

AN ACT

relating to the determination of incompetency in criminal cases.

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

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

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

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

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

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

SECTION 2. Article 46B.004, Code of Criminal Procedure, is amended by adding Subsection (c-1) to read as follows:

(c-1) A suggestion of incompetency is the threshold

1 requirement for an informal inquiry under Subsection (c) and may
2 consist solely of a representation from any credible source that
3 the defendant may be incompetent. A further evidentiary showing is
4 not required to initiate the inquiry, and the court is not required
5 to have a bona fide doubt about the competency of the defendant.
6 Evidence suggesting the need for an informal inquiry may be based on
7 observations made in relation to one or more of the factors
8 described by Article 46B.024 or on any other indication that the
9 defendant is incompetent within the meaning of Article 46B.003.

10 SECTION 3. Article 46B.009, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 46B.009. TIME CREDITS. A court sentencing a person
13 convicted of a criminal offense shall credit to the term of the
14 person's sentence each of the following periods for which [~~the~~
15 ~~time~~] the person may be [~~is~~] confined in a mental health facility,
16 residential care facility, or jail:

17 (1) any period of confinement that occurs pending a
18 determination [~~trial~~] under Subchapter C as to the defendant's
19 competency to stand trial; and

20 (2) any period of confinement that occurs between the
21 date of any initial determination of the defendant's incompetency
22 under that subchapter and the date the person is transported to jail
23 following a final judicial determination that the person has been
24 restored to competency.

25 SECTION 4. Article 46B.0095, Code of Criminal Procedure, is
26 amended to read as follows:

27 Art. 46B.0095. MAXIMUM PERIOD OF [~~FACILITY~~] COMMITMENT OR

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

14 (b) On expiration of the maximum restoration period under
15 Subsection (a), the defendant may be confined for an additional
16 period in a mental hospital or other inpatient or residential
17 facility or ordered to participate for an additional period in an
18 outpatient treatment program, as appropriate, only pursuant to
19 civil [~~commitment~~] proceedings conducted under Subtitle C or D,
20 Title 7, Health and Safety Code, by a court with probate
21 jurisdiction.

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

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

26 (2) in addition to any inpatient or outpatient
27 treatment periods described by Subsection (a), includes any time

1 that, following the entry of an order described by Subdivision (1),
2 the defendant is confined in a correctional facility, as defined by
3 Section 1.07, Penal Code, or is otherwise in the custody of the
4 sheriff during or while awaiting, as applicable:

5 (A) the defendant's transfer to a mental hospital
6 or other inpatient or residential facility;

7 (B) the defendant's release on bail to
8 participate in an outpatient treatment program; or

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

11 (d) The court shall credit to the cumulative period
12 described by Subsection (a) any time that a defendant, following
13 arrest for the offense for which the defendant was to be tried, is
14 confined in a correctional facility, as defined by Section 1.07,
15 Penal Code, before the initial order of commitment or initial order
16 for outpatient treatment program participation is entered under
17 this chapter.

18 SECTION 5. Article 46B.010, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.
21 If a court orders that a defendant charged with a misdemeanor
22 punishable by confinement be committed to a mental hospital or
23 other inpatient or residential facility, participate in an
24 outpatient treatment program, or be subjected to both inpatient and
25 outpatient treatment, [the commitment of or participation in an
26 outpatient treatment program by a defendant who is charged with a
27 misdemeanor punishable by confinement] and the defendant is not

1 tried before the [~~date of~~] expiration of the maximum period of
2 restoration [~~under this chapter as~~] described by Article 46B.0095;

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

5 (2) on the motion of the attorney representing the
6 defendant and notice to the attorney representing the state, the
7 court:

8 (A) shall set the matter to be heard not later
9 than the 10th day after the date of filing of the motion; and

10 (B) may dismiss the charge on a finding that the
11 defendant was not tried before the expiration of the maximum period
12 of restoration[~~, the court on the motion of the attorney~~
13 ~~representing the state shall dismiss the charge].~~

14 SECTION 6. Article 46B.022(a), Code of Criminal Procedure,
15 is amended to read as follows:

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

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

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

23 (A) as appropriate, certification by:

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

27 (ii) the American Board of Professional

1 Psychology in forensic psychology; or

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

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

6 (ii) at least ~~[for an appointment made~~
7 ~~before January 1, 2005, at least five years of experience before~~
8 ~~January 1, 2004, in performing criminal forensic evaluations for~~
9 ~~courts; or~~

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

16 SECTION 7. Article 46B.024, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an
19 examination under this subchapter and in any report based on that
20 examination, an expert shall consider, in addition to other issues
21 determined relevant by the expert, the following:

22 (1) the capacity of the defendant during criminal
23 proceedings to:

24 (A) rationally understand the charges against
25 the defendant and the potential consequences of the pending
26 criminal proceedings;

27 (B) disclose to counsel pertinent facts, events,

1 and states of mind;

2 (C) engage in a reasoned choice of legal
3 strategies and options;

4 (D) understand the adversarial nature of
5 criminal proceedings;

6 (E) exhibit appropriate courtroom behavior; and

7 (F) testify;

8 (2) as supported by current indications and the
9 defendant's personal history, whether the defendant:

10 (A) has a [~~diagnosable~~] mental illness; or

11 (B) [~~or~~] is a person with mental retardation;

12 (3) whether the identified condition has lasted or is
13 expected to last continuously for at least one year;

14 (4) the degree of impairment resulting from [~~impact~~
15 ~~of~~] the mental illness or mental retardation, if existent, and the
16 specific impact on the defendant's capacity to engage with counsel
17 in a reasonable and rational manner; and

18 (5) [~~(4)~~] if the defendant is taking psychoactive or
19 other medication:

20 (A) whether the medication is necessary to
21 maintain the defendant's competency; and

22 (B) the effect, if any, of the medication on the
23 defendant's appearance, demeanor, or ability to participate in the
24 proceedings.

25 SECTION 8. Article 46B.025, Code of Criminal Procedure, is
26 amended by amending Subsections (a) and (b) and adding Subsection
27 (a-1) to read as follows:

1 (a) An expert's report to the court must state an opinion on
2 a defendant's competency or incompetency to stand trial or explain
3 why the expert is unable to state such an opinion and must also:

4 (1) identify and address specific issues referred to
5 the expert for evaluation;

6 (2) document that the expert explained to the
7 defendant the purpose of the evaluation, the persons to whom a
8 report on the evaluation is provided, and the limits on rules of
9 confidentiality applying to the relationship between the expert and
10 the defendant;

11 (3) in specific [~~general~~] terms, describe procedures,
12 techniques, and tests used in the examination, [~~and~~] the purpose of
13 each procedure, technique, or test, and the conclusions reached;
14 and

15 (4) state the expert's clinical observations,
16 findings, and opinions on each specific issue referred to the
17 expert by the court, state the specific criteria supporting the
18 expert's diagnosis, and state specifically any issues on which the
19 expert could not provide an opinion.

20 (a-1) The expert's opinion on the defendant's competency or
21 incompetency may not be based solely on the defendant's refusal to
22 communicate during the examination.

23 (b) If in the opinion of an expert appointed under Article
24 46B.021 the defendant is incompetent to proceed, the expert shall
25 state in the report:

26 (1) the symptoms, exact nature, severity, and expected
27 duration of the deficits resulting from the defendant's mental

1 illness or mental retardation, if any, and the [that] impact of the
2 identified condition on the factors listed in Article 46B.024[
3 contributing to the defendant's incompetency]; [and]

4 (2) an estimate of the period needed to restore the
5 defendant's competency, including whether the defendant is likely
6 to be restored to competency in the foreseeable future; and

7 (3) prospective treatment options, if any,
8 appropriate for the defendant.

9 SECTION 9. Article 46B.071, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY.

12 (a) Except as provided by Subsection (b), on [On] a determination
13 that a defendant is incompetent to stand trial, the court shall:

14 (1) commit the defendant to a facility under Article
15 46B.073; or

16 (2) release the defendant on bail under Article
17 46B.072.

