

1-1 By: Hartnett (Senate Sponsor - Williams) H.B. No. 2725  
1-2 (In the Senate - Received from the House April 27, 2011;  
1-3 April 28, 2011, read first time and referred to Committee on  
1-4 Criminal Justice; May 12, 2011, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;  
1-6 May 12, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2725 By: Huffman

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the determination of incompetency in criminal cases.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. Section 2(a), Article 42.03, Code of Criminal  
1-13 Procedure, is amended to read as follows:  
1-14 (a) In all criminal cases the judge of the court in which the  
1-15 defendant is convicted shall give the defendant credit on the  
1-16 defendant's sentence for the time that the defendant has spent:  
1-17 (1) in jail for the case, including confinement served  
1-18 as described by Article 46B.009 and excluding ~~other than~~  
1-19 confinement served as a condition of community supervision, from  
1-20 the time of his arrest and confinement until his sentence by the  
1-21 trial court; ~~or~~  
1-22 (2) in a substance abuse treatment facility operated  
1-23 by the Texas Department of Criminal Justice under Section 493.009,  
1-24 Government Code, or another court-ordered residential program or  
1-25 facility as a condition of deferred adjudication community  
1-26 supervision granted in the case if the defendant successfully  
1-27 completes the treatment program at that facility; or  
1-28 (3) confined in a mental health facility or  
1-29 residential care facility as described by Article 46B.009.  
1-30 SECTION 2. Article 46B.009, Code of Criminal Procedure, is  
1-31 amended to read as follows:  
1-32 Art. 46B.009. TIME CREDITS. A court sentencing a person  
1-33 convicted of a criminal offense shall credit to the term of the  
1-34 person's sentence each of the following periods for which ~~the~~  
1-35 ~~time~~ the person may be ~~is~~ confined in a mental health facility,  
1-36 residential care facility, or jail:  
1-37 (1) any period of confinement that occurs pending a  
1-38 determination ~~trial~~ under Subchapter C as to the defendant's  
1-39 competency to stand trial; and  
1-40 (2) any period of confinement that occurs between the  
1-41 date of any initial determination of the defendant's incompetency  
1-42 under that subchapter and the date the person is transported to jail  
1-43 following a final judicial determination that the person has been  
1-44 restored to competency.  
1-45 SECTION 3. Article 46B.0095, Code of Criminal Procedure, is  
1-46 amended to read as follows:  
1-47 Art. 46B.0095. MAXIMUM PERIOD OF ~~FACILITY~~ COMMITMENT OR  
1-48 OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM  
1-49 TERM FOR OFFENSE. (a) A defendant may not, under Subchapter D or E  
1-50 or any other provision of this chapter, be committed to a mental  
1-51 hospital or other inpatient or residential facility, ordered to  
1-52 participate in an outpatient treatment program, or subjected to  
1-53 both inpatient and outpatient treatment for a cumulative period  
1-54 that exceeds the maximum term provided by law for the offense for  
1-55 which the defendant was to be tried, except that if the defendant is  
1-56 charged with a misdemeanor and has been ordered only to participate  
1-57 in an outpatient treatment program under Subchapter D or E, the  
1-58 maximum period of restoration is two years ~~beginning on the date of~~  
1-59 ~~the initial order for outpatient treatment program participation~~  
1-60 ~~was entered~~.  
1-61 (b) On expiration of the maximum restoration period under  
1-62 Subsection (a), the defendant may be confined for an additional  
1-63 period in a mental hospital or other inpatient or residential

2-1 facility or ordered to participate for an additional period in an  
 2-2 outpatient treatment program, as appropriate, only pursuant to  
 2-3 civil ~~[commitment]~~ proceedings conducted under Subtitle C or D,  
 2-4 Title 7, Health and Safety Code, by a court with probate  
 2-5 jurisdiction.

2-6 (c) The cumulative period described by Subsection (a):

2-7 (1) begins on the date the initial order of commitment  
 2-8 or initial order for outpatient treatment program participation is  
 2-9 entered under this chapter; and

2-10 (2) in addition to any inpatient or outpatient  
 2-11 treatment periods described by Subsection (a), includes any time  
 2-12 that, following the entry of an order described by Subdivision (1),  
 2-13 the defendant is confined in a correctional facility, as defined by  
 2-14 Section 1.07, Penal Code, or is otherwise in the custody of the  
 2-15 sheriff during or while awaiting, as applicable:

2-16 (A) the defendant's transfer to a mental hospital  
 2-17 or other inpatient or residential facility;

2-18 (B) the defendant's release on bail to  
 2-19 participate in an outpatient treatment program; or

2-20 (C) a criminal trial following any temporary  
 2-21 restoration of the defendant's competency to stand trial.

