

By: Coleman

H.B. No. 3774

A BILL TO BE ENTITLED

AN ACT

relating to the insanity defense and persons found not guilty by reason of insanity in a criminal case.

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

SECTION 1. Article 46B.021, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) An expert appointed under this subchapter to examine the defendant with regard to the defendant's competency to stand trial may not be appointed by the court to examine the defendant with regard to the insanity defense under Chapter 46C.

SECTION 2. Article 46C.001, Code of Criminal Procedure, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Least restrictive appropriate treatment setting" means a setting that:

(A) is available;

(B) provides the acquitted person with the greatest probability of improvement or cure; and

(C) is not any more restrictive of the acquitted person's physical or social liberties than is necessary to provide the person with the most effective care or treatment and to protect adequately against any danger the patient may pose to the patient's self or others.

SECTION 3. Article 46C.002, Code of Criminal Procedure, is amended to read as follows:

1 Art. 46C.002. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY
2 MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by reason of
3 insanity may not be committed to a mental hospital or other
4 inpatient or residential care facility or ordered to receive
5 outpatient or community-based treatment [~~and supervision~~] under
6 Subchapter F for a cumulative period that exceeds the maximum term
7 provided by law for the offense for which the acquitted person was
8 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 SECTION 4. Subchapter B, Chapter 46C, Code of Criminal
15 Procedure, is amended by adding Articles 46C.053, 46C.054, and
16 46C.055 to read as follows:

17 Art. 46C.053. APPOINTMENT OF AND REPRESENTATION BY COUNSEL.

18 (a) A defendant is entitled to representation by counsel before any
19 court-ordered sanity evaluation and during any proceeding at which
20 it is suggested that the defendant may be not guilty by reason of
21 insanity.

22 (b) A defendant who is found not guilty by reason of
23 insanity is entitled to representation by counsel during any
24 proceeding to determine whether the acquitted person should receive
25 court-ordered mental health services under this chapter or under
26 Subtitle C, Title 7, Health and Safety Code, or be committed to a
27 residential care facility to receive mental retardation services

1 under Subtitle D, Title 7, Health and Safety Code.

2 (c) An attorney who represents a defendant in a criminal
3 trial and who plans to offer evidence of the insanity defense must
4 have completed at least three hours of continuing legal education
5 related to Chapter 46B in the 12-month period preceding appointment
6 or in the three-month period following appointment.

7 (d) An attorney representing an acquitted person during any
8 proceeding under this chapter, including the person's criminal
9 trial, must have completed at least three hours of continuing legal
10 education related to this chapter in the 12-month period preceding
11 appointment or in the three-month period following appointment.

12 (e) The court shall inform the attorney in writing of the
13 attorney's duties under Article 46C.054.

14 Art. 46C.054. DUTIES OF ATTORNEY. (a) The attorney for the
15 defendant shall discuss thoroughly with the defendant the relevant
16 law, the facts of the case, all possible defense strategies, and, if
17 appropriate, the grounds on which the insanity defense will be
18 raised.

19 (b) Before raising the insanity defense, the attorney shall
20 advise the defendant of the benefits and risks involved with
21 raising the insanity defense, the consequences related to
22 prevailing on the defense, and the maximum term of the court's
23 jurisdiction if the defendant is acquitted of the offense.

24 (c) Regardless of the attorney's personal opinion, the
25 attorney shall use all reasonable efforts within the bounds of law
26 to advocate for the least restrictive appropriate treatment setting
27 alternatives at each of the following hearings:

1 (1) the hearing on disposition under Article 46C.253;
2 (2) the annual commitment renewal hearing under
3 Article 46C.261; or
4 (3) a hearing on the modification of the commitment
5 order under Article 46C.262.

6 (d) Before each hearing described by Subsection (c), the
7 attorney for the acquitted person shall:

8 (1) review the application for court-ordered
9 treatment, the certificates of medical examination for mental
10 illness, the acquitted person's relevant medical records, and any
11 other relevant records;

12 (2) interview each relevant witness, regardless of
13 whether the witness testifies at the hearing, unless prohibited by
14 law; and

15 (3) explore the least restrictive appropriate
16 treatment setting alternatives to court-ordered inpatient mental
17 health services.

18 Art. 46C.055. WAIVER OF HEARING. (a) The acquitted person
19 must be present at any hearing listed under Article 46C.054(c)
20 unless the attorney for the acquitted person, at least three days
21 before the date of the hearing, files with the court a joint sworn
22 statement that is made by the acquitted person and the acquitted
23 person's attorney and that clearly states on the face of the
24 statement:

25 (1) that the attorney has explained the purposes of
26 the hearing and the consequences of not being present at the
27 hearing, including the possibility that the acquitted person may be

1 ordered to receive inpatient treatment or residential care services
2 or outpatient or community-based treatment for a period that could
3 extend to one year;

4 (2) that the acquitted person is knowingly and
5 voluntarily waiving the person's right to attend the hearing; and

6 (3) if applicable, that the acquitted person agrees to
7 waive any right to a jury trial.

8 (b) For purposes of Subsection (a), an acquitted person is
9 considered present at a hearing if the acquitted person
10 participates via videoconference or teleconference.

11 SECTION 5. Articles 46C.102(a) and (b), Code of Criminal
12 Procedure, are amended to read as follows:

13 (a) The court may appoint qualified psychiatrists or
14 psychologists as experts under this chapter. To qualify for
15 appointment under this subchapter as an expert, a psychiatrist or
16 psychologist must:

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

20 (2) have the following certification [~~or experience~~]
21 or training:

22 (A) as appropriate, certification by:

23 (i) the American Board of Psychiatry and
24 Neurology with added or special qualifications in forensic
25 psychiatry; or

26 (ii) the American Board of Professional
27 Psychology in forensic psychology; or

(B) ~~[experience or]~~ training consisting of:

(i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; and

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

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

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed a total of six hours of approved ~~[required]~~ continuing education ~~[in courses]~~ in forensic psychiatry or psychology~~[, as appropriate,]~~ in the 24 months preceding the appointment.

SECTION 6. Article 46C.103, Code of Criminal Procedure, is amended to read as follows:

Art. 46C.103. COMPETENCY TO STAND TRIAL: CONCURRENT APPOINTMENTS PROHIBITED ~~[APPOINTMENT]~~. ~~[(a)]~~ An expert appointed under this subchapter to examine the defendant with regard to the insanity defense ~~[also]~~ may not be appointed by the court to examine the defendant with regard to the defendant's competency to stand trial under Chapter 46B~~[, if the expert files with the court separate written reports concerning the defendant's competency to stand trial and the insanity defense]~~.

~~[(b)] Notwithstanding Subsection (a), an expert may not examine the defendant for purposes of determining the defendant's~~

1 ~~sanity and may not file a report regarding the defendant's sanity if~~
2 ~~in the opinion of the expert the defendant is incompetent to~~
3 ~~proceed.]~~

4 SECTION 7. Article 46C.154, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF
7 ACQUITTAL. The court shall provide instruction to the jury to
8 inform the jury [~~, the attorney representing the state, or the~~
9 ~~attorney for the defendant may not inform a juror or a prospective~~
10 ~~juror]~~ of the consequences to the defendant if a verdict of not
11 guilty by reason of insanity is returned, in substantially the
12 following form:

13 "A jury during its deliberations must never consider or
14 speculate concerning matters relating to the consequences of its
15 verdict. However, because of the lack of common knowledge
16 regarding the consequences of a verdict of 'not guilty by reason of
17 insanity,' I charge you that if you render this verdict there will
18 be hearings as to the defendant's present mental condition and,
19 where appropriate, involuntary commitment proceedings."~~[.]~~

20 SECTION 8. Article 46C.158, Code of Criminal Procedure, is
21 amended to read as follows:

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

1 court retains jurisdiction over the acquitted person until either:

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

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

10 SECTION 9. Article 46C.252(c), Code of Criminal Procedure,
11 is amended to read as follows:

12 (c) The report must address:

13 (1) whether the acquitted person has a mental illness
14 or mental retardation and, if so, whether the mental illness or
15 mental retardation is severe;

16 (2) whether as a result of any severe mental illness or
17 mental retardation the acquitted person is likely to cause serious
18 harm to another;

19 (3) whether as a result of any impairment the
20 acquitted person is subject to commitment under Subtitle C or D,
21 Title 7, Health and Safety Code;

22 (4) prospective treatment ~~[and supervision]~~ options,
23 if any, appropriate for the acquitted person; and

24 (5) whether any required treatment ~~[and supervision]~~
25 can be safely and effectively provided as outpatient or
26 community-based treatment ~~[and supervision]~~.

27 SECTION 10. Article 46C.253, Code of Criminal Procedure, is

1 amended by amending Subsections (b) and (d) and adding Subsection
2 (d-1) to read as follows:

3 (b) At the hearing, the court shall address:

4 (1) whether the person acquitted by reason of insanity
5 has a severe mental illness or mental retardation;

6 (2) whether as a result of any mental illness or mental
7 retardation the person is likely to cause serious harm to another;
8 and

9 (3) whether appropriate treatment [~~and supervision~~]
10 for any mental illness or mental retardation rendering the person
11 dangerous to another can be safely and effectively provided as
12 outpatient or community-based treatment [~~and supervision~~].

13 (d) The court shall order the acquitted person to receive
14 outpatient or community-based treatment [~~and supervision~~] under
15 Article 46C.257 if the grounds required for that order are
16 established.

17 (d-1) Provided that the burden of proof is satisfied and the
18 commitment requirements are met, the court shall order the
19 acquitted person into the least restrictive appropriate treatment
20 setting.

21 SECTION 11. Article 46C.254, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 46C.254. EFFECT OF STABILIZATION ON TREATMENT REGIMEN.

24 If an acquitted person is stabilized on a treatment regimen,
25 including medication and other treatment modalities, rendering the
26 person no longer likely to cause serious harm to another, inpatient
27 treatment or residential care may be found necessary to protect the

1 safety of others only if:

2 (1) the person would become likely to cause serious
3 harm to another if the person fails to follow the treatment regimen
4 on an Order to Receive Outpatient or Community-Based Treatment [~~and~~
5 ~~Supervision~~]; and

6 (2) under an Order to Receive Outpatient or
7 Community-Based Treatment [~~and Supervision~~] either:

8 (A) the person is likely to fail to comply with an
9 available regimen of outpatient or community-based treatment, as
10 determined by the person's insight into the need for medication,
11 the number, severity, and controllability of side effects, the
12 availability of support and treatment programs for the person from
13 community members, and other appropriate considerations; or

14 (B) a regimen of outpatient or community-based
15 treatment will not be available to the person.

16 SECTION 12. Article 46C.255(b), Code of Criminal Procedure,
17 is amended to read as follows:

18 (b) The following proceedings may not be held before a jury:

19 (1) a proceeding to determine outpatient or
20 community-based treatment [~~and supervision~~] under Article 46C.262;
21 or

22 (2) a proceeding to determine modification or
23 revocation of outpatient or community-based treatment [~~and~~
24 ~~supervision~~] under Article 46C.267.

25 SECTION 13. Article 46C.256, Code of Criminal Procedure, is
26 amended by amending Subsection (a) and adding Subsection (a-1) to
27 read as follows:

1 (a) The court shall order the acquitted person committed to
2 a mental hospital or other appropriate facility for inpatient
3 treatment or residential care if the state establishes by clear and
4 convincing evidence that:

5 (1) the person has a severe mental illness or mental
6 retardation;

7 (2) the person, as a result of that mental illness or
8 mental retardation, is likely to cause serious bodily injury to
9 another if the person is not provided with treatment ~~[and~~
10 ~~supervision]~~; and

11 (3) inpatient treatment or residential care is
12 necessary to protect the safety of others.

13 (a-1) To be clear and convincing under Subsection (a), the
14 evidence must include expert opinion and testimony evidence of a
15 recent overt act or a continuing pattern of behavior that tends to
16 confirm the substance of Subsections (a)(1), (2), and (3).

17 SECTION 14. Article 46C.257, Code of Criminal Procedure, is
18 amended to read as follows:

19 Art. 46C.257. ORDER TO RECEIVE OUTPATIENT OR
20 COMMUNITY-BASED TREATMENT ~~[AND SUPERVISION]~~. (a) The court shall
21 order the acquitted person to receive outpatient or community-based
22 treatment ~~[and supervision]~~ if:

23 (1) the state establishes by clear and convincing
24 evidence that the person:

25 (A) has a severe mental illness or mental
26 retardation; and

27 (B) as a result of that mental illness or mental

1 retardation is likely to cause serious bodily injury to another if
2 the person is not provided with treatment [~~and supervision~~]; and

3 (2) the state fails to establish by clear and
4 convincing evidence that inpatient treatment or residential care is
5 necessary to protect the safety of others.

6 (b) The order of commitment to outpatient or
7 community-based treatment [~~and supervision~~] expires on the first
8 anniversary of the date the order is issued but is subject to
9 renewal as provided by Article 46C.261.

10 SECTION 15. Subchapter F, Chapter 46C, Code of Criminal
11 Procedure, is amended by adding Article 46C.2575 to read as
12 follows:

13 Art. 46C.2575. WAIVER OF EVIDENCE GIVEN BY EXPERT. Only the
14 acquitted person may waive expert opinion and testimony evidence
15 under this subchapter.

16 SECTION 16. Articles 46C.258(a) and (b), Code of Criminal
17 Procedure, are amended to read as follows:

18 (a) The head of the facility to which an acquitted person is
19 committed has, during the commitment period, a continuing
20 responsibility to determine:

21 (1) whether the acquitted person continues to have a
22 severe mental illness or mental retardation and is likely to cause
23 serious harm to another because of any severe mental illness or
24 mental retardation; and

25 (2) if so, whether treatment [~~and supervision~~] cannot
26 be safely and effectively provided as outpatient or community-based
27 treatment [~~and supervision~~].

1 (b) The head of the facility must notify the committing
2 court and seek modification of the order of commitment if the head
3 of the facility determines that an acquitted person no longer has a
4 severe mental illness or mental retardation, is no longer likely to
5 cause serious harm to another, or that treatment ~~[and supervision]~~
6 can be safely and effectively provided as outpatient or
7 community-based treatment ~~[and supervision]~~.

8 SECTION 17. Article 46C.259, Code of Criminal Procedure, is
9 amended to read as follows:

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

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

16 (2) modification of the order to direct outpatient or
17 community-based treatment ~~[and supervision]~~ is governed by Article
18 46C.262; and

19 (3) discharge is governed by Article 46C.268.

20 SECTION 18. Articles 46C.260(a), (b), (c), and (d), Code of
21 Criminal Procedure, are amended to read as follows:

22 (a) A person committed to a facility under this subchapter
23 shall be committed to either the maximum security unit of any
24 facility designated by the department or a nonsecure unit of any
25 facility designated by the department.

26 (b) A person committed under this subchapter shall be
27 transferred to the ~~[maximum security]~~ unit designated by the

1 department immediately on the entry of the order of commitment.

2 (c) Unless the person is determined to be manifestly
3 dangerous by a review board within the department, not later than
4 the 60th day following the date of the person's arrival at the
5 applicable [~~maximum security~~] unit the person shall be transferred
6 to a nonsecure unit of a facility designated by the department or
7 the Department of Aging and Disability Services, as appropriate.

8 (d) The commissioner shall appoint a review board of five
9 members, including one psychiatrist licensed to practice medicine
10 in this state and two persons who work directly with persons with
11 mental illnesses or with mental retardation, to determine whether
12 the person is manifestly dangerous and, as a result of the danger
13 the person presents, requires [~~continued~~] placement in a maximum
14 security unit.

15 SECTION 19. The heading to Article 46C.261, Code of
16 Criminal Procedure, is amended to read as follows:

17 Art. 46C.261. RENEWAL OF ORDERS FOR INPATIENT COMMITMENT OR
18 OUTPATIENT OR COMMUNITY-BASED TREATMENT [~~AND SUPERVISION~~].

19 SECTION 20. Article 46C.261, Code of Criminal Procedure, is
20 amended by amending Subsections (a), (b), (f), (h), and (i) and
21 adding Subsections (j) and (k) to read as follows:

22 (a) A court that orders an acquitted person committed to
23 inpatient treatment or orders outpatient or community-based
24 treatment [~~and supervision~~] annually shall determine whether to
25 renew the order.