18 (b) On a determination that a defendant is incompetent to
19 stand trial and is unlikely to be restored to competency in the
20 foreseeable future, the court shall:

21 (1) proceed under Subchapter E or F; or

22 (2) release the defendant on bail as permitted under
23 Chapter 17.

24 SECTION 10. Article 46B.072, Code of Criminal Procedure, is
25 amended by amending Subsections (a), (b), and (c) and adding
26 Subsection (a-1) to read as follows:

27 (a) This article applies only to a defendant who is subject

1 to an initial restoration period based on Article 46B.071.

2 (a-1) Subject to conditions reasonably related to assuring
3 public safety and the effectiveness of the defendant's treatment,
4 if the court determines that a defendant found incompetent to stand
5 trial is not a danger to others and may be safely treated on an
6 outpatient basis with the specific objective of attaining
7 competency to stand trial and if an appropriate outpatient
8 treatment program is available for the defendant, the court:

9 (1) may release on bail a defendant found incompetent
10 to stand trial with respect to a felony or may continue the
11 defendant's release on bail; and

12 (2) shall release on bail a defendant found
13 incompetent to stand trial with respect to a misdemeanor or shall
14 continue the defendant's release on bail.

15 (b) The court shall order a defendant released on bail under
16 Subsection (a-1) [~~(a)~~] to participate in an outpatient treatment
17 program for a period not to exceed 120 days.

18 (c) Notwithstanding Subsection (a-1) [~~(a)~~], the court may
19 order a defendant to participate in an outpatient treatment program
20 under this article only if:

21 (1) the court receives and approves a comprehensive
22 plan that:

23 (A) provides for the treatment of the defendant
24 for purposes of competency restoration; and

25 (B) identifies the person who will be responsible
26 for providing that treatment to the defendant; and

27 (2) the court finds that the treatment proposed by the

1 plan will be available to and will be provided to the defendant.

2 SECTION 11. Articles 46B.073(a) and (b), Code of Criminal
3 Procedure, are amended to read as follows:

4 (a) This article applies only to a defendant not released on
5 bail who is subject to an initial restoration period based on
6 Article 46B.071.

7 (b) For further examination and treatment toward the
8 specific objective of the defendant attaining competency to stand
9 trial, the [The] court shall commit a defendant described by
10 Subsection (a) to a mental health facility or residential care
11 facility for the applicable [a] period as follows:

12 (1) a period of not more than 60 days, if the defendant
13 is charged with an offense punishable as a misdemeanor; or

14 (2) a period of not more than 120 days, if the
15 defendant is charged with an offense punishable as a felony [not to
16 exceed 120 days for further examination and treatment toward the
17 specific objective of attaining competency to stand trial].

18 SECTION 12. Subchapter D, Chapter 46B, Code of Criminal
19 Procedure, is amended by adding Article 46B.0755 to read as
20 follows:

21 Art. 46B.0755. PROCEDURES ON CREDIBLE EVIDENCE OF IMMEDIATE
22 RESTORATION. (a) Notwithstanding any other provision of this
23 subchapter, if the court receives credible evidence indicating that
24 the defendant has been restored to competency at any time after the
25 defendant's incompetency trial under Subchapter C but before the
26 defendant is transported under Article 46B.075 to a mental health
27 facility, residential care facility, or outpatient treatment

1 program, as applicable, the court may appoint disinterested experts
2 to reexamine the defendant in accordance with Subchapter B. The
3 court is not required to appoint the same expert or experts who
4 performed the initial examination of the defendant under that
5 subchapter.

6 (b) If after a reexamination of the defendant the applicable
7 expert's report states an opinion that the defendant remains
8 incompetent, the court's order under Article 46B.072 or 46B.073
9 remains in effect, and the defendant shall be transported to the
10 facility or outpatient treatment program as required by Article
11 46B.075. If after a reexamination of the defendant the applicable
12 expert's report states an opinion that the defendant has been
13 restored to competency, the court shall withdraw its order under
14 Article 46B.072 or 46B.073 and proceed under Subsection (c) or (d).

15 (c) The court shall find the defendant competent to stand
16 trial and proceed in the same manner as if the defendant had been
17 found restored to competency at a hearing if:

18 (1) both parties agree that the defendant is competent
19 to stand trial; and

20 (2) the court concurs.