2-22 (d) The court shall credit to the cumulative period  
 2-23 described by Subsection (a) any time that a defendant, following  
 2-24 arrest for the offense for which the defendant was to be tried, is  
 2-25 confined in a correctional facility, as defined by Section 1.07,  
 2-26 Penal Code, before the initial order of commitment or initial order  
 2-27 for outpatient treatment program participation is entered under  
 2-28 this chapter.

2-29 SECTION 4. Article 46B.010, Code of Criminal Procedure, is  
 2-30 amended to read as follows:

2-31 Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES.  
 2-32 If a court orders that a defendant charged with a misdemeanor  
 2-33 punishable by confinement be committed to a mental hospital or  
 2-34 other inpatient or residential facility, participate in an  
 2-35 outpatient treatment program, or be subjected to both inpatient and  
 2-36 outpatient treatment, ~~[the commitment of or participation in an~~  
 2-37 ~~outpatient treatment program by a defendant who is charged with a~~  
 2-38 ~~misdemeanor punishable by confinement]~~ and the defendant is not  
 2-39 tried before the ~~[date of]~~ expiration of the maximum period of  
 2-40 restoration ~~[under this chapter as]~~ described by Article 46B.0095:

2-41 (1) on the motion of the attorney representing the  
 2-42 state, the court shall dismiss the charge; or

2-43 (2) on the motion of the attorney representing the  
 2-44 defendant and notice to the attorney representing the state, the  
 2-45 court:

2-46 (A) shall set the matter to be heard not later  
 2-47 than the 10th day after the date of filing of the motion; and

2-48 (B) may dismiss the charge on a finding that the  
 2-49 defendant was not tried before the expiration of the maximum period  
 2-50 of restoration~~[, the court on the motion of the attorney~~  
 2-51 ~~representing the state shall dismiss the charge].~~

2-52 SECTION 5. Article 46B.022(a), Code of Criminal Procedure,  
 2-53 is amended to read as follows:

2-54 (a) To qualify for appointment under this subchapter as an  
 2-55 expert, a psychiatrist or psychologist must:

2-56 (1) as appropriate, be a physician licensed in this  
 2-57 state or be a psychologist licensed in this state who has a doctoral  
 2-58 degree in psychology; and

2-59 (2) have the following certification ~~[or experience]~~  
 2-60 or training:

2-61 (A) as appropriate, certification by:

2-62 (i) the American Board of Psychiatry and  
 2-63 Neurology with added or special qualifications in forensic  
 2-64 psychiatry; or

2-65 (ii) the American Board of Professional  
 2-66 Psychology in forensic psychology; or

2-67 (B) ~~[experience or]~~ training consisting of:

2-68 (i) at least 24 hours of specialized  
 2-69 forensic training relating to incompetency or insanity

3-1 evaluations; and  
 3-2 (ii) at least [~~for an appointment made~~  
 3-3 ~~before January 1, 2005, at least five years of experience before~~  
 3-4 ~~January 1, 2004, in performing criminal forensic evaluations for~~  
 3-5 ~~courts; or~~  
 3-6 [~~(iii) for an appointment made on or after~~  
 3-7 ~~January 1, 2005, at least five years of experience before January 1,~~  
 3-8 ~~2004, in performing criminal forensic evaluations for courts and]~~  
 3-9 ~~eight [or more] hours of continuing education relating to forensic~~  
 3-10 ~~evaluations, completed in the 12 months preceding the appointment~~  
 3-11 ~~[and documented with the court].~~

3-12 SECTION 6. Article 46B.024, Code of Criminal Procedure, is  
 3-13 amended to read as follows:

3-14 Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an  
 3-15 examination under this subchapter and in any report based on that  
 3-16 examination, an expert shall consider, in addition to other issues  
 3-17 determined relevant by the expert, the following:

3-18 (1) the capacity of the defendant during criminal  
 3-19 proceedings to:

3-20 (A) rationally understand the charges against  
 3-21 the defendant and the potential consequences of the pending  
 3-22 criminal proceedings;

