduct the hearing at the facility to which
19 the defendant has been committed under this chapter or may conduct
20 the hearing by means of telephonic conferencing or an electronic
21 broadcast system as provided by Article 46B.013.

22 SECTION 17. Article 46C.102(a), Code of Criminal Procedure,
23 is amended to read as follows:

24 (a) The court may appoint qualified psychiatrists or
25 psychologists as experts under this chapter. To qualify for
26 appointment under this subchapter as an expert, a psychiatrist or
27 psychologist must:

1 (1) as appropriate, be a physician licensed in this
2 state or be a psychologist licensed in this state who has a doctoral
3 degree in psychology; and

4 (2) have the following certification [~~or experience~~]
5 or training:

6 (A) as appropriate, certification by:

7 (i) the American Board of Psychiatry and
8 Neurology with added or special qualifications in forensic
9 psychiatry; or

10 (ii) the American Board of Professional
11 Psychology in forensic psychology; or

12 (B) [~~experience or~~] training consisting of[+
13 [~~(i)~~] at least 24 hours of specialized
14 forensic training relating to incompetency or insanity
15 evaluations[+

16 [~~(ii) at least five years of experience in
17 performing criminal forensic evaluations for courts, and~~

18 [~~(iii) eight or more hours of continuing
19 education relating to forensic evaluations, completed in the 12
20 months preceding the appointment and documented with the court~~].

21 SECTION 18. Article 46C.252(a), Code of Criminal Procedure,
22 is amended to read as follows:

23 (a) The report ordered under Article 46C.251 must be filed
24 with the court as soon as practicable before the hearing on
25 disposition but not later than the seventh [~~fourth~~] day before that
26 hearing.

27 SECTION 19. Article 46C.261(a), Code of Criminal Procedure,

1 is amended to read as follows:

2 (a) A criminal court that orders an acquitted person
3 committed to inpatient treatment or orders outpatient or
4 community-based treatment and supervision annually shall determine
5 whether to renew the order and has continuing jurisdiction over all
6 renewals for the purposes of this chapter.

7 SECTION 20. Section 551.042, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 551.042. OUTPATIENT CLINICS AND TRANSITIONAL
10 FACILITIES. (a) If funds are available, the department may
11 establish in locations the department considers necessary
12 outpatient clinics and transitional facilities to treat persons
13 with mental illness.

14 (b) As necessary to establish and operate the clinics and
15 transitional facilities, the department may:

- 16 (1) acquire facilities;
- 17 (2) hire personnel;
- 18 (3) adopt rules; and
- 19 (4) contract with persons, corporations, and local,
20 state, and federal agencies.

21 SECTION 21. Sections 572.004(c) and (d), Health and Safety
22 Code, are amended to read as follows:

23 (c) The notified physician shall evaluate the patient to
24 determine whether there is reasonable cause to believe that the
25 patient might meet the criteria for court-ordered mental health
26 services or emergency detention. The notified physician shall
27 discharge the patient on completion of the evaluation [~~before the~~

1 ~~end of the four-hour period]~~ unless the physician finds [~~has~~]
2 reasonable cause to believe that the patient might meet the
3 criteria for court-ordered mental health services or emergency
4 detention.

5 (d) A physician who finds [~~has~~] reasonable cause to believe
6 that a patient might meet the criteria for court-ordered mental
7 health services or emergency detention shall examine the patient as
8 soon as possible within 24 hours after the time the request for
9 discharge is filed. The physician shall discharge the patient on
10 completion of the examination unless the physician determines that
11 the person meets the criteria for court-ordered mental health
12 services or emergency detention. If the physician makes a
13 determination that the patient meets the criteria for court-ordered
14 mental health services or emergency detention, the physician shall,
15 not later than 4 p.m. on the next succeeding business day after the
16 date on which the examination occurs, either discharge the patient
17 or file an application for court-ordered mental health services or
18 emergency detention and obtain a written order for further
19 detention. The physician shall notify the patient if the physician
20 intends to detain the patient under this subsection or intends to
21 file an application for court-ordered mental health services or
22 emergency detention. A decision to detain a patient under this
23 subsection and the reasons for the decision shall be made a part of
24 the patient's clinical record.

25 SECTION 22. Section 574.086, Health and Safety Code, is
26 amended by adding Subsections (d) and (e) to read as follows:

27 (d) Notwithstanding Subsection (a), a discharge under this

1 section is subject to judicial review and disapproval under Section
2 574.090 if:

3 (1) one of the criteria that formed the basis for the
4 decision to commit the patient was a finding that the patient was
5 likely to cause serious harm to others;

6 (2) regardless of the criteria that formed the basis
7 for the decision to commit, a treating physician now believes that
8 the patient poses a substantial risk of causing harm to others; or

9 (3) the patient has a violent criminal history.

10 (e) For purposes of this subsection, a patient has a violent
11 criminal history if the patient:

12 (1) has a prior conviction or has received community
13 supervision for an offense listed in Article 17.032(a), Code of
14 Criminal Procedure;

15 (2) is currently charged with an offense listed in
16 Article 17.032(a), Code of Criminal Procedure;

17 (3) has been charged with an offense listed in Article
18 17.032(a), Code of Criminal Procedure, in the five years preceding
19 the date of the patient's current commitment; or

20 (4) has ever been found not guilty by reason of
21 insanity of an offense listed in Article 17.032(a), Code of
22 Criminal Procedure.

23 SECTION 23. Subchapter F, Chapter 574, Health and Safety
24 Code, is amended by adding Section 574.090 to read as follows:

25 Sec. 574.090. JUDICIAL REVIEW OF DISCHARGE. (a) A facility
26 administrator who determines that a patient described by Section
27 574.086(d) does not meet the criteria for court-ordered inpatient

1 mental health services shall prepare a discharge certificate as
2 required by Section 574.087 and file it with the court that entered
3 the order committing the patient to court-ordered inpatient mental
4 health services.

5 (b) On the filing of a discharge certificate under
6 Subsection (a), the court shall notify the attorney representing
7 the state and the patient's last attorney of record and provide each
8 attorney a copy of the discharge certificate.

9 (c) On the request of the attorney representing the state,
10 the court must conduct a hearing to determine whether the patient no
11 longer meets the criteria for court-ordered inpatient mental health
12 services and should be discharged. The court may hold the hearing
13 on its own motion.

14 (d) The court may order further psychiatric or
15 psychological testing the court considers necessary for
16 determining whether the patient no longer meets the criteria for
17 court-ordered inpatient mental health services and should be
18 discharged.

19 (e) At the hearing conducted under this section, the court
20 shall determine whether the person meets any criteria for
21 court-ordered inpatient mental health services listed in Section
22 574.035(a). If the court finds by clear and convincing evidence
23 that the patient meets one of the criteria for court-ordered
24 inpatient mental health services, the court shall disapprove the
25 patient's release and enter a new order committing the patient for
26 court-ordered extended inpatient mental health services. If the
27 court does not find by clear and convincing evidence that the

1 patient meets one of the criteria for court-ordered inpatient
2 mental health services, the court shall approve the patient's
3 discharge.

4 SECTION 24. The changes in law made by this Act in amending
5 Chapters 46B and 46C, Code of Criminal Procedure, apply only to a
6 defendant with respect to whom any proceeding under Chapter 46B or
7 46C, Code of Criminal Procedure, is conducted on or after the
8 effective date of this Act.

9 SECTION 25. This Act takes effect September 1, 2011.