

1-1 By: Menendez, Hartnett H.B. No. 748  
1-2 (Senate Sponsor - Van de Putte)  
1-3 (In the Senate - Received from the House May 13, 2011;  
1-4 May 13, 2011, read first time and referred to Committee on Criminal  
1-5 Justice; May 21, 2011, reported favorably by the following vote:  
1-6 Yeas 6, Nays 0; May 21, 2011, sent to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to a criminal defendant's incompetency to stand trial, to  
1-10 certain related time credits, and to the maximum period allowed for  
1-11 restoration of the defendant to competency.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 2(a), Article 42.03, Code of Criminal  
1-14 Procedure, is amended to read as follows:

1-15 (a) In all criminal cases the judge of the court in which the  
1-16 defendant is convicted shall give the defendant credit on the  
1-17 defendant's sentence for the time that the defendant has spent:

1-18 (1) in jail for the case, including confinement served  
1-19 as described by Article 46B.009 and excluding ~~other than~~  
1-20 confinement served as a condition of community supervision, from  
1-21 the time of his arrest and confinement until his sentence by the  
1-22 trial court; ~~or~~

1-23 (2) in a substance abuse treatment facility operated  
1-24 by the Texas Department of Criminal Justice under Section 493.009,  
1-25 Government Code, or another court-ordered residential program or  
1-26 facility as a condition of deferred adjudication community  
1-27 supervision granted in the case if the defendant successfully  
1-28 completes the treatment program at that facility; or

1-29 (3) ~~confined in a mental health facility or~~  
1-30 residential care facility as described by Article 46B.009.

1-31 SECTION 2. Article 46B.009, Code of Criminal Procedure, is  
1-32 amended to read as follows:

1-33 Art. 46B.009. TIME CREDITS. A court sentencing a person  
1-34 convicted of a criminal offense shall credit to the term of the  
1-35 person's sentence each of the following periods for which ~~the~~  
1-36 ~~time~~ the person may be ~~is~~ confined in a mental health facility,  
1-37 residential care facility, or jail:

1-38 (1) any period of confinement that occurs pending a  
1-39 determination ~~trial~~ under Subchapter C as to the defendant's  
1-40 competency to stand trial; and

1-41 (2) any period of confinement that occurs between the  
1-42 date of any initial determination of the defendant's incompetency  
1-43 under that subchapter and the date the person is transported to jail  
1-44 following a final judicial determination that the person has been  
1-45 restored to competency.

1-46 SECTION 3. Article 46B.0095, Code of Criminal Procedure, is  
1-47 amended to read as follows:

1-48 Art. 46B.0095. MAXIMUM PERIOD OF ~~[FACILITY]~~ COMMITMENT OR  
1-49 OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM  
1-50 TERM FOR OFFENSE. (a) A defendant may not, under this chapter, be  
1-51 committed to a mental hospital or other inpatient or residential  
1-52 facility, ordered to participate in an outpatient treatment  
1-53 program, or subjected to both inpatient and outpatient treatment  
1-54 for a cumulative period that exceeds the maximum term provided by  
1-55 law for the offense for which the defendant was to be tried, except  
1-56 that if the defendant is charged with a misdemeanor and has been  
1-57 ordered only to participate in an outpatient treatment program  
1-58 under Subchapter D or E, the maximum period of restoration is two  
1-59 years ~~[beginning on the date of the initial order for outpatient~~  
1-60 ~~treatment program participation was entered].~~

1-61 (b) On expiration of the maximum restoration period under  
1-62 Subsection (a), the mental hospital or other inpatient or  
1-63 residential facility or outpatient treatment program provider  
1-64 identified in the most recent order of commitment or order of

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

2-9 (c) The cumulative period described by Subsection (a):

2-10 (1) begins on the date the initial order of commitment  
 2-11 or initial order for outpatient treatment program participation is  
 2-12 entered under this chapter; and

2-13 (2) includes any time that, following the entry of an  
 2-14 order described by Subdivision (1), the defendant is confined in a  
 2-15 correctional facility, as defined by Section 1.07, Penal Code,  
 2-16 while awaiting:

2-17 (A) transfer to a mental hospital or other  
 2-18 inpatient or residential facility;

2-19 (B) release on bail to participate in an  
 2-20 outpatient treatment program; or

2-21 (C) a criminal trial following any temporary  
 2-22 restoration of the defendant's competency to stand trial.