3-23 (B) disclose to counsel pertinent facts, events,  
 3-24 and states of mind;

3-25 (C) engage in a reasoned choice of legal  
 3-26 strategies and options;

3-27 (D) understand the adversarial nature of  
 3-28 criminal proceedings;

3-29 (E) exhibit appropriate courtroom behavior; and

3-30 (F) testify;

3-31 (2) as supported by current indications and the  
 3-32 defendant's personal history, whether the defendant:

3-33 (A) has a [~~diagnosable~~] mental illness; or

3-34 (B) [~~or~~] is a person with mental retardation;

3-35 (3) whether the identified condition has lasted or is  
 3-36 expected to last continuously for at least one year;

3-37 (4) the degree of impairment resulting from [~~impact~~  
 3-38 ~~of~~] the mental illness or mental retardation, if existent, and the  
 3-39 specific impact on the defendant's capacity to engage with counsel  
 3-40 in a reasonable and rational manner; and

3-41 (5) [~~(4)~~] if the defendant is taking psychoactive or  
 3-42 other medication:

3-43 (A) whether the medication is necessary to  
 3-44 maintain the defendant's competency; and

3-45 (B) the effect, if any, of the medication on the  
 3-46 defendant's appearance, demeanor, or ability to participate in the  
 3-47 proceedings.

3-48 SECTION 7. Article 46B.025, Code of Criminal Procedure, is  
 3-49 amended by amending Subsections (a) and (b) and adding Subsection  
 3-50 (a-1) to read as follows:

3-51 (a) An expert's report to the court must state an opinion on  
 3-52 a defendant's competency or incompetency to stand trial or explain  
 3-53 why the expert is unable to state such an opinion and must also:

3-54 (1) identify and address specific issues referred to  
 3-55 the expert for evaluation;

3-56 (2) document that the expert explained to the  
 3-57 defendant the purpose of the evaluation, the persons to whom a  
 3-58 report on the evaluation is provided, and the limits on rules of  
 3-59 confidentiality applying to the relationship between the expert and  
 3-60 the defendant;

3-61 (3) in specific [~~general~~] terms, describe procedures,  
 3-62 techniques, and tests used in the examination, [~~and~~] the purpose of  
 3-63 each procedure, technique, or test, and the conclusions reached;  
 3-64 and

3-65 (4) state the expert's clinical observations,  
 3-66 findings, and opinions on each specific issue referred to the  
 3-67 expert by the court, state the specific criteria supporting the  
 3-68 expert's diagnosis, and state specifically any issues on which the  
 3-69 expert could not provide an opinion.

4-1 (a-1) The expert's opinion on the defendant's competency or  
4-2 incompetency may not be based solely on the defendant's refusal to  
4-3 communicate during the examination.

4-4 (b) If in the opinion of an expert appointed under Article  
4-5 46B.021 the defendant is incompetent to proceed, the expert shall  
4-6 state in the report:

4-7 (1) the symptoms, exact nature, severity, and expected  
4-8 duration of the deficits resulting from the defendant's mental  
4-9 illness or mental retardation, if any, and the [that] impact of the  
4-10 identified condition on the factors listed in Article 46B.024[  
4-11 contributing to the defendant's incompetency]; [and]

4-12 (2) an estimate of the period needed to restore the  
4-13 defendant's competency, including whether the defendant is likely  
4-14 to be restored to competency in the foreseeable future; and

4-15 (3) prospective treatment options, if any,  
4-16 appropriate for the defendant.

4-17 SECTION 8. Article 46B.071, Code of Criminal Procedure, is  
4-18 amended to read as follows:

4-19 Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY.

4-20 (a) Except as provided by Subsection (b), on [On] a determination  
4-21 that a defendant is incompetent to stand trial, the court shall:

4-22 (1) commit the defendant to a facility under Article  
4-23 46B.073; or

4-24 (2) release the defendant on bail under Article  
4-25 46B.072.

4-26 (b) On a determination that a defendant is incompetent to  
4-27 stand trial and is unlikely to be restored to competency in the  
4-28 foreseeable future, the court shall:

4-29 (1) proceed under Subchapter E or F; or

4-30 (2) release the defendant on bail as permitted under  
4-31 Chapter 17.

