

CODE OF CRIMINAL PROCEDURE  
TITLE 1. CODE OF CRIMINAL PROCEDURE  
CHAPTER 46C. INSANITY DEFENSE

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

(3) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.

(4) "Mental retardation" has the meaning assigned by Section 591.003, Health and Safety Code.

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

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 11, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 14, eff. September 1, 2019.

Art. 46C.0011. 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. 12, eff. June 14, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 15, eff. September 1, 2019.

Art. 46C.002. MAXIMUM PERIOD OF COMMITMENT DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A person acquitted by reason of insanity may not be committed to a mental hospital or other

inpatient or residential care facility or ordered to receive outpatient or community-based treatment and supervision under Subchapter F for a cumulative period that exceeds the maximum term provided by law for the offense for which the acquitted person was tried.

(b) On expiration of that maximum term, the acquitted person may be further confined in a mental hospital or other inpatient or residential care facility or ordered to receive outpatient or community-based treatment and supervision only under civil commitment proceedings.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.003. VICTIM NOTIFICATION OF RELEASE. If the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care, the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under Subchapter D, Chapter 56A or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding Article 56A.156, the clerk of the court may inspect a victim impact statement for the purpose of notification under this article. On request, a victim assistance coordinator may provide the clerk of the court with information or other assistance necessary for the clerk to comply with this article.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.18, eff. January 1, 2021.

#### SUBCHAPTER B. RAISING THE INSANITY DEFENSE

Art. 46C.051. NOTICE OF INTENT TO RAISE INSANITY DEFENSE.

(a) A defendant planning to offer evidence of the insanity defense must file with the court a notice of the defendant's intention to offer that evidence.

(b) The notice must:

(1) contain a certification that a copy of the notice has been served on the attorney representing the state; and

(2) be filed at least 20 days before the date the case is set for trial, except as described by Subsection (c).

(c) If before the 20-day period the court sets a pretrial hearing, the defendant shall give notice at the hearing.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.052. EFFECT OF FAILURE TO GIVE NOTICE. Unless notice is timely filed under Article 46C.051, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

#### SUBCHAPTER C. COURT-ORDERED EXAMINATION AND REPORT

Art. 46C.101. APPOINTMENT OF EXPERTS. (a) If notice of intention to raise the insanity defense is filed under Article 46C.051, the court may, on its own motion or motion by the defendant, the defendant's counsel, or the attorney representing the state, appoint one or more disinterested experts to:

(1) examine the defendant with regard to the insanity defense; and

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

(b) The court shall advise an expert appointed under this article of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.102. EXPERTS: QUALIFICATIONS. (a) The court may appoint qualified psychiatrists or psychologists as experts under this chapter. 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 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 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 9, eff. September 1, 2021.

Art. 46C.103. COMPETENCY TO STAND TRIAL: CONCURRENT

APPOINTMENT. (a) An expert appointed under this subchapter to examine the defendant with regard to the insanity defense also may be appointed by the court to examine the defendant with regard to the defendant's competency to stand trial under Chapter 46B, if the expert files with the court separate written reports concerning the defendant's competency to stand trial and the insanity defense.

(b) Notwithstanding Subsection (a), an expert may not examine the defendant for purposes of determining the defendant's sanity and may not file a report regarding the defendant's sanity if in the opinion of the expert the defendant is incompetent to proceed.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.104. ORDER COMPELLING DEFENDANT TO SUBMIT TO EXAMINATION. (a) For the purposes described by this chapter, the court may order any defendant to submit to examination, including a defendant who is free on bail. If the defendant fails or refuses to submit to examination, the court may order the defendant to custody for examination for a reasonable period not to exceed 21 days. Custody ordered by the court under this subsection may include custody at a facility operated by the commission.

(b) If a defendant who has been ordered to a facility operated by the commission for examination remains in the facility for a period that exceeds 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel rules in effect at that time.

(c) The court may not order a defendant to a facility operated by the commission for examination without the consent of the head of that facility.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 13, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 16, eff. September 1, 2019.

Art. 46C.105. REPORTS SUBMITTED BY EXPERTS. (a) A written report of the examination shall be submitted to the court not later than the 30th day after the date of the order of examination. The court shall provide copies of the report to the defense counsel and the attorney representing the state.

(b) The report must include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense.

(c) The examiner shall submit a separate report stating the examiner's observations and findings concerning:

(1) whether the defendant is presently a person with a mental illness and requires court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code; or

(2) whether the defendant is presently a person with mental retardation.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.106. COMPENSATION OF EXPERTS. (a) The appointed experts shall be paid by the county in which the indictment was returned or information was filed.

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

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Amended by:

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

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 17, eff. September 1, 2019.

Art. 46C.107. EXAMINATION BY EXPERT OF DEFENDANT'S CHOICE. If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

#### SUBCHAPTER D. DETERMINATION OF ISSUE OF DEFENDANT'S SANITY

Art. 46C.151. DETERMINATION OF SANITY ISSUE BY JURY. (a) In a case tried to a jury, the issue of the defendant's sanity shall be submitted to the jury only if the issue is supported by competent evidence. The jury shall determine the issue.

(b) If the issue of the defendant's sanity is submitted to the jury, the jury shall determine and specify in the verdict whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.152. DETERMINATION OF SANITY ISSUE BY JUDGE. (a) If a jury trial is waived and if the issue is supported by competent evidence, the judge as trier of fact shall determine the issue of the defendant's sanity.

(b) The parties may, with the consent of the judge, agree to have the judge determine the issue of the defendant's sanity on the basis of introduced or stipulated competent evidence, or both.

(c) If the judge determines the issue of the defendant's sanity, the judge shall enter a finding of guilty, not guilty, or not guilty by reason of insanity.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.153. GENERAL PROVISIONS RELATING TO DETERMINATION

OF SANITY ISSUE BY JUDGE OR JURY. (a) The judge or jury shall determine that a defendant is not guilty by reason of insanity if:

(1) the prosecution has established beyond a reasonable doubt that the alleged conduct constituting the offense was committed; and

(2) the defense has established by a preponderance of the evidence that the defendant was insane at the time of the alleged conduct.

(b) The parties may, with the consent of the judge, agree to both:

(1) dismissal of the indictment or information on the ground that the defendant was insane; and

(2) entry of a judgment of dismissal due to the defendant's insanity.

(c) An entry of judgment under Subsection (b)(2) has the same effect as a judgment stating that the defendant has been found not guilty by reason of insanity.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.154. INFORMING JURY REGARDING CONSEQUENCES OF ACQUITTAL. The court, the attorney representing the state, or the attorney for the defendant may not inform a juror or a prospective juror of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.155. FINDING OF NOT GUILTY BY REASON OF INSANITY CONSIDERED ACQUITTAL. (a) Except as provided by Subsection (b), a defendant who is found not guilty by reason of insanity stands acquitted of the offense charged and may not be considered a person charged with an offense.

(b) A defendant who is found not guilty by reason of insanity is not considered to be acquitted for purposes of Chapter [55](#).

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff.



September 1, 2005.

Art. 46C.156. JUDGMENT. (a) In each case in which the insanity defense is raised, the judgment must reflect whether the defendant was found guilty, not guilty, or not guilty by reason of insanity.

(b) If the defendant was found not guilty by reason of insanity, the judgment must specify the offense of which the defendant was found not guilty.

(c) If the defendant was found not guilty by reason of insanity, the judgment must reflect the finding made under Article [46C.157](#).

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.157. DETERMINATION REGARDING DANGEROUS CONDUCT OF ACQUITTED PERSON. If a defendant is found not guilty by reason of insanity, the court immediately shall determine whether the offense of which the person was acquitted involved conduct that:

(1) caused serious bodily injury to another person;

(2) placed another person in imminent danger of serious bodily injury; or

(3) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.158. CONTINUING JURISDICTION OF DANGEROUS ACQUITTED PERSON. If the court finds that the offense of which the person was acquitted involved conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court retains jurisdiction over the acquitted person until either:

(1) the court discharges the person and terminates its jurisdiction under Article [46C.268](#); or

(2) the cumulative total period of

institutionalization and outpatient or community-based treatment and supervision under the court's jurisdiction equals the maximum term provided by law for the offense of which the person was acquitted by reason of insanity and the court's jurisdiction is automatically terminated under Article [46C.269](#).