2-23 (d) The court may credit to the cumulative period described  
 2-24 by Subsection (a):

2-25 (1) any time that a defendant, following arrest for  
 2-26 the offense for which the defendant was to be tried, is confined in  
 2-27 a correctional facility, as defined by Section 1.07, Penal Code,  
 2-28 before the initial order of commitment or initial order for  
 2-29 outpatient treatment program participation is entered under this  
 2-30 chapter; and

2-31 (2) any good conduct time the defendant has been  
 2-32 granted under Article 42.032 in relation to the defendant's  
 2-33 confinement as described by Subdivision (1).

2-34 SECTION 4. Article 46B.010, Code of Criminal Procedure, is  
 2-35 amended to read as follows:

2-36 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.  
 2-37 If a court orders that a defendant charged with a misdemeanor  
 2-38 punishable by confinement be committed to a mental hospital or  
 2-39 other inpatient or residential facility, participate in an  
 2-40 outpatient treatment program, or be subjected to both inpatient and  
 2-41 outpatient treatment, ~~[the commitment of or participation in an~~  
 2-42 ~~outpatient treatment program by a defendant who is charged with a~~  
 2-43 ~~misdemeanor punishable by confinement]~~ and the defendant is not  
 2-44 tried before the ~~[date of]~~ expiration of the maximum period of  
 2-45 restoration ~~[under this chapter as]~~ described by Article 46B.0095:

2-46 (1) on the motion of the attorney representing the  
 2-47 state, the court shall dismiss the charge; or

2-48 (2) on the motion of the attorney representing the  
 2-49 defendant, the court shall:

2-50 (A) set the matter to be heard not later than the  
 2-51 10th day after the date of filing of the motion; and

2-52 (B) dismiss the charge on a finding that the  
 2-53 defendant was not tried before the expiration of the maximum period  
 2-54 of restoration~~[, the court on the motion of the attorney~~  
 2-55 ~~representing the state shall dismiss the charge].~~

2-56 SECTION 5. Section 574.110(b), Health and Safety Code, is  
 2-57 amended to read as follows:

2-58 (b) An order issued under Section 574.106 for a patient who  
 2-59 is returned to a correctional facility, as defined by Section 1.07,  
 2-60 Penal Code, to await ~~[awaiting]~~ trial in a criminal proceeding  
 2-61 continues to be in effect until the earlier of the following dates,  
 2-62 as applicable:

2-63 (1) the 180th day after the date the defendant was  
 2-64 returned to the correctional facility;

2-65 (2) ~~[expires on]~~ the date the defendant is acquitted,  
 2-66 is convicted, or enters a plea of guilty; or

2-67 (3) the date on which charges in the case are  
 2-68 dismissed. ~~[An order continued under this subsection shall be~~  
 2-69 ~~reviewed by the issuing court every six months.]~~

3-1 SECTION 6. (a) Except as provided by Subsection (b) of this  
3-2 section, the change in law made by this Act applies only to a  
3-3 defendant with respect to which any proceeding under Chapter 46B,  
3-4 Code of Criminal Procedure, is conducted on or after the effective  
3-5 date of this Act.

3-6 (b) The change in law made by this Act in amending Section  
3-7 574.110(b), Health and Safety Code, applies only to an order issued  
3-8 under Section 574.106 of that code on or after the effective date of  
3-9 this Act.

3-10 SECTION 7. This Act takes effect September 1, 2011.

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