4-32 SECTION 9. Article 46B.072, Code of Criminal Procedure, is  
4-33 amended by amending Subsections (a), (b), and (c) and adding  
4-34 Subsection (a-1) to read as follows:

4-35 (a) This article applies only to a defendant who is subject  
4-36 to an initial restoration period based on Article 46B.071.

4-37 (a-1) Subject to conditions reasonably related to assuring  
4-38 public safety and the effectiveness of the defendant's treatment,  
4-39 if the court determines that a defendant found incompetent to stand  
4-40 trial is not a danger to others and may be safely treated on an  
4-41 outpatient basis with the specific objective of attaining  
4-42 competency to stand trial and if an appropriate outpatient  
4-43 treatment program is available for the defendant, the court:

4-44 (1) may release on bail a defendant found incompetent  
4-45 to stand trial with respect to a felony or may continue the  
4-46 defendant's release on bail; and

4-47 (2) shall release on bail a defendant found  
4-48 incompetent to stand trial with respect to a misdemeanor or shall  
4-49 continue the defendant's release on bail.

4-50 (b) The court shall order a defendant released on bail under  
4-51 Subsection (a-1) [~~(a)~~] to participate in an outpatient treatment  
4-52 program for a period not to exceed 120 days.

4-53 (c) Notwithstanding Subsection (a-1) [~~(a)~~], the court may  
4-54 order a defendant to participate in an outpatient treatment program  
4-55 under this article only if:

4-56 (1) the court receives and approves a comprehensive  
4-57 plan that:

4-58 (A) provides for the treatment of the defendant  
4-59 for purposes of competency restoration; and

4-60 (B) identifies the person who will be responsible  
4-61 for providing that treatment to the defendant; and

4-62 (2) the court finds that the treatment proposed by the  
4-63 plan will be available to and will be provided to the defendant.

4-64 SECTION 10. Articles 46B.073(a) and (b), Code of Criminal  
4-65 Procedure, are amended to read as follows:

4-66 (a) This article applies only to a defendant not released on  
4-67 bail who is subject to an initial restoration period based on  
4-68 Article 46B.071.

4-69 (b) For further examination and treatment toward the

5-1 specific objective of the defendant attaining competency to stand  
5-2 trial, the [The] court shall commit a defendant described by  
5-3 Subsection (a) to a mental health facility or residential care  
5-4 facility for the applicable [a] period as follows:

5-5 (1) a period of not more than 60 days, if the defendant  
5-6 is charged with an offense punishable as a misdemeanor; or

5-7 (2) a period of not more than 120 days, if the  
5-8 defendant is charged with an offense punishable as a felony [not to  
5-9 exceed 120 days for further examination and treatment toward the  
5-10 specific objective of attaining competency to stand trial].

5-11 SECTION 11. Subchapter D, Chapter 46B, Code of Criminal  
5-12 Procedure, is amended by adding Article 46B.0755 to read as  
5-13 follows:

5-14 Art. 46B.0755. PROCEDURES ON CREDIBLE EVIDENCE OF IMMEDIATE  
5-15 RESTORATION. (a) Notwithstanding any other provision of this  
5-16 subchapter, if the court receives credible evidence indicating that  
5-17 the defendant has been restored to competency at any time after the  
5-18 defendant's incompetency trial under Subchapter C but before the  
5-19 defendant is transported under Article 46B.075 to a mental health  
5-20 facility, residential care facility, or outpatient treatment  
5-21 program, as applicable, the court may appoint disinterested experts  
5-22 to reexamine the defendant in accordance with Subchapter B. The  
5-23 court is not required to appoint the same expert or experts who  
5-24 performed the initial examination of the defendant under that  
5-25 subchapter.

5-26 (b) If after a reexamination of the defendant the applicable  
5-27 expert's report states an opinion that the defendant remains  
5-28 incompetent, the court's order under Article 46B.072 or 46B.073  
5-29 remains in effect, and the defendant shall be transported to the  
5-30 facility or outpatient treatment program as required by Article  
5-31 46B.075. If after a reexamination of the defendant the applicable  
5-32 expert's report states an opinion that the defendant has been  
5-33 restored to competency, the court shall withdraw its order under  
5-34 Article 46B.072 or 46B.073 and proceed under Subsection (c) or (d).

5-35 (c) The court shall find the defendant competent to stand  
5-36 trial and proceed in the same manner as if the defendant had been  
5-37 found restored to competency at a hearing if:

5-38 (1) both parties agree that the defendant is competent  
5-39 to stand trial; and

5-40 (2) the court concurs.