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.159. PROCEEDINGS REGARDING NONDANGEROUS ACQUITTED PERSON. If the court finds that the offense of which the person was acquitted did not involve conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court shall proceed under Subchapter E.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.160. DETENTION PENDING FURTHER PROCEEDINGS. (a) On a determination by the judge or jury that the defendant is not guilty by reason of insanity, pending further proceedings under this chapter, the court may order the defendant detained in jail or any other suitable place for a period not to exceed 14 days.

(b) The court may order a defendant detained in a facility of the commission under this article only with the consent of the head of the facility.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. [562](#)), Sec. 15, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. [601](#)), Sec. 18, eff. September 1, 2019.

SUBCHAPTER E. DISPOSITION FOLLOWING ACQUITTAL BY REASON OF  
INSANITY: NO FINDING OF DANGEROUS CONDUCT

Art. 46C.201. DISPOSITION: NONDANGEROUS CONDUCT. (a) If the court determines that the offense of which the person was acquitted did not involve conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court shall determine whether there is evidence to support a finding that the person is a person with a mental illness or with mental retardation.

(b) If the court determines that there is evidence to support a finding of mental illness or mental retardation, the court shall enter an order transferring the person to the appropriate court for civil commitment proceedings to determine whether the person should receive court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, or be committed to a residential care facility to receive mental retardation services under Subtitle D, Title 7, Health and Safety Code. The court may also order the person:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution of appropriate civil proceedings by the attorney representing the state or other person designated by the court; or

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

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.202. DETENTION OR RELEASE. (a) Notwithstanding Article 46C.201(b), a person placed in a commission facility pending civil hearing as described by that subsection may be detained only with the consent of the head of the facility and under an Order of Protective Custody issued under Subtitle C or D, Title 7, Health and Safety Code.

(b) If the court does not detain or place the person under Article 46C.201(b), the court shall release the person.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff.

September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 16, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 19, eff. September 1, 2019.

SUBCHAPTER F. DISPOSITION FOLLOWING ACQUITTAL BY  
REASON OF INSANITY: FINDING OF DANGEROUS CONDUCT

Art. 46C.251. COMMITMENT FOR EVALUATION AND TREATMENT; REPORT. (a) The court shall order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the facility designated by the commission. The period of commitment under this article may not exceed 30 days.

(b) The court shall order that:

(1) a transcript of all medical testimony received in the criminal proceeding be prepared as soon as possible by the court reporter and the transcript be forwarded to the facility to which the acquitted person is committed; and

(2) the following information be forwarded to the facility and to the commission:

(A) the complete name, race, and gender of the person;

(B) any known identifying number of the person, including social security number, driver's license number, or state identification number;

(C) the person's date of birth; and

(D) the offense of which the person was found not guilty by reason of insanity and a statement of the facts and circumstances surrounding the alleged offense.

(c) The court shall order that a report be filed with the court under Article 46C.252.

(d) To determine the proper disposition of the acquitted person, the court shall hold a hearing on disposition not later than the 30th day after the date of acquittal.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 17, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 20, eff. September 1, 2019.

Art. 46C.252. REPORT AFTER EVALUATION. (a) The report ordered under Article 46C.251 must be filed with the court as soon as practicable before the hearing on disposition but not later than the fourth day before that hearing.

(b) The report in general terms must describe and explain the procedure, techniques, and tests used in the examination of the person.

(c) The report must address:

(1) whether the acquitted person has a mental illness or mental retardation and, if so, whether the mental illness or mental retardation is severe;

(2) whether as a result of any severe mental illness or mental retardation the acquitted person is likely to cause serious harm to another;

(3) whether as a result of any impairment the acquitted person is subject to commitment under Subtitle C or D, Title 7, Health and Safety Code;

(4) prospective treatment and supervision options, if any, appropriate for the acquitted person; and

(5) whether any required treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.253. HEARING ON DISPOSITION. (a) The hearing on disposition shall be conducted in the same manner as a hearing on an application for involuntary commitment under Subtitle C or D, Title 7, Health and Safety Code, except that the use of a jury is governed

by Article [46C.255](#).

(b) At the hearing, the court shall address:

(1) whether the person acquitted by reason of insanity has a severe mental illness or mental retardation;

(2) whether as a result of any mental illness or mental retardation the person is likely to cause serious harm to another; and

(3) whether appropriate treatment and supervision for any mental illness or mental retardation rendering the person dangerous to another can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) The court shall order the acquitted person committed for inpatient treatment or residential care under Article [46C.256](#) if the grounds required for that order are established.

(d) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision under Article [46C.257](#) if the grounds required for that order are established.

(e) The court shall order the acquitted person transferred to an appropriate court for proceedings under Subtitle C or D, Title 7, Health and Safety Code, if the state fails to establish the grounds required for an order under Article [46C.256](#) or [46C.257](#) but the evidence provides a reasonable basis for believing the acquitted person is a proper subject for those proceedings.

(f) The court shall order the acquitted person discharged and immediately released if the evidence fails to establish that disposition under Subsection (c), (d), or (e) is appropriate.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.254. EFFECT OF STABILIZATION ON TREATMENT REGIMEN. If an acquitted person is stabilized on a treatment regimen, including medication and other treatment modalities, rendering the person no longer likely to cause serious harm to another, inpatient treatment or residential care may be found necessary to protect the safety of others only if:

(1) the person would become likely to cause serious

harm to another if the person fails to follow the treatment regimen on an Order to Receive Outpatient or Community-Based Treatment and Supervision; and

(2) under an Order to Receive Outpatient or Community-Based Treatment and Supervision either:

(A) the person is likely to fail to comply with an available regimen of outpatient or community-based treatment, as determined by the person's insight into the need for medication, the number, severity, and controllability of side effects, the availability of support and treatment programs for the person from community members, and other appropriate considerations; or

(B) a regimen of outpatient or community-based treatment will not be available to the person.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.255. TRIAL BY JURY. (a) The following proceedings under this chapter must be before the court, and the underlying matter determined by the court, unless the acquitted person or the state requests a jury trial or the court on its own motion sets the matter for jury trial:

(1) a hearing under Article 46C.253;

(2) a proceeding for renewal of an order under Article 46C.261;

(3) a proceeding on a request for modification or revocation of an order under Article 46C.266; and

(4) a proceeding seeking discharge of an acquitted person under Article 46C.268.

(b) The following proceedings may not be held before a jury:

(1) a proceeding to determine outpatient or community-based treatment and supervision under Article 46C.262; or

(2) a proceeding to determine modification or revocation of outpatient or community-based treatment and supervision under Article 46C.267.

(c) If a hearing is held before a jury and the jury determines that the person has a mental illness or mental

retardation and is likely to cause serious harm to another, the court shall determine whether inpatient treatment or residential care is necessary to protect the safety of others.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.256. ORDER OF COMMITMENT TO INPATIENT TREATMENT OR RESIDENTIAL CARE. (a) The court shall order the acquitted person committed to a mental hospital or other appropriate facility for inpatient treatment or residential care if the state establishes by clear and convincing evidence that:

(1) the person has a severe mental illness or mental retardation;

(2) the person, as a result of that mental illness or mental retardation, is likely to cause serious bodily injury to another if the person is not provided with treatment and supervision; and

(3) inpatient treatment or residential care is necessary to protect the safety of others.

(b) In determining whether inpatient treatment or residential care has been proved necessary, the court shall consider whether the evidence shows both that:

(1) an adequate regimen of outpatient or community-based treatment will be available to the person; and

(2) the person will follow that regimen.

(c) The order of commitment to inpatient treatment or residential care expires on the 181st day following the date the order is issued but is subject to renewal as provided by Article [46C.261](#).

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.257. ORDER TO RECEIVE OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision if:

(1) the state establishes by clear and convincing



evidence that the person:

(A) has a severe mental illness or mental retardation; and

(B) as a result of that mental illness or mental retardation is likely to cause serious bodily injury to another if the person is not provided with treatment and supervision; and

(2) the state fails to establish by clear and convincing evidence that inpatient treatment or residential care is necessary to protect the safety of others.

(b) The order of commitment to outpatient or community-based treatment and supervision expires on the first anniversary of the date the order is issued but is subject to renewal as provided by Article [46C.261](#).

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.258. RESPONSIBILITY OF INPATIENT OR RESIDENTIAL CARE FACILITY. (a) The head of the facility to which an acquitted person is committed has, during the commitment period, a continuing responsibility to determine:

(1) whether the acquitted person continues to have a severe mental illness or mental retardation and is likely to cause serious harm to another because of any severe mental illness or mental retardation; and

(2) if so, whether treatment and supervision cannot be safely and effectively provided as outpatient or community-based treatment and supervision.

(b) The head of the facility must notify the committing court and seek modification of the order of commitment if the head of the facility determines that an acquitted person no longer has a severe mental illness or mental retardation, is no longer likely to cause serious harm to another, or that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) Not later than the 60th day before the date of expiration of the order, the head of the facility shall transmit to the committing court a psychological evaluation of the acquitted

person, a certificate of medical examination of the person, and any recommendation for further treatment of the person. The committing court shall make the documents available to the attorneys representing the state and the acquitted person.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.259. STATUS OF COMMITTED PERSON. If an acquitted person is committed under this subchapter, the person's status as a patient or resident is governed by Subtitle C or D, Title 7, Health and Safety Code, except that:

(1) transfer to a nonsecure unit is governed by Article 46C.260;

(2) modification of the order to direct outpatient or community-based treatment and supervision is governed by Article 46C.262; and

(3) discharge is governed by Article 46C.268.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.260. TRANSFER OF COMMITTED PERSON TO NON-MAXIMUM SECURITY FACILITY. (a) A person committed to a facility under this subchapter shall be committed to a facility designated by the commission.

(b) A person committed under this subchapter shall be transferred to the designated facility immediately on the entry of the order of commitment.

(c) Unless a person committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board under this article, not later than the 60th day following the date of the person's arrival at the maximum security unit the person shall be transferred to a non-maximum security unit of a facility designated by the commission.

(d) 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 illnesses or with mental retardation, to

determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

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

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 18, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 21, eff. September 1, 2019.

Art. 46C.261. RENEWAL OF ORDERS FOR INPATIENT COMMITMENT OR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) A court that orders an acquitted person committed to inpatient treatment or orders outpatient or community-based treatment and supervision annually shall determine whether to renew the order.

(b) Not later than the 30th day before the date an order is scheduled to expire, the institution to which a person is committed, the person responsible for providing outpatient or community-based treatment and supervision, or the attorney representing the state may file a request that the order be renewed. The request must explain in detail the reasons why the person requests renewal under this article. A request to renew an order committing the person to inpatient treatment must also explain in detail why outpatient or community-based treatment and supervision is not appropriate.

(c) The request for renewal must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the person during the 30-day period preceding the date on which the request is filed.

(d) On the filing of a request for renewal under this article, the court shall:

- (1) set the matter for a hearing; and
- (2) appoint an attorney to represent the person.

(e) The court shall act on the request for renewal before the order expires.

(f) If a hearing is held, the person may be transferred from the facility to which the acquitted person was committed to a jail for purposes of participating in the hearing only if necessary but not earlier than 72 hours before the hearing begins. If the order is renewed, the person shall be transferred back to the facility immediately on renewal of the order.

(g) If no objection is made, the court may admit into evidence the certificate of medical examination for mental illness. Admitted certificates constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificate and the detailed request for renewal.

(h) A court shall renew the order only if the court finds that the party who requested the renewal has established by clear and convincing evidence that continued mandatory supervision and treatment are appropriate. A renewed order authorizes continued inpatient commitment or outpatient or community-based treatment and supervision for not more than one year.

(i) The court, on application for renewal of an order for inpatient or residential care services, may modify the order to provide for outpatient or community-based treatment and supervision if the court finds the acquitted person has established by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.262. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION AFTER INPATIENT COMMITMENT. (a) An acquitted person, the head of the facility to which the acquitted person is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order outpatient or community-based treatment

and supervision.

(b) The court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed. A hearing under this subsection must be held not later than the 14th day after the date of the request.

(c) If a request is made by an acquitted person or the attorney representing the state, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material provide a basis for believing modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or as soon as practicable after any hearing on the request but not later than the 14th day after the date of the request.

(f) The court shall modify the commitment order to direct outpatient or community-based treatment and supervision if at the hearing the acquitted person establishes by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.263. COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court may order an acquitted person to participate in an outpatient or community-based regimen of treatment and supervision:

- (1) as an initial matter under Article [46C.253](#);
- (2) on renewal of an order of commitment under Article [46C.261](#); or
- (3) after a period of inpatient treatment or

residential care under Article [46C.262](#).

(b) An acquitted person may be ordered to participate in an outpatient or community-based regimen of treatment and supervision only if:

(1) the court receives and approves an outpatient or community-based treatment plan that comprehensively provides for the outpatient or community-based treatment and supervision; and

(2) the court finds that the outpatient or community-based treatment and supervision provided for by the plan will be available to and provided to the acquitted person.

(c) The order may require the person to participate in a prescribed regimen of medical, psychiatric, or psychological care or treatment, and the regimen may include treatment with psychoactive medication.

(d) The court may order that supervision of the acquitted person be provided by the appropriate community supervision and corrections department or the facility administrator of a community center that provides mental health or mental retardation services.

(e) The court may order the acquitted person to participate in a supervision program funded by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(f) An order under this article must identify the person responsible for administering an ordered regimen of outpatient or community-based treatment and supervision.

(g) In determining whether an acquitted person should be ordered to receive outpatient or community-based treatment and supervision rather than inpatient care or residential treatment, the court shall have as its primary concern the protection of society.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.264. LOCATION OF COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court may order the outpatient or community-based treatment and supervision to be provided in any appropriate county where the necessary resources are available.

(b) This article does not supersede any requirement under the other provisions of this subchapter to obtain the consent of a treatment and supervision provider to administer the court-ordered outpatient or community-based treatment and supervision.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.265. SUPERVISORY RESPONSIBILITY FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall:

- (1) monitor the condition of the acquitted person; and
- (2) determine whether the acquitted person is complying with the regimen of treatment and supervision.

(b) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall notify the court ordering that treatment and supervision and the attorney representing the state if the person:

- (1) fails to comply with the regimen; and
- (2) becomes likely to cause serious harm to another.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.266. MODIFICATION OR REVOCATION OF ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The court, on its own motion or the motion of any interested person and after notice to the acquitted person and a hearing, may modify or revoke court-ordered outpatient or community-based treatment and supervision.

(b) At the hearing, the court without a jury shall determine whether the state has established clear and convincing evidence that:

- (1) the acquitted person failed to comply with the regimen in a manner or under circumstances indicating the person will become likely to cause serious harm to another if the person is provided continued outpatient or community-based treatment and supervision; or

(2) the acquitted person has become likely to cause serious harm to another if provided continued outpatient or community-based treatment and supervision.

(c) On a determination under Subsection (b), the court may take any appropriate action, including:

(1) revoking court-ordered outpatient or community-based treatment and supervision and ordering the person committed for inpatient or residential care; or

(2) imposing additional or more stringent terms on continued outpatient or community-based treatment.

(d) An acquitted person who is the subject of a proceeding under this article is entitled to representation by counsel in the proceeding.

(e) The court shall set a date for a hearing under this article that is not later than the seventh day after the applicable motion was filed. The court may grant one or more continuances of the hearing on the motion of a party or of the court and for good cause shown.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.267. DETENTION PENDING PROCEEDINGS TO MODIFY OR REVOKE ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION. (a) The state or the head of the facility or other person responsible for administering a regimen of outpatient or community-based treatment and supervision may file a sworn application with the court for the detention of an acquitted person receiving court-ordered outpatient or community-based treatment and supervision. The application must state that the person meets the criteria of Article 46C.266 and provide a detailed explanation of that statement.

(b) If the court determines that the application establishes probable cause to believe the order for outpatient or community-based treatment and supervision should be revoked, the court shall issue an order to an on-duty peace officer authorizing the acquitted person to be taken into custody and brought before the court.



(c) An acquitted person taken into custody under an order of detention shall be brought before the court without unnecessary delay.

(d) When an acquitted person is brought before the court, the court shall determine whether there is probable cause to believe that the order for outpatient or community-based treatment and supervision should be revoked. On a finding that probable cause for revocation exists, the court shall order the person held in protective custody pending a determination of whether the order should be revoked.

(e) An acquitted person may be detained under an order for protective custody for a period not to exceed 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b), Health and Safety Code, for an extreme emergency.

(f) This subchapter does not affect the power of a peace officer to take an acquitted person into custody under Section 573.001, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.268. ADVANCE DISCHARGE OF ACQUITTED PERSON AND TERMINATION OF JURISDICTION. (a) An acquitted person, the head of the facility to which the acquitted person is committed, the person responsible for providing the outpatient or community-based treatment and supervision, or the state may request that the court discharge an acquitted person from inpatient commitment or outpatient or community-based treatment and supervision.

(b) Not later than the 14th day after the date of the request, the court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed or the person responsible for providing the outpatient or community-based treatment and supervision.

(c) If a request is made by an acquitted person, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the

request and any accompanying material indicate that modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or shortly after any hearing that is held and in any case not later than the 14th day after the date of the request.

(f) The court shall discharge the acquitted person from all court-ordered commitment and treatment and supervision and terminate the court's jurisdiction over the person if the court finds that the acquitted person has established by a preponderance of the evidence that:

(1) the acquitted person does not have a severe mental illness or mental retardation; or

(2) the acquitted person is not likely to cause serious harm to another because of any severe mental illness or mental retardation.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.

Art. 46C.269. TERMINATION OF COURT'S JURISDICTION. (a) The jurisdiction of the court over a person covered by this subchapter automatically terminates on the date when the cumulative total period of institutionalization and outpatient or community-based treatment and supervision imposed under this subchapter equals the maximum term of imprisonment provided by law for the offense of which the person was acquitted by reason of insanity.

(b) On the termination of the court's jurisdiction under this article, the person must be discharged from any inpatient treatment or residential care or outpatient or community-based treatment and supervision ordered under this subchapter.

(c) An inpatient or residential care facility to which a person has been committed under this subchapter or a person responsible for administering a regimen of outpatient or

community-based treatment and supervision under this subchapter must notify the court not later than the 30th day before the court's jurisdiction over the person ends under this article.

(d) This subchapter does not affect whether a person may be ordered to receive care or treatment under Subtitle C or D, Title 7, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 2, eff. September 1, 2005.

Art. 46C.270. APPEALS. (a) An acquitted person may appeal a judgment reflecting an acquittal by reason of insanity on the basis of the following:

(1) a finding that the acquitted person committed the offense; or

(2) a finding that the offense on which the prosecution was based involved conduct that:

(A) caused serious bodily injury to another person;

(B) placed another person in imminent danger of serious bodily injury; or

(C) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

(b) Either the acquitted person or the state may appeal from:

(1) an Order of Commitment to Inpatient Treatment or Residential Care entered under Article 46C.256;

(2) an Order to Receive Outpatient or Community-Based Treatment and Supervision entered under Article 46C.257 or 46C.262;

(3) an order renewing or refusing to renew an Order for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision entered under Article 46C.261;

(4) an order modifying or revoking an Order for Outpatient or Community-Based Treatment and Supervision entered under Article 46C.266 or refusing a request to modify or revoke that order; or

(5) an order discharging an acquitted person under Article 46C.268 or denying a request for discharge of an acquitted

person.

(c) An appeal under this subchapter may not be considered moot solely due to the expiration of an order on which the appeal is based.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. [837](#)), Sec. 2, eff. September 1, 2005.