

House Bill 2725
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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; [ø]

(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.

No equivalent provision.

SENATE VERSION (IE)

SECTION 1. Same as House version.

CONFERENCE

SECTION __. 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 requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a bona fide doubt about the competency of the defendant. Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003. [FA2(3)]

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

Art. 46B.009. TIME CREDITS. A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence **the time the person is confined** in a mental health facility, residential care facility, or jail:

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

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

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

Art. 46B.0095. MAXIMUM PERIOD OF ~~[FACILITY]~~ COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient treatment program under Subchapter D or E, the maximum period of restoration is two

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

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

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

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

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years ~~[beginning on the date of the initial order for outpatient treatment program participation was entered].~~

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

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

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

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

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

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

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

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

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No equivalent provision.

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

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

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

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

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

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

SECTION 4. Article 46B.022(a), Code of Criminal Procedure, is amended to read as follows:

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

(1) as appropriate, be a physician licensed in this state or be a

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psychologist licensed in this state who has a doctoral degree in psychology; and

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

(A) as appropriate, certification by:

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

(ii) the American Board of Professional 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 [~~for an appointment made before January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts; or~~

~~(iii) for an appointment made on or after January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts and]~~ eight

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

SECTION 5. Article 46B.024, Code of Criminal Procedure, is amended to read as follows:

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

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

(A) rationally understand the charges against the defendant

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and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

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

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

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

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

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

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

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

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

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

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

SECTION 6. Articles 46B.025(a) and (b), Code of Criminal Procedure, are amended to read as follows:

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

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

- (1) identify and address specific issues referred to the expert for evaluation;
- (2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;
- (3) in specific ~~[general]~~ terms, describe procedures, techniques, and tests used in the examination, ~~[and]~~ the purpose of each procedure, technique, or test, and the conclusions reached; and
- (4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

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

- (1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or mental retardation, if any, and the [that] impact of the identified condition on the factors listed in Article 46B.024~~[, contributing to the defendant's incompetency]~~; ~~[and]~~
- (2) an estimate of the period needed to restore the defendant's

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

- (1) identify and address specific issues referred to the expert for evaluation;
- (2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;
- (3) in specific ~~[general]~~ terms, describe procedures, techniques, and tests used in the examination, ~~[and]~~ the purpose of each procedure, technique, or test, and the conclusions reached; and
- (4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

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

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

- (1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or mental retardation, if any, and the [that] impact of the identified condition on the factors listed in Article 46B.024~~[, contributing to the defendant's incompetency]~~; ~~[and]~~
- (2) an estimate of the period needed to restore the defendant's

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competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and
(3) prospective treatment options, if any, appropriate for the defendant.

SECTION 7. Article 46B.071, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY. (a) Except as provided by Subsection (b), on [On] a determination that a defendant is incompetent to stand trial, the court shall:

- (1) commit the defendant to a facility under Article 46B.073; or
- (2) release the defendant on bail under Article 46B.072.

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

- (1) proceed under Subchapter E or F; or
- (2) release the defendant on bail as permitted under Chapter 17.

SECTION 8. Article 46B.072, Code of Criminal Procedure, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

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

(a-1) Subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective

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competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and
(3) prospective treatment options, if any, appropriate for the defendant.

SECTION 8. Same as House version.

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of attaining competency to stand trial and if an appropriate outpatient treatment program is available for the defendant, the court:

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

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

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

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

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

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

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

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

SECTION 9. Articles 46B.073(a) and (b), Code of Criminal Procedure, are amended to read as follows:

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

(b) For further examination and treatment toward the specific objective of the defendant attaining competency to stand trial, ~~the~~ ~~[The]~~ court shall commit a defendant described by

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Subsection (a) to a mental health facility or residential care facility for the applicable [a] period as follows:

- (1) a period of not more than 60 days, if the defendant is charged with an offense punishable as a misdemeanor; or
- (2) a period of not more than 120 days, if the defendant is charged with an offense punishable as a felony [not to exceed 120 days for further examination and treatment toward the specific objective of attaining competency to stand trial].

SECTION 10. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by adding Article 46B.0755 to read as follows:

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

(b) If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant remains incompetent, the court's order under Article 46B.072 or 46B.073 remains in effect, and the defendant shall be transported to the facility or outpatient treatment program as required by Article 46B.075. If after a reexamination of the defendant the applicable expert's report states an opinion that

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the defendant has been restored to competency, the court shall withdraw its order under Article 46B.072 or 46B.073 and proceed under Subsection (c) or (d).