5-41 (d) The court shall hold a hearing to determine whether the  
5-42 defendant has been restored to competency if any party fails to  
5-43 agree or if the court fails to concur that the defendant is  
5-44 competent to stand trial. If a court holds a hearing under this  
5-45 subsection, on the request of the counsel for either party or the  
5-46 motion of the court, a jury shall make the competency  
5-47 determination. For purposes of the hearing, incompetency is  
5-48 presumed, and the defendant's competency must be proved by a  
5-49 preponderance of the evidence. If after the hearing the defendant  
5-50 is again found to be incompetent to stand trial, the court shall  
5-51 issue a new order under Article 46B.072 or 46B.073, as appropriate  
5-52 based on the defendant's current condition.

5-53 SECTION 12. Article 46B.077(a), Code of Criminal Procedure,  
5-54 is amended to read as follows:

5-55 (a) The facility to which the defendant is committed or the  
5-56 outpatient treatment program to which the defendant is released on  
5-57 bail shall:

5-58 (1) develop an individual program of treatment;

5-59 (2) assess and evaluate whether the defendant is  
5-60 likely to be restored to [will obtain] competency in the  
5-61 foreseeable future; and

5-62 (3) report to the court and to the local mental health  
5-63 authority or to the local mental retardation authority on the  
5-64 defendant's progress toward achieving competency.

5-65 SECTION 13. Article 46B.079, Code of Criminal Procedure, is  
5-66 amended to read as follows:

5-67 Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of  
5-68 the facility or the provider of the outpatient treatment program,  
5-69 as appropriate, not later than the 15th day before the date on which

6-1 the initial ~~[a]~~ restoration period is to expire according to the  
 6-2 terms of the order or under Article 46B.0095 or other applicable  
 6-3 provisions of this chapter, shall notify the applicable court that  
 6-4 the ~~[restoration]~~ period is about to expire.

6-5 (b) The head of the facility or outpatient treatment program  
 6-6 provider shall promptly notify the court when the head of the  
 6-7 facility or outpatient treatment program provider believes that:

6-8 (1) the defendant has attained competency to stand  
 6-9 trial; or

6-10 (2) the defendant is not likely to ~~[will not]~~ attain  
 6-11 competency in the foreseeable future.

6-12 (c) When the head of the facility or outpatient treatment  
 6-13 program provider gives notice to the court under Subsection (a) or  
 6-14 (b), the head of the facility or outpatient treatment program  
 6-15 provider also shall file a final report with the court stating the  
 6-16 reason for the proposed discharge under this chapter and including  
 6-17 a list of the types and dosages of medications prescribed for ~~[with~~  
 6-18 ~~which]~~ the defendant ~~[was treated for mental illness]~~ while the  
 6-19 defendant was in the facility or participating in the outpatient  
 6-20 treatment program. To enable any objection to the findings of the  
 6-21 report to be made in a timely manner under Article 46B.084(a), the  
 6-22 court shall provide copies of the report to the attorney  
 6-23 representing the defendant and the attorney representing the state.

6-24 (d) If the head of the facility or outpatient treatment  
 6-25 program provider notifies the court that the initial restoration  
 6-26 period is about to expire, the notice may contain a request for an  
 6-27 extension of the period for an additional period of 60 days and an  
 6-28 explanation for the basis of the request. An explanation provided  
 6-29 under this subsection must include a description of any evidence  
 6-30 indicating a reduction in the severity of the defendant's symptoms  
 6-31 or impairment.

6-32 SECTION 14. Articles 46B.080(b) and (c), Code of Criminal  
 6-33 Procedure, are amended to read as follows:

6-34 (b) The court may enter an order under Subsection (a) only  
 6-35 if the court determines that ~~[, on the basis of information provided~~  
 6-36 ~~by the head of the facility or the treatment program provider]~~:

6-37 (1) the defendant has not attained competency; and

6-38 (2) an extension of the initial restoration period  
 6-39 will likely enable the facility or program to restore the defendant  
 6-40 to competency within the period of the extension.