21 (d) The court shall hold a hearing to determine whether the
22 defendant has been restored to competency if any party fails to
23 agree or if the court fails to concur that the defendant is
24 competent to stand trial. If a court holds a hearing under this
25 subsection, on the request of the counsel for either party or the
26 motion of the court, a jury shall make the competency
27 determination. For purposes of the hearing, incompetency is

1 presumed, and the defendant's competency must be proved by a
2 preponderance of the evidence. If after the hearing the defendant
3 is again found to be incompetent to stand trial, the court shall
4 issue a new order under Article 46B.072 or 46B.073, as appropriate
5 based on the defendant's current condition.

6 SECTION 13. Article 46B.077(a), Code of Criminal Procedure,
7 is amended to read as follows:

8 (a) The facility to which the defendant is committed or the
9 outpatient treatment program to which the defendant is released on
10 bail shall:

11 (1) develop an individual program of treatment;

12 (2) assess and evaluate whether the defendant is
13 likely to be restored to [~~will obtain~~] competency in the
14 foreseeable future; and

15 (3) report to the court and to the local mental health
16 authority or to the local mental retardation authority on the
17 defendant's progress toward achieving competency.

18 SECTION 14. Article 46B.079, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of
21 the facility or the provider of the outpatient treatment program,
22 as appropriate, not later than the 15th day before the date on which
23 the initial [~~a~~] restoration period is to expire according to the
24 terms of the order or under Article 46B.0095 or other applicable
25 provisions of this chapter, shall notify the applicable court that
26 the [~~restoration~~] period is about to expire.

27 (b) The head of the facility or outpatient treatment program

1 provider shall promptly notify the court when the head of the
2 facility or outpatient treatment program provider believes that:

3 (1) the defendant has attained competency to stand
4 trial; or

5 (2) the defendant is not likely to ~~[will not]~~ attain
6 competency in the foreseeable future.

7 (c) When the head of the facility or outpatient treatment
8 program provider gives notice to the court under Subsection (a) or
9 (b), the head of the facility or outpatient treatment program
10 provider also shall file a final report with the court stating the
11 reason for the proposed discharge under this chapter and including
12 a list of the types and dosages of medications prescribed for ~~[with~~
13 ~~which]~~ the defendant ~~[was treated for mental illness]~~ while the
14 defendant was in the facility or participating in the outpatient
15 treatment program. To enable any objection to the findings of the
16 report to be made in a timely manner under Article 46B.084(a), the
17 court shall provide copies of the report to the attorney
18 representing the defendant and the attorney representing the state.

19 (d) If the head of the facility or outpatient treatment
20 program provider notifies the court that the initial restoration
21 period is about to expire, the notice may contain a request for an
22 extension of the period for an additional period of 60 days and an
23 explanation for the basis of the request. An explanation provided
24 under this subsection must include a description of any evidence
25 indicating a reduction in the severity of the defendant's symptoms
26 or impairment.

27 SECTION 15. Articles 46B.080(b) and (c), Code of Criminal

1 Procedure, are amended to read as follows:

2 (b) The court may enter an order under Subsection (a) only
3 if the court determines that [~~on the basis of information provided~~
4 ~~by the head of the facility or the treatment program provider~~]:

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

6 (2) an extension of the initial restoration period
7 will likely enable the facility or program to restore the defendant
8 to competency within the period of the extension.

9 (c) The court may grant only one 60-day extension under this
10 article in connection with the specific offense with which the
11 defendant is charged [~~for a period of restoration ordered under~~
12 ~~this subchapter~~].

13 SECTION 16. Article 46B.084(a), Code of Criminal Procedure,
14 is amended to read as follows:

15 (a) On the return of a defendant to the court, the court
16 shall make a determination with regard to the defendant's
17 competency to stand trial. The court may make the determination
18 based [~~solely~~] on the report filed under Article 46B.079(c) and on
19 other medical information or personal history information relating
20 to the defendant. A [~~unless any~~] party may object [~~objects~~] in
21 writing or in open court to the findings of the report not later
22 than the 15th day after the date on which the court received
23 notification under Article 46B.079. The court shall make the
24 determination not later than the 20th day after the date on which
25 the court received notification under Article 46B.079, regardless
26 of whether a party objects to the report as described by this
27 subsection and the issue is set for hearing under Subsection (b).