26 (b) Not later than the 30th day before the date an order is
27 scheduled to expire, the institution to which a person is

1 committed, the person responsible for providing outpatient or
2 community-based treatment [~~and supervision~~], or the attorney
3 representing the state may file a request that the order be
4 renewed. The request must explain in detail the reasons why the
5 person requests renewal under this article. A request to renew an
6 order committing the person to inpatient treatment must also
7 explain in detail why outpatient or community-based treatment [~~and~~
8 ~~supervision~~] is not appropriate.

9 (f) If a hearing is held, the acquitted person shall [~~may~~]
10 be transferred from the facility to which the [~~acquitted~~] person
11 was committed to a jail as [~~for purposes of participating in the~~
12 ~~hearing only if~~] necessary but not earlier than 72 hours before the
13 hearing begins. If the order is renewed, the person shall be
14 transferred back to the facility immediately on renewal of the
15 order.

16 (h) A court shall renew an [~~the~~] order for inpatient or
17 residential care services only if the court finds that the state
18 [~~party who requested the renewal~~] has established by clear and
19 convincing evidence the requirements under Article 46C.256 [~~that~~
20 ~~continued mandatory supervision and treatment are appropriate. A~~
21 ~~renewed order authorizes continued inpatient commitment or~~
22 ~~outpatient or community-based treatment and supervision for not~~
23 ~~more than one year~~].

24 (i) The court, on application for renewal of an [~~order for~~
25 ~~inpatient or residential care services, may modify the order to~~
26 ~~provide for~~] outpatient or community-based treatment order, may
27 renew the order [~~and supervision~~] if the requirements under Article

1 46C.257 are satisfied [~~court finds the acquitted person has~~
2 ~~established by a preponderance of the evidence that treatment and~~
3 ~~supervision can be safely and effectively provided as outpatient or~~
4 ~~community-based treatment and supervision~~].

5 (j) A renewed order authorizes continued inpatient
6 commitment or outpatient or community-based treatment for not more
7 than one year.

8 (k) If a party fails to comply with the requirements in
9 Subsection (b) or (c), or the applicable order expires, then the
10 party requesting the renewal of the order must proceed under
11 Article 46C.253.

12 SECTION 21. The heading to Article 46C.262, Code of
13 Criminal Procedure, is amended to read as follows:

14 Art. 46C.262. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED
15 TREATMENT [~~AND SUPERVISION~~] AFTER INPATIENT COMMITMENT.

16 SECTION 22. Articles 46C.262(a) and (f), Code of Criminal
17 Procedure, are amended to read as follows:

18 (a) An acquitted person, the head of the facility to which
19 the acquitted person is committed, or the attorney representing the
20 state may request that the court modify an order for inpatient
21 treatment or residential care to order outpatient or
22 community-based treatment [~~and supervision~~].

23 (f) The court shall modify the commitment order to direct
24 outpatient or community-based treatment [~~and supervision~~] if at the
25 hearing the acquitted person establishes by a preponderance of the
26 evidence that treatment [~~and supervision~~] can be safely and
27 effectively provided as outpatient or community-based treatment

1 ~~[and supervision]~~.

2 SECTION 23. Article 46C.263, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 46C.263. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED
5 TREATMENT ~~[AND SUPERVISION]~~. (a) The court may order an acquitted
6 person to participate in an outpatient or community-based regimen
7 of treatment ~~[and supervision]~~:

8 (1) as an initial matter under Article 46C.253;

9 (2) on renewal of an order of commitment under Article
10 46C.261; or

11 (3) after a period of inpatient treatment or
12 residential care under Article 46C.262.

13 (b) An acquitted person may be ordered to participate in an
14 outpatient or community-based regimen of treatment ~~[and~~
15 ~~supervision]~~ only if:

16 (1) the court receives and approves an outpatient or
17 community-based treatment plan that comprehensively provides for
18 the outpatient or community-based treatment ~~[and supervision]~~; and

19 (2) the court finds that the outpatient or
20 community-based treatment ~~[and supervision]~~ provided for by the
21 plan will be available to and provided to the acquitted person.

22 (c) The order may require the person to participate in a
23 prescribed regimen of medical, psychiatric, or psychological care
24 or treatment, and the regimen may include:

25 (1) care coordination and any other treatment or
26 services considered medically necessary to treat the person's
27 mental illness and medically necessary to assist the patient in

1 functioning safely in the outpatient or community-based placement;
2 (2) medically necessary medication; and
3 (3) supported housing [~~treatment with psychoactive~~
4 ~~medication~~].

5 (d) Subsection (c)(2) does not authorize a person to
6 administer medication to a patient who refuses to take the
7 medication voluntarily, except in cases of emergency, as defined
8 under Subchapter G, Chapter 574, Health and Safety Code. Emergency
9 treatment under this subsection may not include long-acting
10 injectable medications.

11 (e) The prescribed regimen must be incorporated into the
12 court order, and the acquitted person is entitled to petition the
13 court for specific enforcement of the court order.

14 (f) [(d)] The court may order that community supervision of
15 the acquitted person be provided and funded by the appropriate
16 community supervision and corrections department or the [facility
17 ~~administrator of a community center that provides mental health or~~
18 ~~mental retardation services.~~

19 ~~[(e) The court may order the acquitted person to participate~~
20 ~~in a supervision program funded by the]~~ Texas Correctional Office
21 on Offenders with Medical or Mental Impairments. For purposes of
22 this subsection, "community supervision" means a court's placement
23 of an acquitted person under public safety conditions designed to
24 monitor the acquitted person's compliance with non-treatment-based
25 conditions of the commitment order.

26 (g) A treatment provider is not responsible for community
27 supervision of the acquitted person.

(h) ~~[(f)]~~ An order under this article must identify the person responsible for administering an ordered regimen of outpatient or community-based treatment ~~[and supervision]~~. At least seven days before the entry of the order, the responsible person shall submit to the court a general program of the care or treatment regimen to be provided to the acquitted person consistent with the care or treatment regimen authorized by Subsection (c).

(i) ~~[(g)]~~ In determining whether an acquitted person should be ordered to receive outpatient or community-based treatment ~~[and supervision]~~ rather than inpatient care or residential treatment, the court shall have as its primary concern the protection of society. Consistent with this chapter, the court shall order the acquitted person into the least restrictive appropriate treatment setting.

SECTION 24. Article 46C.264, Code of Criminal Procedure, is amended to read as follows:

Art. 46C.264. LOCATION OF COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT ~~[AND SUPERVISION]~~. (a) The court may order the outpatient or community-based treatment ~~[and supervision]~~ to be provided in any appropriate county where the necessary resources are available.

(b) The court may not designate an outpatient or community-based treatment provider as responsible for administering the court-ordered treatment without the consent of the provider. ~~[This article does not supersede any requirement under the other provisions of this subchapter to obtain the consent of a treatment and supervision provider to administer the~~

1 ~~court-ordered outpatient or community-based treatment and~~
2 ~~supervision.~~]

3 SECTION 25. Article 46C.265, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 46C.265. [~~SUPERVISORY~~] RESPONSIBILITY OF [~~FOR~~]
6 OUTPATIENT OR COMMUNITY-BASED TREATMENT PROVIDER [~~AND~~
7 ~~SUPERVISION~~]. (a) The person responsible for administering a
8 regimen of outpatient or community-based treatment [~~and~~
9 ~~supervision~~] shall be solely responsible for:

10 (1) monitoring [~~monitor~~] the condition of the
11 acquitted person; and

12 (2) determining [~~determine~~] whether the acquitted
13 person is complying with the regimen of treatment [~~and~~
14 ~~supervision~~].

15 (b) The person responsible for administering a regimen of
16 outpatient or community-based treatment [~~and supervision~~] shall
17 notify the court ordering that treatment, [~~and supervision and~~] the
18 attorney representing the state, and the acquitted person's
19 attorney if the person:

20 (1) fails to comply with the regimen; and

21 (2) becomes likely to cause serious harm to another.