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

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

(2) the court concurs.

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

SECTION 11. Article 46B.077(a), Code of Criminal Procedure, is amended to read as follows:

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

(1) develop an individual program of treatment;

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

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

SECTION 12. Article 46B.079, Code of Criminal Procedure, is amended to read as follows:

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

(b) The head of the facility or outpatient treatment program provider shall promptly notify the court when the head of the facility or outpatient treatment program provider believes that:
(1) the defendant has attained competency to stand trial; or
(2) the defendant is not likely to [~~will not~~] attain competency in the foreseeable future.

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

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the defendant and the attorney representing the state.

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

SECTION 13. Articles 46B.080(b) and (c), Code of Criminal Procedure, are amended to read as follows:

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

(1) the defendant has not attained competency; and

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

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

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

(a) On the return of a defendant to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based ~~[solely]~~ on the report filed under Article

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SECTION 15. Same as House version.

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46B.079(c) and on other medical information or personal history information relating to the defendant. A~~[, unless any]~~ party may object ~~[objects]~~ in writing or in open court to the findings of the report not later than the 15th day after the date on which the court received notification under Article 46B.079. The court shall make the determination not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

SECTION 15. Article 46B.086(a), Code of Criminal Procedure, is amended to read as follows:

- (a) This article applies only to a defendant:
 - (1) who is determined under this chapter to be incompetent to stand trial;
 - (2) who either:
 - (A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient treatment program;
 - (B) is committed to an inpatient mental health facility or a residential care facility for the purpose of competency restoration;
 - (C) is confined in a correctional facility while awaiting further criminal proceedings following competency restoration treatment; or
 - (D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) ~~[(a)]~~ of that article;
 - (3) for whom a correctional facility that employs or contracts with a licensed psychiatrist, an inpatient mental health facility,

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SECTION 16. Articles 46B.086(a) and (c), Code of Criminal Procedure, are amended to read as follows:

- (a) This article applies only to a defendant:
 - (1) who is determined under this chapter to be incompetent to stand trial;
 - (2) who either:
 - (A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient treatment program;
 - (B) is committed to an inpatient mental health facility or a residential care facility for the purpose of competency restoration;
 - (C) is confined in a correctional facility while awaiting further criminal proceedings following competency restoration treatment; or
 - (D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) ~~[(a)]~~ of that article;
 - (3) for whom a correctional facility that employs or contracts with a licensed psychiatrist, an inpatient mental health facility,

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a residential care facility, or an outpatient treatment program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and
(4) who, after a hearing held under Section 574.106, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications.

SECTION 16. Article 46B.101, Code of Criminal Procedure, is amended to read as follows:
Art. 46B.101. APPLICABILITY. This subchapter applies to a defendant against whom a court is required to proceed according to [under] Article 46B.084(e) or according to the court's appropriate determination under Article 46B.071.

SECTION 17. Article 46B.151(a), Code of Criminal Procedure, is amended to read as follows:
(a) If a court is required by Article 46B.084(f) or by its appropriate determination under Article 46B.071 to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) to proceed under this subchapter, the court shall

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a residential care facility, or an outpatient treatment program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and
(4) who, after a hearing held under Section 574.106, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications.

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed [fifth day after the defendant is returned to the committing court], may authorize the director of the correctional facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be conducted using an electronic broadcast system as provided by Article 46B.013. [FA1(1),(2)]

SECTION 17. Same as House version.

SECTION 18. Same as House version.

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determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with mental retardation.

SECTION 18. The Department of State Health Services, in coordination with the Health and Human Services Commission, shall study the feasibility of providing home and community-based services, instead of institutional care, to persons with severe and persistent mental illness who have a history of more than one **inpatient forensic commitment** under Chapter 46B, Code of Criminal Procedure. Not later than December 1, 2012, the department shall issue a report to the legislature regarding the results of the feasibility study.

SECTION 19. The change in law made by this Act applies only to a defendant with respect to whom any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

SECTION 20. This Act takes effect September 1, 2011.

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

SECTION 20. **(a) Except as provided by Subsection (b) of this section,** the change in law made by this Act applies only to a defendant with respect to whom any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

(b) Article 46B.004(c-1), Code of Criminal Procedure, as added by this Act, applies only to a motion suggesting a defendant's incompetency to stand trial made on or after the effective date of this Act. A motion suggesting a defendant's incompetency to stand trial made before the effective date of this Act is covered by the law in effect when the motion was made, and the former law is continued in effect for that purpose. [FA2(1),(2)]

SECTION 21. Same as House version.

CONFERENCE