6-41 (c) The court may grant only one 60-day extension under this  
 6-42 article in connection with the specific offense with which the  
 6-43 defendant is charged ~~[for a period of restoration ordered under~~  
 6-44 ~~this subchapter].~~

6-45 SECTION 15. Article 46B.084(a), Code of Criminal Procedure,  
 6-46 is amended to read as follows:

6-47 (a) On the return of a defendant to the court, the court  
 6-48 shall make a determination with regard to the defendant's  
 6-49 competency to stand trial. The court may make the determination  
 6-50 based ~~[solely]~~ on the report filed under Article 46B.079(c) and on  
 6-51 other medical information or personal history information relating  
 6-52 to the defendant. A ~~[, unless any]~~ party may object ~~[objects]~~ in  
 6-53 writing or in open court to the findings of the report not later  
 6-54 than the 15th day after the date on which the court received  
 6-55 notification under Article 46B.079. The court shall make the  
 6-56 determination not later than the 20th day after the date on which  
 6-57 the court received notification under Article 46B.079, regardless  
 6-58 of whether a party objects to the report as described by this  
 6-59 subsection and the issue is set for hearing under Subsection (b).

6-60 SECTION 16. Article 46B.086(a), Code of Criminal Procedure,  
 6-61 is amended to read as follows:

6-62 (a) This article applies only to a defendant:

6-63 (1) who is determined under this chapter to be  
 6-64 incompetent to stand trial;

6-65 (2) who either:

6-66 (A) remains confined in a correctional facility,  
 6-67 as defined by Section 1.07, Penal Code, for a period exceeding 72  
 6-68 hours while awaiting transfer to an inpatient mental health  
 6-69 facility, a residential care facility, or an outpatient treatment

7-1 program;  
 7-2 (B) is committed to an inpatient mental health  
 7-3 facility or a residential care facility for the purpose of  
 7-4 competency restoration;  
 7-5 (C) is confined in a correctional facility while  
 7-6 awaiting further criminal proceedings following competency  
 7-7 restoration treatment; or  
 7-8 (D) is subject to Article 46B.072, if the court  
 7-9 has made the determinations required by Subsection (a-1) [~~(a)~~] of  
 7-10 that article;

7-11 (3) for whom a correctional facility that employs or  
 7-12 contracts with a licensed psychiatrist, an inpatient mental health  
 7-13 facility, a residential care facility, or an outpatient treatment  
 7-14 program provider has prepared a continuity of care plan that  
 7-15 requires the defendant to take psychoactive medications; and

7-16 (4) who, after a hearing held under Section 574.106,  
 7-17 Health and Safety Code, if applicable, has been found to not meet  
 7-18 the criteria prescribed by Sections 574.106(a) and (a-1), Health  
 7-19 and Safety Code, for court-ordered administration of psychoactive  
 7-20 medications.

7-21 SECTION 17. Article 46B.101, Code of Criminal Procedure, is  
 7-22 amended to read as follows:

7-23 Art. 46B.101. APPLICABILITY. This subchapter applies to a  
 7-24 defendant against whom a court is required to proceed according to  
 7-25 [~~under~~] Article 46B.084(e) or according to the court's appropriate  
 7-26 determination under Article 46B.071.

7-27 SECTION 18. Article 46B.151(a), Code of Criminal Procedure,  
 7-28 is amended to read as follows:

7-29 (a) If a court is required by Article 46B.084(f) or by its  
 7-30 appropriate determination under Article 46B.071 to proceed under  
 7-31 this subchapter, or if the court is permitted by Article 46B.004(e)  
 7-32 to proceed under this subchapter, the court shall determine whether  
 7-33 there is evidence to support a finding that the defendant is either  
 7-34 a person with mental illness or a person with mental retardation.

7-35 SECTION 19. The Department of State Health Services, in  
 7-36 coordination with the Health and Human Services Commission, shall  
 7-37 study the feasibility of providing home and community-based  
 7-38 services, instead of institutional care, to persons with severe and  
 7-39 persistent mental illness who have a history of more than one  
 7-40 inpatient commitment under Chapter 46B, Code of Criminal Procedure.  
 7-41 Not later than December 1, 2012, the department shall issue a report  
 7-42 to the legislature regarding the results of the feasibility study.

7-43 SECTION 20. The change in law made by this Act applies only  
 7-44 to a defendant with respect to whom any proceeding under Chapter  
 7-45 46B, Code of Criminal Procedure, is conducted on or after the  
 7-46 effective date of this Act.

7-47 SECTION 21. This Act takes effect September 1, 2011.

7-48 \* \* \* \* \*