22 SECTION 26. The heading to Article 46C.266, Code of
23 Criminal Procedure, is amended to read as follows:

24 Art. 46C.266. MODIFICATION OR REVOCATION OF ORDER FOR
25 OUTPATIENT OR COMMUNITY-BASED TREATMENT [~~AND SUPERVISION~~].

26 SECTION 27. Articles 46C.266(a), (b), and (c), Code of
27 Criminal Procedure, are amended to read as follows:

1 (a) The court, on its own motion or the motion of any
2 interested person and after notice to the acquitted person and a
3 hearing, may modify or revoke court-ordered outpatient or
4 community-based treatment [~~and supervision~~].

5 (b) At the hearing, the court without a jury shall determine
6 whether the state has established clear and convincing evidence
7 that:

8 (1) the acquitted person failed to comply with the
9 regimen in a manner or under circumstances indicating the person
10 will become likely to cause serious harm to another if the person is
11 provided continued outpatient or community-based treatment [~~and~~
12 ~~supervision~~]; or

13 (2) the acquitted person has become likely to cause
14 serious harm to another if provided continued outpatient or
15 community-based treatment [~~and supervision~~].

16 (c) On a determination under Subsection (b), the court may
17 take any appropriate action, including:

18 (1) revoking court-ordered outpatient or
19 community-based treatment [~~and supervision~~] and ordering the
20 person committed for inpatient or residential care; or

21 (2) imposing additional or more stringent terms on
22 continued outpatient or community-based treatment.

23 SECTION 28. The heading to Article 46C.267, Code of
24 Criminal Procedure, is amended to read as follows:

25 Art. 46C.267. DETENTION PENDING PROCEEDINGS TO MODIFY OR
26 REVOKE ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT [~~AND~~
27 ~~SUPERVISION~~].

SECTION 29. Articles 46C.267(a), (b), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(a) The state or the head of the facility or other person responsible for administering a regimen of outpatient or community-based treatment ~~[and supervision]~~ may file a sworn application with the court for the detention of an acquitted person receiving court-ordered outpatient or community-based treatment ~~[and supervision]~~. The application must state that the person meets the criteria of Article 46C.266 and provide a detailed explanation of that statement.

(b) If the court determines that the application establishes probable cause to believe the order for outpatient or community-based treatment ~~[and supervision]~~ should be revoked, the court shall issue an order to an on-duty peace officer authorizing the acquitted person to be taken into custody and brought before the court.

(d) When an acquitted person is brought before the court, the court shall determine whether there is probable cause to believe that the order for outpatient or community-based treatment ~~[and supervision]~~ should be revoked. On a finding that probable cause for revocation exists, the court shall order the person held in protective custody pending a determination of whether the order should be revoked.

(e) An acquitted person may be detained under an order for protective custody for a period not to exceed 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b), Health and Safety Code, for an extreme

1 emergency. A person so detained shall be evaluated within 24 hours
 2 after being detained to determine whether the person presents a
 3 substantial risk of serious harm to others so that the person cannot
 4 be at liberty pending the hearing. Substantial risk of serious harm
 5 may be demonstrated by the person's behavior or by evidence of
 6 severe emotional distress and deterioration. If the evaluation
 7 shows that the person does not meet the criteria for continued
 8 detention, the facility shall release the person. If the person is
 9 found to present a substantial risk of serious harm to others, as
 10 described by this subsection, the hearing required by Article
 11 46C.266 shall be conducted before the expiration of the period
 12 authorized by this subsection for the order of protective custody.

13 SECTION 30. Articles 46C.268(a), (b), and (f), Code of
 14 Criminal Procedure, are amended to read as follows:

15 (a) An acquitted person, the head of the facility to which
 16 the acquitted person is committed, the person responsible for
 17 providing the outpatient or community-based treatment [~~and~~
 18 ~~supervision~~], or the state may request that the court discharge an
 19 acquitted person from inpatient commitment or outpatient or
 20 community-based treatment [~~and supervision~~].

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

26 (f) The court shall discharge the acquitted person from all
 27 court-ordered commitment and treatment [~~and supervision~~] and

1 terminate the court's jurisdiction over the person if the court
2 finds that the acquitted person has established by a preponderance
3 of the evidence that:

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

6 (2) the acquitted person is not likely to cause
7 serious harm to another because of any severe mental illness or
8 mental retardation.

9 SECTION 31. Articles 46C.269(a), (b), and (c), Code of
10 Criminal Procedure, are amended to read as follows:

11 (a) The jurisdiction of the court over a person covered by
12 this subchapter automatically terminates on the date when the
13 cumulative total period of institutionalization and outpatient or
14 community-based treatment ~~[and supervision]~~ imposed under this
15 subchapter equals the maximum term of imprisonment provided by law
16 for the offense of which the person was acquitted by reason of
17 insanity.

18 (b) On the termination of the court's jurisdiction under
19 this article, the person must be discharged from any inpatient
20 treatment or residential care or outpatient or community-based
21 treatment ~~[and supervision]~~ ordered under this subchapter.

22 (c) An inpatient or residential care facility to which a
23 person has been committed under this subchapter or a person
24 responsible for administering a regimen of outpatient or
25 community-based treatment ~~[and supervision]~~ under this subchapter
26 must notify the court not later than the 30th day before the court's
27 jurisdiction over the person ends under this article.

SECTION 32. Article 46C.270, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Either the acquitted person or the state may appeal to the court of appeals from the county in which the order is entered from:

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

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

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

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

(5) an order discharging an acquitted person under Article 46C.268 or denying a request for discharge of an acquitted person.

(b-1) The entity responsible for administering a regimen of inpatient treatment or residential care or outpatient or community-based treatment may appeal to the court of appeals for the county in which the order was entered from:

(1) an initial inpatient commitment order requiring the facility to provide inpatient treatment or residential care to

1 the acquitted person entered under Article 46C.256;

2 (2) an initial outpatient commitment order requiring
3 the treatment provider to provide outpatient or community-based
4 treatment to the acquitted person entered under Article 46C.257; or

5 (3) a commitment order renewing inpatient or
6 outpatient treatment requiring the treatment provider to provide
7 treatment entered under Article 46C.261.

8 (b-2) An appeal under Subsection (b-1) shall be given
9 preferential setting.

10 SECTION 33. Subchapter F, Chapter 46C, Code of Criminal
11 Procedure, is amended by adding Article 46C.271 to read as follows:

12 Art. 46C.271. HABEAS CORPUS PROCEEDINGS. (a) A petition
13 for a writ of habeas corpus must be filed in the court of appeals for
14 the county in which the applicable order is entered or ruling is
15 received.

16 (b) A habeas corpus proceeding under this article shall be
17 given preferential setting.

18 SECTION 34. Section 533.0095(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) The executive commissioner of the Health and Human
21 Services Commission by rule shall require the department to collect
22 information and maintain current records regarding a person found
23 not guilty of an offense by reason of insanity under Chapter 46C,
24 Code of Criminal Procedure, who is:

25 (1) ordered by a court to receive inpatient mental
26 health services under Chapter 574 or under Chapter 46C, Code of
27 Criminal Procedure;

1 (2) committed by a court for long-term placement in a
2 residential care facility under Chapter 593 or under Chapter 46C,
3 Code of Criminal Procedure; or

4 (3) ordered by a court to receive outpatient or
5 community-based treatment [~~and supervision~~].

6 SECTION 35. Section 8.01(a), Penal Code, is amended to read
7 as follows:

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

12 SECTION 36. The change in law made by this Act in amending
13 Section 8.01(a), Penal Code, applies only to a defendant acquitted
14 of an offense committed on or after the effective date of this Act.
15 A defendant acquitted of an offense committed before the effective
16 date of this Act is covered by the law in effect when the offense was
17 committed, and the former law is continued in effect for that
18 purpose. For purposes of this section, an offense was committed
19 before the effective date of this Act if any element of the offense
20 occurred before that date.

21 SECTION 37. Notwithstanding Section 5, Chapter 831, Acts of
22 the 79th Legislature, Regular Session, 2005, a determination of not
23 guilty by reason of insanity is governed by Chapter 46C, Code of
24 Criminal Procedure, for a person who committed any element of the
25 offense before September 1, 2005, under former Article 46.03, Code
26 of Criminal Procedure.

27 SECTION 38. This Act takes effect September 1, 2013.