1 SECTION 17. Articles 46B.086(a) and (c), Code of Criminal
2 Procedure, are amended to read as follows:

3 (a) This article applies only to a defendant:

4 (1) who is determined under this chapter to be
5 incompetent to stand trial;

6 (2) who either:

7 (A) remains confined in a correctional facility,
8 as defined by Section 1.07, Penal Code, for a period exceeding 72
9 hours while awaiting transfer to an inpatient mental health
10 facility, a residential care facility, or an outpatient treatment
11 program;

12 (B) is committed to an inpatient mental health
13 facility or a residential care facility for the purpose of
14 competency restoration;

15 (C) is confined in a correctional facility while
16 awaiting further criminal proceedings following competency
17 restoration treatment; or

18 (D) is subject to Article 46B.072, if the court
19 has made the determinations required by Subsection (a-1) [~~(a)~~] of
20 that article;

21 (3) for whom a correctional facility that employs or
22 contracts with a licensed psychiatrist, an inpatient mental health
23 facility, a residential care facility, or an outpatient treatment
24 program provider has prepared a continuity of care plan that
25 requires the defendant to take psychoactive medications; and

26 (4) who, after a hearing held under Section 574.106,
27 Health and Safety Code, if applicable, has been found to not meet

1 the criteria prescribed by Sections 574.106(a) and (a-1), Health
2 and Safety Code, for court-ordered administration of psychoactive
3 medications.

4 (c) The court, after notice and after a hearing held not
5 later than the 10th day after the motion to compel medication is
6 filed [~~fifth day after the defendant is returned to the committing~~
7 ~~court~~], may authorize the director of the correctional facility or
8 the program provider, as applicable, to have the medication
9 administered to the defendant, by reasonable force if necessary. A
10 hearing under this subsection may be conducted using an electronic
11 broadcast system as provided by Article 46B.013.

12 SECTION 18. Article 46B.101, Code of Criminal Procedure, is
13 amended to read as follows:

14 Art. 46B.101. APPLICABILITY. This subchapter applies to a
15 defendant against whom a court is required to proceed according to
16 [~~under~~] Article 46B.084(e) or according to the court's appropriate
17 determination under Article 46B.071.

18 SECTION 19. Article 46B.151(a), Code of Criminal Procedure,
19 is amended to read as follows:

20 (a) If a court is required by Article 46B.084(f) or by its
21 appropriate determination under Article 46B.071 to proceed under
22 this subchapter, or if the court is permitted by Article 46B.004(e)
23 to proceed under this subchapter, the court shall determine whether
24 there is evidence to support a finding that the defendant is either
25 a person with mental illness or a person with mental retardation.

26 SECTION 20. The Department of State Health Services, in
27 coordination with the Health and Human Services Commission, shall

1 study the feasibility of providing home and community-based
2 services, instead of institutional care, to persons with severe and
3 persistent mental illness who have a history of more than one
4 inpatient commitment under Chapter 46B, Code of Criminal Procedure.
5 Not later than December 1, 2012, the department shall issue a report
6 to the legislature regarding the results of the feasibility study.

7 SECTION 21. (a) Except as provided by Subsection (b) of
8 this section, the change in law made by this Act applies only to a
9 defendant with respect to whom any proceeding under Chapter 46B,
10 Code of Criminal Procedure, is conducted on or after the effective
11 date of this Act.

12 (b) Article 46B.004(c-1), Code of Criminal Procedure, as
13 added by this Act, applies only to a motion suggesting a defendant's
14 incompetency to stand trial made on or after the effective date of
15 this Act. A motion suggesting a defendant's incompetency to stand
16 trial made before the effective date of this Act is covered by the
17 law in effect when the motion was made, and the former law is
18 continued in effect for that purpose.

19 SECTION 22. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 2725 was passed by the House on April 26, 2011, by the following vote: Yeas 148, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2725 on May 24, 2011, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2725 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor