

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 46B. INCOMPETENCY TO STAND TRIAL

SUBCHAPTER A. GENERAL PROVISIONS

Art. 46B.001. DEFINITIONS. In this chapter:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) "Commission" means the Health and Human Services Commission.

(3) "Competency restoration" means the treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.

(4) "Developmental period" means the period of a person's life from birth through 17 years of age.

(5) "Electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Inpatient mental health facility" has the meaning assigned by Section [571.003](#), Health and Safety Code.

(8) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(9) "Local mental health authority" has the meaning assigned by Section [571.003](#), Health and Safety Code.

(10) "Local intellectual and developmental disability authority" has the meaning assigned by Section [531.002](#), Health and Safety Code.

(11) "Mental health facility" has the meaning assigned

by Section 571.003, Health and Safety Code.

(12) "Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that grossly impairs:

(A) a person's thought, perception of reality, emotional process, or judgment; or

(B) behavior as demonstrated by recent disturbed behavior.

(13) "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

(14) "Subaverage general intellectual functioning" means a measured intelligence two or more standard deviations below the age-group mean, using a standardized psychometric instrument. Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.006, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 2, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 5, eff. September 1, 2019.

Art. 46B.002. APPLICABILITY. This chapter applies to a defendant charged with a felony or with a misdemeanor punishable by confinement.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.0021. FACILITY DESIGNATION. The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

Added by Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 3, eff. June 14, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 6, eff. September 1, 2019.

Art. 46B.003. INCOMPETENCY; PRESUMPTIONS. (a) A person is incompetent to stand trial if the person does not have:

(1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against the person.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.004. RAISING ISSUE OF INCOMPETENCY TO STAND TRIAL.

(a) Either party may suggest by motion, or the trial court may suggest on its own motion, that the defendant may be incompetent to stand trial. A motion suggesting that the defendant may be incompetent to stand trial may be supported by affidavits setting out the facts on which the suggestion is made.

(b) If evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial.

(c) On suggestion that the defendant may be incompetent to stand trial, the court shall determine by informal inquiry whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial.

(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](#).

(d) If the court determines there is evidence to support a finding of incompetency, the court, except as provided by Subsection (e) and Article [46B.005\(d\)](#), shall stay all other proceedings in the case.

(e) At any time during the proceedings under this chapter after the issue of the defendant's incompetency to stand trial is first raised, the court on the motion of the attorney representing the state may dismiss all charges pending against the defendant, regardless of whether there is any evidence to support a finding of the defendant's incompetency under Subsection (d) or whether the court has made a finding of incompetency under this chapter. If the court dismisses the charges against the defendant, the court may not continue the proceedings under this chapter, except that, if there is evidence to support a finding of the defendant's incompetency under Subsection (d), the court may proceed under Subchapter F. If the court does not elect to proceed under Subchapter F, the court shall discharge the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 2, eff. September 1, 2011.

Art. 46B.005. DETERMINING INCOMPETENCY TO STAND TRIAL. (a) If after an informal inquiry the court determines that evidence exists to support a finding of incompetency, the court shall order an examination under Subchapter B to determine whether the defendant is incompetent to stand trial in a criminal case.

(b) Except as provided by Subsection (c), the court shall hold a trial under Subchapter C before determining whether the defendant is incompetent to stand trial on the merits.

(c) A trial under this chapter is not required if:

(1) neither party's counsel requests a trial on the issue of incompetency;

(2) neither party's counsel opposes a finding of incompetency; and

(3) the court does not, on its own motion, determine that a trial is necessary to determine incompetency.

(d) If the issue of the defendant's incompetency to stand trial is raised after the trial on the merits begins, the court may determine the issue at any time before the sentence is pronounced. If the determination is delayed until after the return of a verdict, the court shall make the determination as soon as reasonably possible after the return. If a verdict of not guilty is returned, the court may not determine the issue of incompetency. Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.006. APPOINTMENT OF AND REPRESENTATION BY COUNSEL.

(a) A defendant is entitled to representation by counsel before any court-ordered competency evaluation and during any proceeding at which it is suggested that the defendant may be incompetent to stand trial.

(b) If the defendant is indigent and the court has not appointed counsel to represent the defendant, the court shall appoint counsel as necessary to comply with Subsection (a).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.007. ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER EVIDENCE. A statement made by a defendant during an examination or trial on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:

(1) a trial on the defendant's incompetency; or

(2) any proceeding at which the defendant first introduces into evidence a statement, testimony, or evidence described by this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.008. RULES OF EVIDENCE. Notwithstanding Rule 101, Texas Rules of Evidence, the Texas Rules of Evidence apply to a trial under Subchapter C or other proceeding under this chapter whether the proceeding is before a jury or before the court.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

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 person may be confined in a mental health facility, residential care facility, or jail:

(1) any period of confinement that occurs pending a determination 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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 3, eff. September 1, 2011.

Art. 46B.0095. MAXIMUM PERIOD OF COMMITMENT OR 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 or to a jail-based competency restoration program, ordered to participate in an outpatient competency restoration or treatment program, or subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter 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 competency restoration or treatment program under Subchapter D or E, the maximum period of restoration is two years.

(b) On expiration of the maximum restoration period under Subsection (a), the mental hospital, facility, or program provider identified in the most recent order of commitment or order of outpatient competency restoration or treatment program participation under this chapter shall assess the defendant to determine if civil proceedings under Subtitle C or D, Title 7, Health and Safety Code, are appropriate. The defendant may be confined for an additional period in a mental hospital or other facility or may be ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil 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 competency restoration or treatment program participation is entered under this chapter; and

(2) in addition to any inpatient or outpatient competency restoration periods or program participation 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:

(i) a mental hospital or other inpatient or residential facility; or

(ii) a jail-based competency restoration program;

(B) the defendant's release on bail to participate in an outpatient competency restoration or 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 competency restoration or treatment program participation is entered under this chapter.

(e) In addition to the time credit awarded under Subsection (d), the court may credit to the cumulative period described by Subsection (a) any good conduct time the defendant may have been granted under Article 42.032 in relation to the defendant's confinement as described by Subsection (d).

Added by Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.010(b), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.010(c), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.010(d), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 627 (S.B. 1326), Sec. 1, eff.

September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 627 (S.B. 1326), Sec. 3, eff.

September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 6, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 7, eff.

September 1, 2017.

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 or to a jail-based competency restoration program, that the defendant participate in an outpatient competency restoration or treatment program, or that the defendant be subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter, and the defendant is not tried before the expiration of the maximum period of restoration 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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 2, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 4, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 5, eff.

September 1, 2011.

Reenacted by Acts 2015, 84th Leg., R.S., Ch. 627 (S.B. 1326), Sec. 2, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 8, eff. September 1, 2017.

Art. 46B.011. APPEALS. Neither the state nor the defendant is entitled to make an interlocutory appeal relating to a determination or ruling under Article 46B.005.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 3, eff. September 1, 2005.

Art. 46B.012. COMPLIANCE WITH CHAPTER. The failure of a person to comply with this chapter does not provide a defendant with a right to dismissal of charges.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.013. USE OF ELECTRONIC BROADCAST SYSTEM IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted using an electronic broadcast system as permitted by this chapter and in accordance with the other provisions of this code if:

(1) written consent to the use of an electronic broadcast system is filed with the court by:

(A) the defendant or the attorney representing the defendant; and

(B) the attorney representing the state;

(2) the electronic broadcast system provides for a simultaneous, compressed full motion video, and interactive communication of image and sound between the judge, the attorney representing the state, the attorney representing the defendant, and the defendant; and

(3) on request of the defendant or the attorney representing the defendant, the defendant and the attorney representing the defendant are able to communicate privately

without being recorded or heard by the judge or the attorney representing the state.

(b) On the motion of the defendant, the attorney representing the defendant, or the attorney representing the state or on the court's own motion, the court may terminate an appearance made through an electronic broadcast system at any time during the appearance and require an appearance by the defendant in open court.

(c) A recording of the communication shall be made and preserved until any appellate proceedings have been concluded. The defendant may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

Added by Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 4, eff. September 1, 2005.

SUBCHAPTER B. EXAMINATION

Art. 46B.021. APPOINTMENT OF EXPERTS. (a) On a suggestion that the defendant may be incompetent to stand trial, the court may appoint one or more disinterested experts to:

(1) examine the defendant and report to the court on the competency or incompetency of the defendant; and

(2) testify as to the issue of competency or incompetency of the defendant at any trial or hearing involving that issue.

(b) On a determination that evidence exists to support a finding of incompetency to stand trial, the court shall appoint one or more experts to perform the duties described by Subsection (a).

(c) An expert involved in the treatment of the defendant may not be appointed to examine the defendant under this article.

(d) The movant or other party as directed by the court shall provide to experts appointed under this article information relevant to a determination of the defendant's competency, including copies of the indictment or information, any supporting documents used to establish probable cause in the case, and previous mental health evaluation and treatment records.

(e) The court may appoint as experts under this chapter qualified psychiatrists or psychologists employed by the local mental health authority or local intellectual and developmental disability authority. The local mental health authority or local intellectual and developmental disability authority is entitled to compensation and reimbursement as provided by Article 46B.027.

(f) If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the expert with reasonable opportunity to examine the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.007, eff. April 2, 2015.

Art. 46B.022. EXPERTS: QUALIFICATIONS. (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 psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification 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) training consisting of:

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

(ii) at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment.

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed six hours of required continuing

education in courses in forensic psychiatry or psychology, as appropriate, in either of the reporting periods in the 24 months preceding the appointment.

(c) A court may appoint as an expert a psychiatrist or psychologist who does not meet the requirements of Subsections (a) and (b) only if exigent circumstances require the court to base the appointment on professional training or experience of the expert that directly provides the expert with a specialized expertise to examine the defendant that would not ordinarily be possessed by a psychiatrist or psychologist who meets the requirements of Subsections (a) and (b).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 6, eff. September 1, 2011.

Art. 46B.023. CUSTODY STATUS. During an examination under this subchapter, except as otherwise ordered by the court, the defendant shall be maintained under the same custody or status as the defendant was maintained under immediately before the examination began.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

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 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) is a person with mental illness; or

(B) is a person with an intellectual disability;

(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 the mental illness or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(5) 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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 7, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 6.008, eff. April 2, 2015.

Art. 46B.025. EXPERT'S REPORT. (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 terms, describe procedures, techniques, and tests used in the examination, 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 intellectual disability, if any, and the impact of the identified condition on the factors listed in Article [46B.024](#);

(2) an estimate of the period needed to restore the defendant's 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.

(c) An expert's report may not state the expert's opinion on the defendant's sanity at the time of the alleged offense, if in the opinion of the expert the defendant is incompetent to proceed.

(d) The court shall direct an expert to provide the expert's report to the court and the appropriate parties in the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section [614.0032\(b\)](#), Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1269 (H.B. [2194](#)), Sec. 1, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 8, eff.

September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 6.009, eff. April 2, 2015.

Art. 46B.026. REPORT DEADLINE. (a) Except as provided by Subsection (b), an expert examining the defendant shall provide the report on the defendant's competency or incompetency to stand trial to the court, the attorney representing the state, and the attorney representing the defendant not later than the 30th day after the date on which the expert was ordered to examine the defendant and prepare the report.

(b) For good cause shown, the court may permit an expert to complete the examination and report and provide the report to the court and attorneys at a date later than the date required by Subsection (a).

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 35(1), eff. September 1, 2017.

(d) The court shall submit to the Office of Court Administration of the Texas Judicial System on a monthly basis the number of reports provided to the court under this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1269 (H.B. [2194](#)), Sec. 2, eff. June 18, 2005.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 9, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 35(1), eff. September 1, 2017.

Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF FACILITIES. (a) For any appointment under this chapter, the county in which the indictment was returned or information was filed shall pay for services described by Articles [46B.021](#)(a)(1) and (2). If those services are provided by an expert who is an employee of the local mental health authority or local intellectual and developmental disability authority, the county shall pay the authority for the services.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are reasonably necessary and incidental to the proper examination of the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.010, eff. April 2, 2015.

SUBCHAPTER C. INCOMPETENCY TRIAL

Art. 46B.051. TRIAL BEFORE JUDGE OR JURY. (a) If a court holds a trial to determine whether the defendant is incompetent to stand trial, on the request of either party or the motion of the court, a jury shall make the determination.

(b) The court shall make the determination of incompetency if a jury determination is not required by Subsection (a).

(c) If a jury determination is required by Subsection (a), a jury that has not been selected to determine the guilt or innocence of the defendant must determine the issue of incompetency.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 6, eff. September 1, 2005.

Art. 46B.052. JURY VERDICT. (a) If a jury determination of the issue of incompetency to stand trial is required by Article 46B.051(a), the court shall require the jury to state in its verdict whether the defendant is incompetent to stand trial.

(b) The verdict must be concurred in by each juror.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.053. PROCEDURE AFTER FINDING OF COMPETENCY. If the court or jury determines that the defendant is competent to stand trial, the court shall continue the trial on the merits. If a jury determines that the defendant is competent and the trial on the

merits is to be held before a jury, the court shall continue the trial with another jury selected for that purpose.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 7, eff. September 1, 2005.

Art. 46B.054. UNCONTESTED INCOMPETENCY. If the court finds that evidence exists to support a finding of incompetency to stand trial and the court and the counsel for each party agree that the defendant is incompetent to stand trial, the court shall proceed in the same manner as if a jury had been impaneled and had found the defendant incompetent to stand trial.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 7, eff. September 1, 2005.

Art. 46B.055. PROCEDURE AFTER FINDING OF INCOMPETENCY. If the defendant is found incompetent to stand trial, the court shall proceed under Subchapter D.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER D. PROCEDURES AFTER DETERMINATION OF INCOMPETENCY

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

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

(1) if the defendant is charged with an offense punishable as a Class B misdemeanor:

(A) release the defendant on bail under Article 46B.0711; or

(B) commit the defendant to:

(i) a jail-based competency restoration program under Article 46B.073(e); or

(ii) a mental health facility or residential care facility under Article 46B.073(f); or

(2) if the defendant is charged with an offense punishable as a Class A misdemeanor or any higher category of offense:

(A) release the defendant on bail under Article [46B.072](#); or

(B) commit the defendant to a facility or a jail-based competency restoration program under Article [46B.073](#)(c) or (d).

(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](#).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 9, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 10, eff. September 1, 2017.

Art. 46B.0711. RELEASE ON BAIL FOR CLASS B MISDEMEANOR.

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

(b) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a Class B misdemeanor and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court shall:

(1) release the defendant on bail or continue the defendant's release on bail; and

(2) order the defendant to participate in an outpatient competency restoration program for a period not to

exceed 60 days.

(c) Notwithstanding Subsection (b), the court may order a defendant to participate in an outpatient competency restoration 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.

(d) An order issued under this article may require the defendant to participate in:

(1) as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment.

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 11, eff. September 1, 2017.

Art. 46B.072. RELEASE ON BAIL FOR FELONY OR CLASS A MISDEMEANOR. (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 ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a felony or a Class A misdemeanor and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court:

(1) may release on bail a defendant found incompetent to stand trial with respect to an offense punishable as 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 an offense punishable as a Class 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) to participate in an outpatient competency restoration program for a period not to exceed 120 days.

(c) Notwithstanding Subsection (a-1), the court may order a defendant to participate in an outpatient competency restoration 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.

(d) An order issued under this article may require the defendant to participate in:

(1) as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides outpatient competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication, including those required under Article [46B.086](#).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 10, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 12, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 13, eff. September 1, 2017.

Art. 46B.073. COMMITMENT FOR RESTORATION TO COMPETENCY.

(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 purposes of further examination and competency restoration services with the specific objective of the defendant attaining competency to stand trial, the court shall commit a defendant described by Subsection (a) to a mental health facility, residential care facility, or jail-based competency restoration program for the applicable 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.

(c) If the defendant is charged with an offense listed in Article [17.032](#)(a) or if the indictment alleges an affirmative finding under Article [42A.054](#)(c) or (d), the court shall enter an order committing the defendant for competency restoration services to a facility designated by the commission.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Article [42A.054](#)(c) or (d), the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority or to a jail-based competency restoration program. A defendant may be committed to a jail-based competency restoration program only if the program provider determines the defendant will begin to receive competency restoration services within 72 hours of arriving at the program.

(e) Except as provided by Subsection (f), a defendant charged with an offense punishable as a Class B misdemeanor may be committed under this subchapter only to a jail-based competency

restoration program.

(f) A defendant charged with an offense punishable as a Class B misdemeanor may be committed to a mental health facility or residential care facility described by Subsection (d) only if a jail-based competency restoration program is not available or a licensed or qualified mental health professional determines that a jail-based competency restoration program is not appropriate.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 797 (S.B. 1475), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.011, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.20, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.15(b), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 14, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 4, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 7, eff. September 1, 2019.

Art. 46B.0735. DATE COMPETENCY RESTORATION PERIOD BEGINS. The initial restoration period for a defendant under Article 46B.0711, 46B.072, or 46B.073 begins on the later of:

(1) the date the defendant is:

(A) ordered to participate in an outpatient competency restoration program; or

(B) committed to a mental health facility,

residential care facility, or jail-based competency restoration program; or

(2) the date competency restoration services actually begin.

Added by Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 4, eff. September 1, 2021.

Art. 46B.074. COMPETENT TESTIMONY REQUIRED. (a) A defendant may be committed to a jail-based competency restoration program, mental health facility, or residential care facility under this subchapter only on competent medical or psychiatric testimony provided by an expert qualified under Article 46B.022.

(b) The court may allow an expert to substitute the expert's report under Article 46B.025 for any testimony by the expert that may be required under this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 10, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 15, eff. September 1, 2017.

Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR PROGRAM. An order issued under Article 46B.0711, 46B.072, or 46B.073 must place the defendant in the custody of the sheriff or sheriff's deputy for transportation to the facility or program, as applicable, in which the defendant is to receive competency restoration services.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 5, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 16, eff. September 1, 2017.

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 the facility or 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.0711, 46B.072, or 46B.073 remains in effect, and the defendant shall be transported to the facility or program as required by Article 46B.075. If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant has been restored to competency, the court shall withdraw its order under Article 46B.0711, 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.0711, 46B.072, or 46B.073, as appropriate based on the defendant's current condition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 12, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 17, eff. September 1, 2017.

Art. 46B.076. COURT'S ORDER. (a) If the defendant is found incompetent to stand trial, not later than the date of the order of commitment or of release on bail, as applicable, the court shall send a copy of the order to the applicable facility or program. The court shall also provide to the facility or program copies of the following made available to the court during the incompetency trial:

- (1) reports of each expert;
- (2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;
- (3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;
- (4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;
- (5) the defendant's criminal history record; and
- (6) the addresses of the attorney representing the state and the attorney representing the defendant.

(b) The court shall order that the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the applicable facility or program. Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 6.012, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 18, eff. September 1, 2017.

Art. 46B.077. INDIVIDUAL TREATMENT PROGRAM. (a) The facility or jail-based competency restoration program to which the defendant is committed or the outpatient competency restoration 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 competency in the foreseeable future; and
- (3) report to the court and to the local mental health authority or to the local intellectual and developmental disability authority on the defendant's progress toward achieving competency.

(b) If the defendant is committed to an inpatient mental health facility, residential care facility, or jail-based competency restoration program, the facility or program shall report to the court at least once during the commitment period.

(c) If the defendant is released to an outpatient competency restoration program, the program shall report to the court:

- (1) not later than the 14th day after the date on which the defendant's competency restoration services begin; and
- (2) until the defendant is no longer released to the program, at least once during each 30-day period following the date of the report required by Subdivision (1).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.013, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 19, eff. September 1, 2017.

Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the charges pending against a defendant are dismissed, the court that issued the order under Article 46B.0711, 46B.072, or 46B.073 shall send a copy of the order of dismissal to the sheriff of the county in

which the court is located and to the head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate. On receipt of the copy of the order, the facility or program shall discharge the defendant into the care of the sheriff or sheriff's deputy for transportation in the manner described by Article [46B.082](#).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 7, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 20, eff. September 1, 2017.

Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate, not later than the 15th day before the date on which the initial 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 period is about to expire.

(b) The head of the facility or jail-based competency restoration program provider shall promptly notify the court when the head of the facility or program provider believes that:

(1) the defendant is clinically ready and can be safely transferred to a competency restoration program for education services but has not yet attained competency to stand trial;

(2) the defendant has attained competency to stand trial; or

(3) the defendant is not likely to attain competency in the foreseeable future.

(b-1) The outpatient competency restoration program provider shall promptly notify the court when the program provider believes that:

(1) the defendant has attained competency to stand

trial; or

(2) the defendant is not likely to attain competency in the foreseeable future.

(c) When the head of the facility or program provider gives notice to the court under Subsection (a), (b), or (b-1), the head of the facility or program provider also shall file a final report with the court stating the reason for the proposed discharge or transfer under this chapter and including a list of the types and dosages of medications prescribed for the defendant while the defendant was receiving competency restoration services in the facility or through the program. The court shall provide to the attorney representing the defendant and the attorney representing the state copies of a report based on notice under this article, other than notice under Subsection (b)(1), to enable any objection to the findings of the report to be made in a timely manner as required under Article [46B.084\(a-1\)](#).

(d) If the head of the facility or 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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 994 (H.B. [211](#)), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 21, eff. September 1, 2017.

Art. 46B.080. EXTENSION OF ORDER. (a) On a request of the

head of a facility or a program provider that is made under Article 46B.079(d) and notwithstanding any other provision of this subchapter, the court may enter an order extending the initial restoration period for an additional period of 60 days.

(b) The court may enter an order under Subsection (a) only if the court determines that:

(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.

(d) An extension under this article begins on the later of:

(1) the date the court enters the order under Subsection (a); or

(2) the date competency restoration services actually begin pursuant to the order entered under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 15, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 22, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 5, eff. September 1, 2021.

Art. 46B.0805. COMPETENCY RESTORATION EDUCATION SERVICES.

(a) On notification from the head of a facility or a jail-based competency restoration program provider under Article 46B.079(b)(1), the court shall order the defendant to receive competency restoration education services in a jail-based competency restoration program or an outpatient competency

restoration program, as appropriate and if available.

(b) If a defendant for whom an order is entered under Subsection (a) was committed for competency restoration to a facility other than a jail-based competency restoration program, the court shall send a copy of that order to:

(1) the sheriff of the county in which the court is located;

(2) the head of the facility to which the defendant was committed for competency restoration; and

(3) the local mental health authority or local intellectual and developmental disability authority, as appropriate.

(c) As soon as practicable but not later than the 10th day after the date of receipt of a copy of an order under Subsection (b)(2), the applicable facility shall discharge the defendant into the care of the sheriff of the county in which the court is located or into the care of the sheriff's deputy. The sheriff or sheriff's deputy shall transport the defendant to the jail-based competency restoration program or outpatient competency restoration program, as appropriate.

(d) A jail-based competency restoration program or outpatient competency restoration program that receives a defendant under this article shall give to the court:

(1) notice regarding the defendant's entry into the program for purposes of receiving competency restoration education services; and

(2) subsequent notice as otherwise required under Article [46B.079](#).

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 23, eff. September 1, 2017.

Art. [46B.081](#). RETURN TO COURT. Subject to Article [46B.082](#)(b), a defendant committed or released on bail under this subchapter shall be returned to the applicable court as soon as practicable after notice to the court is provided under Article [46B.079](#)(a), (b)(2), (b)(3), or (b-1), but not later than the date of expiration of the period for restoration specified by the court

under Article [46B.0711](#), [46B.072](#), or [46B.073](#).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 7, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 24, eff. September 1, 2017.

Art. 46B.082. TRANSPORTATION OF DEFENDANT TO COURT.

(a) On notification from the court under Article [46B.078](#), the sheriff of the county in which the court is located or the sheriff's deputy shall transport the defendant to the court.

(b) If before the 15th day after the date on which the court received notification under Article [46B.079](#)(a), (b)(2), (b)(3), or (b-1) a defendant committed to a facility or jail-based competency restoration program or ordered to participate in an outpatient competency restoration program has not been transported to the court that issued the order under Article [46B.0711](#), [46B.072](#), or [46B.073](#), as applicable, the head of the facility or provider of the jail-based competency restoration program to which the defendant is committed or the provider of the outpatient competency restoration program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse the Health and Human Services Commission or program provider, as appropriate, for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 6.014, eff.

April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 25, eff. September 1, 2017.

Art. 46B.0825. ADMINISTRATION OF MEDICATION WHILE IN CUSTODY OF SHERIFF. (a) A sheriff or sheriff's deputy having custody of a defendant for transportation as required by Article 46B.0805 or 46B.082 or during proceedings described by Article 46B.084 shall, according to information available at the time and unless directed otherwise by a physician treating the defendant, ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant.

(b) To the extent funds are appropriated for that purpose, a sheriff is entitled to reimbursement from the state for providing the medication required by Subsection (a).

(c) If the sheriff determines that funds are not available from the state to reimburse the sheriff as provided by Subsection (b), the sheriff is not required to comply with Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 23, eff. September 1, 2017.

Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY OR PROGRAM. (a) If the head of the facility, the jail-based competency restoration program provider, or the outpatient competency restoration program provider believes that the defendant is a person with mental illness and meets the criteria for court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility or the program provider shall have submitted to the court a certificate of medical examination for mental illness.

(b) If the head of the facility, the jail-based competency restoration program provider, or the outpatient competency restoration program provider believes that the defendant is a person with an intellectual disability, the head of the facility or the program provider shall have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.015, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 26, eff. September 1, 2017.

Art. 46B.0831. DETERMINATION WHETHER DEFENDANT IS MANIFESTLY DANGEROUS. A defendant committed to a maximum security unit by the commission may be assessed, at any time before the defendant is restored to competency, by the review board established under Section 46B.105 to determine whether the defendant is manifestly dangerous. If the review board determines the defendant is not manifestly dangerous, the commission shall transfer the defendant to a non-maximum security facility designated by the commission.

Added by Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 5, eff. June 14, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 8, eff. September 1, 2019.

Art. 46B.084. PROCEEDINGS ON RETURN OF DEFENDANT TO COURT.
(a)(1) Not later than the next business day following the return of a defendant to the court, the court shall notify the attorney representing the state and the attorney for the defendant regarding the return. Within three business days of the date that notice is received under this subsection or, on a showing of good cause, a later date specified by the court, the attorney for the defendant shall meet and confer with the defendant to evaluate whether there is any suggestion that the defendant has not yet regained competency.

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, as soon as practicable

following the date of the defendant's return to the court, the court shall provide the notice required by that subdivision to the attorney representing the state and the attorney for the defendant, and the attorney for the defendant shall meet and confer with the defendant as soon as practicable after the date of receipt of that notice.

(a-1)(1) Following the defendant's return 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 only on the most recent report that is filed under Article [46B.079\(c\)](#) and based on notice under that article, other than notice under Subsection (b)(1) of that article, and on other medical information or personal history information relating to the defendant. A party may object in writing or in open court to the findings of the most recent report not later than the 15th day after the date on which the court received the applicable notice under Article [46B.079](#). The court shall make the determination not later than the 20th day after the date on which the court received the applicable notice under Article [46B.079](#), or not later than the fifth day after the date of the defendant's return to court, whichever occurs first, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, the court shall make the determination described by that subdivision 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 that subdivision and the issue is set for a hearing under Subsection (b).

(b) If a party objects under Subsection (a-1), the issue shall be set for a hearing. The hearing is before the court, except that on motion by the defendant, the defense counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury.

(b-1) If the hearing is before the court, the hearing may be

conducted by means of an electronic broadcast system as provided by Article [46B.013](#). Notwithstanding any other provision of this chapter, the defendant is not required to be returned to the court with respect to any hearing that is conducted under this article in the manner described by this subsection.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1307, Sec. 21, eff. September 1, 2007.

(d)(1) If the defendant is found competent to stand trial, on the court's own motion criminal proceedings in the case against the defendant shall be resumed not later than the 14th day after the date of the court's determination under this article that the defendant's competency has been restored.

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, on the court's own motion criminal proceedings in the case against the defendant shall be resumed as soon as practicable after the date of the court's determination under this article that the defendant's competency has been restored.

(d-1) This article does not require the criminal case to be finally resolved within any specific period.

(e) If the defendant is found incompetent to stand trial and if all charges pending against the defendant are not dismissed, the court shall proceed under Subchapter E.

(f) If the defendant is found incompetent to stand trial and if all charges pending against the defendant are dismissed, the court shall proceed under Subchapter F.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 21, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. [2725](#)), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 994 (H.B. 211), Sec. 2, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 27, eff. September 1, 2017.

Art. 46B.085. SUBSEQUENT RESTORATION PERIODS AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may order only one initial period of restoration and one extension under this subchapter in connection with the same offense.

(b) After an initial restoration period and an extension are ordered as described by Subsection (a), any subsequent court orders for treatment must be issued under Subchapter E or F.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 16, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 9, eff. September 1, 2007.

Art. 46B.086. COURT-ORDERED MEDICATIONS. (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 competency restoration program;

(B) is committed to an inpatient mental health facility, a residential care facility, or a jail-based competency restoration program for the purpose of competency restoration;

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

(D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) of that

article;

(3) for whom a correctional facility or jail-based competency restoration program that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient competency restoration 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 or 592.156, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1) or 592.156(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) If a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, the director of the facility or the program provider, as applicable, shall notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal. The court shall promptly notify the attorney representing the state and the attorney representing the defendant of the defendant's refusal. The attorney representing the state may file a written motion to compel medication. The motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106 or 592.156, Health and Safety Code, except that, for a defendant in an outpatient competency restoration program, the motion may be filed at any time.

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed, may authorize the director of the 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.

(d) The court may issue an order under this article only if the order is supported by the testimony of two physicians, one of

whom is the physician at or with the applicable facility or program who is prescribing the medication as a component of the defendant's continuity of care plan and another who is not otherwise involved in proceedings against the defendant. The court may require either or both physicians to examine the defendant and report on the examination to the court.

(e) The court may issue an order under this article if the court finds by clear and convincing evidence that:

(1) the prescribed medication is medically appropriate, is in the best medical interest of the defendant, and does not present side effects that cause harm to the defendant that is greater than the medical benefit to the defendant;

(2) the state has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial;

(3) no other less invasive means of obtaining and maintaining the defendant's competency exists; and

(4) the prescribed medication will not unduly prejudice the defendant's rights or use of defensive theories at trial.

(f) A statement made by a defendant to a physician during an examination under Subsection (d) may not be admitted against the defendant in any criminal proceeding, other than at:

(1) a hearing on the defendant's incompetency; or

(2) any proceeding at which the defendant first introduces into evidence the contents of the statement.

(g) For a defendant described by Subsection (a)(2)(A), an order issued under this article:

(1) authorizes the initiation of any appropriate mental health treatment for the defendant awaiting transfer; and

(2) does not constitute authorization to retain the defendant in a correctional facility for competency restoration treatment.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 8, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 9, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 17, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 28, eff. September 1, 2017.

Art. 46B.091. JAIL-BASED COMPETENCY RESTORATION PROGRAM IMPLEMENTED BY COUNTY.

(a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 11(2), eff. September 1, 2021.

(b) A county or counties jointly may develop and implement a jail-based competency restoration program.

(c) A county that implements a program under this article shall contract with a provider of jail-based competency restoration services that is a local mental health authority or local behavioral health authority that is in good standing with the commission, which may include an authority that is in good standing with the commission and subcontracts with a provider of jail-based competency restoration services.

(d) A jail-based competency restoration program must:

(1) provide jail-based competency restoration services through the use of a multidisciplinary treatment team that are:

(A) directed toward the specific objective of restoring the defendant's competency to stand trial; and

(B) similar to other competency restoration programs;

(2) employ or contract for the services of at least one psychiatrist;

(3) provide jail-based competency restoration services through licensed or qualified mental health professionals;

(4) provide weekly competency restoration hours

commensurate to the hours provided as part of a competency restoration program at an inpatient mental health facility;

(5) operate in the jail in a designated space that is separate from the space used for the general population of the jail;

(6) ensure coordination of general health care;

(7) provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and

(8) supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article [46B.086](#) of this code or Section [574.106](#), Health and Safety Code.

(e) The executive commissioner shall adopt rules as necessary for a county to develop and implement a program under this article. The commission shall, as part of the rulemaking process, establish contract monitoring and oversight requirements for a local mental health authority or local behavioral health authority that contracts with a county to provide jail-based competency restoration services under this article. The contract monitoring and oversight requirements must be consistent with local mental health authority or local behavioral health authority performance contract monitoring and oversight requirements, as applicable.

(f) The commission may inspect on behalf of the state any aspect of a program implemented under this article.

(g) A psychiatrist or psychologist for the provider who has the qualifications described by Article [46B.022](#) shall evaluate the defendant's competency and report to the court as required by Article [46B.079](#).

(h) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall consider that report as the report of an expert stating an opinion that the defendant has been restored

to competency for purposes of Article 46B.0755(a) or (b).

(i) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall:

(A) proceed under Subchapter E or F and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant, as provided under Subchapter E or F, as applicable; or

(B) release the defendant on bail as permitted under Chapter 17.

(j) If the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the program, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this subchapter, including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

(1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or

(2) for a defendant charged with a felony or a misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 days are remaining under the extension order.

(j-1) After receipt of a notice under Subsection (j), the defendant shall be transferred without unnecessary delay to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by this subchapter, including any extension that

may be ordered under Article [46B.080](#) if an extension has not previously been ordered under that article. If the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by this subchapter, the defendant shall be returned to the court for further proceedings. For a defendant charged with a misdemeanor, the court may:

- (1) proceed under Subchapter E or F;
- (2) release the defendant on bail as permitted under Chapter [17](#); or
- (3) dismiss the charges in accordance with Article [46B.010](#).

(k) Unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article [46B.0095](#), apply to a defendant receiving competency restoration services, including competency restoration education services, under a program implemented under this article in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(l) This article does not affect the responsibility of a county to ensure the safety of a defendant who is committed to the program and to provide the same adequate care to the defendant as is provided to other inmates of the jail in which the defendant is located.

(m) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

(1) the court determines that the defendant is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial; and

(2) the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

Added by Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. [1326](#)), Sec. 30, eff. September 1, 2017.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 11(2), eff. September 1, 2021.

SUBCHAPTER E. CIVIL COMMITMENT: CHARGES PENDING

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

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 18, eff. September 1, 2011.

Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS.

(a) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety Code.

(b) Proceedings for commitment of the defendant to court-ordered mental health services are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(c) If the court enters an order committing the defendant to a mental health facility, the defendant shall be:

(1) treated in conformity with Subtitle C, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application for court-ordered temporary or

extended mental health services may not be required;

(2) the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 10, eff. September 1, 2007.

Art. 46B.103. CIVIL COMMITMENT HEARING: INTELLECTUAL DISABILITY. (a) If it appears to the court that the defendant may be a person with an intellectual disability, the court shall hold a hearing to determine whether the defendant is a person with an intellectual disability.

(b) Proceedings for commitment of the defendant to a residential care facility are governed by Subtitle D, Title 7, Health and Safety Code, to the extent that Subtitle D applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(c) If the court enters an order committing the defendant to a residential care facility, the defendant shall be:

(1) treated and released in accordance with Subtitle D, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application to have the defendant declared a person with an intellectual disability may not be required;

(2) the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a

residential care facility under Subtitle D, Title 7, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 11, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.017, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.018, eff. April 2, 2015.

Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the facility designated by the commission if:

(1) the defendant is charged with an offense listed in Article 17.032(a); or

(2) the indictment charging the offense alleges an affirmative finding under Article 42A.054(c) or (d).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 20, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.019, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.21, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 6, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 9, eff. September 1, 2019.

Art. 46B.105. TRANSFER FOLLOWING CIVIL COMMITMENT PLACEMENT. (a) Unless a defendant committed to a maximum security unit by the commission is determined to be manifestly dangerous by a

review board established under Subsection (b), not later than the 60th day after the date the defendant arrives at the maximum security unit, the defendant shall be transferred to:

(1) a unit of an inpatient mental health facility other than a maximum security unit;

(2) a residential care facility; or

(3) a program designated by a local mental health authority or a local intellectual and developmental disability authority.

(b) The executive commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or an intellectual disability, to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(c) The review board may not make a determination as to the defendant's need for treatment.

(d) A finding that the defendant is not manifestly dangerous is not a medical determination that the defendant no longer meets the criteria for involuntary civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(e) If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, the matter shall be referred to the executive commissioner. The executive commissioner shall decide whether the defendant is manifestly dangerous.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 21, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.020, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 7, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 10, eff. September 1, 2019.

Art. 46B.1055. MODIFICATION OF ORDER FOLLOWING INPATIENT CIVIL COMMITMENT PLACEMENT. (a) This article applies to a defendant who has been transferred under Article 46B.105 from a maximum security unit to any facility other than a maximum security unit.

(b) The defendant, the head of the facility to which the defendant is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order the defendant to participate in an outpatient treatment program.

(c) If the head of the facility to which the defendant is committed makes a request under Subsection (b), not later than the 14th day after the date of the request the court shall hold a hearing to determine whether the court should modify the order for inpatient treatment or residential care in accordance with Subtitle C, Title 7, Health and Safety Code.

(d) If the defendant or the attorney representing the state makes a request under Subsection (b), not later than the 14th day after the date of the request the court shall grant the request, deny the request, or hold a hearing on the request to determine whether the court should modify the order for inpatient treatment or residential care. A court is not required to hold a hearing under this subsection unless the request and any supporting materials provided to the court provide a basis for believing modification of the order may be appropriate.

(e) On receipt of a request to modify an order under Subsection (b), the court shall require the local mental health authority or local behavioral health authority to submit to the court, before any hearing is held under this article, a statement regarding whether treatment and supervision for the defendant can be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services are available to the defendant.

(f) If the head of the facility to which the defendant is committed believes that the defendant is a person with mental illness who meets the criteria for court-ordered outpatient mental

health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility shall submit to the court before the hearing a certificate of medical examination for mental illness stating that the defendant meets the criteria for court-ordered outpatient mental health services.

(g) If a request under Subsection (b) is made by a defendant before the 91st day after the date the court makes a determination on a previous request under that subsection, the court is not required to act on the request until the earlier of:

(1) the expiration of the current order for inpatient treatment or residential care; or

(2) the 91st day after the date of the court's previous determination.

(h) Proceedings for commitment of the defendant to a court-ordered outpatient treatment program are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings regardless of whether the criminal court is also the county court.

(i) The court shall rule on a request made under Subsection (b) as soon as practicable after a hearing on the request, but not later than the 14th day after the date of the request.

(j) An outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

Added by Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 8, eff. September 1, 2021.

Art. 46B.106. CIVIL COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE. (a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to:

(1) a facility designated by the commission; or

(2) an outpatient treatment program.

(b) A facility or outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 13, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.021, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 8, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 11, eff. September 1, 2019.

Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT.

(a) The release of a defendant committed under this chapter from the commission, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(b) If the head of the facility or outpatient treatment provider to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, the head of the facility or outpatient treatment provider shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility or outpatient treatment provider intends to release the defendant.

(c) The head of the facility or outpatient treatment provider shall provide with the notice a written statement that states an opinion as to whether the defendant to be released has attained competency to stand trial.

(d) The court shall, on receiving notice from the head of a facility or outpatient treatment provider of intent to release the defendant under Subsection (b), hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may, on motion of the attorney representing the state or on its own motion, hold a

hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code, regardless of whether the court receives notice that the head of a facility or outpatient treatment provider provides notice of intent to release the defendant under Subsection (b). The court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as provided by Article 46B.013.

(e) If the court determines that release is not appropriate, the court shall enter an order directing the head of the facility or the outpatient treatment provider to not release the defendant.

(f) If an order is entered under Subsection (e), any subsequent proceeding to release the defendant is subject to this article.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 24, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.022, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 9, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 12, eff. September 1, 2019.

Art. 46B.108. REDETERMINATION OF COMPETENCY. (a) If criminal charges against a defendant found incompetent to stand trial have not been dismissed, the trial court at any time may determine whether the defendant has been restored to competency.

(b) An inquiry into restoration of competency under this subchapter may be made at the request of the head of the mental health facility, outpatient treatment provider, or residential care facility to which the defendant has been committed, the defendant, the attorney representing the defendant, or the attorney

representing the state, or may be made on the court's own motion.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 25, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 15, eff. September 1, 2007.

Art. 46B.109. REQUEST BY HEAD OF FACILITY OR OUTPATIENT TREATMENT PROVIDER. (a) The head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial may request the court to determine that the defendant has been restored to competency.

(b) The head of the facility or outpatient treatment provider shall provide with the request a written statement that in their opinion the defendant is competent to stand trial.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 16, eff. September 1, 2007.

Art. 46B.110. MOTION BY DEFENDANT, ATTORNEY REPRESENTING DEFENDANT, OR ATTORNEY REPRESENTING STATE. (a) The defendant, the attorney representing the defendant, or the attorney representing the state may move that the court determine that the defendant has been restored to competency.

(b) A motion for a determination of competency may be accompanied by affidavits supporting the moving party's assertion that the defendant is competent.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 26, eff. September 1, 2005.

Art. 46B.111. APPOINTMENT OF EXAMINERS. On the filing of a request or motion to determine that the defendant has been restored

to competency or on the court's decision on its own motion to inquire into restoration of competency, the court may appoint disinterested experts to examine the defendant in accordance with Subchapter B.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.112. DETERMINATION OF RESTORATION WITH AGREEMENT.

On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, 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.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.113. DETERMINATION OF RESTORATION WITHOUT

AGREEMENT. (a) The court shall hold a hearing on a request by the head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial to determine whether the defendant has been restored to competency.

(b) The court may hold a hearing on a motion to determine whether the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, and shall hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency.

(c) If a court holds a hearing under this article, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. If the competency determination will be made by the court rather than a jury, the court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as

provided by Article [46B.013](#).

(d) If the head of a facility or outpatient treatment provider to which the defendant was committed as a result of a finding of incompetency to stand trial has provided an opinion that the defendant has regained competency, competency is presumed at a hearing under this subchapter and continuing incompetency must be proved by a preponderance of the evidence.

(e) If the head of a facility or outpatient treatment provider has not provided an opinion described by Subsection (d), incompetency is presumed at a hearing under this subchapter and the defendant's competency must be proved by a preponderance of the evidence.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 27, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. [867](#)), Sec. 17, eff. September 1, 2007.

Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. If the hearing is not conducted at the facility to which the defendant has been committed under this chapter or conducted by means of an electronic broadcast system as described by this subchapter, an order setting a hearing to determine whether the defendant has been restored to competency shall direct that, as soon as practicable but not earlier than 72 hours before the date the hearing is scheduled, the defendant be placed in the custody of the sheriff of the county in which the committing court is located or the sheriff's designee for transportation to the court. The sheriff or the sheriff's designee may not take custody of the defendant under this article until 72 hours before the date the hearing is scheduled.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 28, eff. September 1, 2005.

Art. 46B.115. SUBSEQUENT REDETERMINATIONS OF COMPETENCY.

(a) If the court has made a determination that a defendant has not been restored to competency under this subchapter, a subsequent request or motion for a redetermination of competency filed before the 91st day after the date of that determination must:

(1) explain why the person making the request or motion believes another inquiry into restoration is appropriate; and

(2) provide support for the belief.

(b) The court may hold a hearing on a request or motion under this article only if the court first finds reason to believe the defendant's condition has materially changed since the prior determination that the defendant was not restored to competency.

(c) If the competency determination will be made by the court, the court may conduct the hearing at the facility to which the defendant has been committed under this chapter or may conduct the hearing by means of an electronic broadcast system as provided by Article [46B.013](#).

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 29, eff. September 1, 2005.

Art. 46B.116. DISPOSITION ON DETERMINATION OF COMPETENCY. If the defendant is found competent to stand trial, the proceedings on the criminal charge may proceed.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Art. 46B.117. DISPOSITION ON DETERMINATION OF INCOMPETENCY. If a defendant under order of commitment to a facility or outpatient treatment program is found to not have been restored to competency to stand trial, the court shall remand the defendant pursuant to that order of commitment, and, if applicable, order the defendant placed in the custody of the sheriff or the sheriff's designee for transportation back to the facility or outpatient treatment program.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. [679](#)), Sec. 30, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 18, eff.
September 1, 2007.

SUBCHAPTER F. CIVIL COMMITMENT: CHARGES DISMISSED

Art. 46B.151. COURT DETERMINATION RELATED TO CIVIL COMMITMENT. (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 determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with an intellectual disability.

(b) If it appears to the court that there is evidence to support a finding of mental illness or an intellectual disability, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. The court may order the defendant:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or

(2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.

(c) Notwithstanding Subsection (b), a defendant placed in a facility of the commission pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

(d) If the court does not detain or place the defendant under Subsection (b), the court shall release the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 32, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 33, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 822 (H.B. 2725), Sec. 19, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.023, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 10, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 13, eff. September 1, 2019.

SUBCHAPTER G. PROVISIONS APPLICABLE TO SUBCHAPTERS E AND F

Art. 46B.171. TRANSCRIPTS AND OTHER RECORDS. (a) The court shall order that:

(1) a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings under Subchapter E or F be prepared as soon as possible by the court reporters; and

(2) copies of documents listed in Article 46B.076 accompany the defendant to the mental health facility, outpatient treatment program, or residential care facility.

(b) On the request of the defendant or the attorney representing the defendant, a mental health facility, an outpatient treatment program, or a residential care facility shall provide to the defendant or the attorney copies of the facility's records regarding the defendant.

Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 34, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 19, eff. September 1, 2007.