

By: Menendez

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 the time the person is confined in a mental health  
5 facility, residential care facility, or jail:

6 (1) pending a determination [trial] under Subchapter C  
7 as to the defendant's competency to stand trial; or

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

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

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

27 (b) On expiration of the maximum restoration period under

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

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

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

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

20 (A) transfer to a mental hospital or other  
21 inpatient or residential facility;

22 (B) release on bail to participate in an  
23 outpatient treatment program; or

24 (C) a criminal trial following any temporary  
25 restoration of the defendant's competency to stand trial.

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

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

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

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

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

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

24           (2) on the motion of the attorney representing the  
25 defendant, the court shall set the matter to be heard not later than  
26 the 10th day after the date of filing of the motion and shall  
27 dismiss the charge on a finding that the defendant was not tried

1 before the expiration of the maximum period of restoration~~[, the~~  
2 ~~court on the motion of the attorney representing the state shall~~  
3 ~~dismiss the charge].~~

4         SECTION 5. The change in law made by this Act applies only  
5 to a defendant with respect to which any proceeding under Chapter  
6 46B, Code of Criminal Procedure, is conducted on or after the  
7 effective date of this Act.

8         SECTION 6. This Act takes effect September 1, 2011.