

Code of Criminal Procedure – Chapter 46C NGRI / Insanity Defense*

Flow Chart Key

Informational

Exits from 46C

Commitment Types

A Defendant (“D”) is **Not Guilty by Reason of Insanity (NGRI)** if:

- The prosecution has established, beyond a reasonable doubt, that D committed the offense; and
- The defense establishes, by a preponderance of the evidence, that D was **insane** at the time of the offense. [46C.153(a)]

*** Penal Code, Sec. 8.01. Insanity**

It is an affirmative defense to prosecution that, **at the time of the conduct charged**, the actor, as a result of severe mental disease or defect, **did not know that his conduct was wrong**.

A Defendant (“D”) must give **notice of intent to raise insanity defense** at least **20 days before trial**, or at the pretrial hearing if more than 20 days from trial [46C.051]

Once the intent to raise the insanity defense has been raised, the court may **appoint disinterested experts** to:

- examine D with regard to the defense; and
- testify at trial regarding that issue [46C.101]

Expert on insanity may be same person who opined on D’s competency under Art. 46B. The **report is due** to court in **30 days** from date of appointment and must address:

- **observations and findings** pertaining to **insanity**;
- whether D currently meets **MH Code** for **commitment**; or
- whether D has **Intellectual/Developmental Disabilities (“IDD”)** [46C.105]

Determination of sanity may be made by judge or jury, however, **jury may not be informed of the consequences of an acquittal by reason of insanity**. [46C.151-156]

If there is evidence of continued **MH** or **IDD** issues the criminal court shall **transfer** the matter to court with probate jurisdiction [46C.201-202]

If found **Not Guilty by Reason of Insanity (“NGRI”)** the court must determine if the offense for which D was acquitted involved conduct that:

- caused **serious bodily injury (“SBI”)** to another;
- placed another in imminent danger of **SBI**; or
- consisted of a threat of SBI through use of a **deadly weapon** [46C.157]

Conduct did **NOT** involve SBI or use of **deadly weapon** [46C.159]

Conduct **involving SBI** or **deadly weapon** [46C.158]

* Court personnel please contact the Forensic Admissions Team’s email at Forensicadmissions@hhsc.state.tx.us for more information about admission of AP to an HHSC designated facility

The court shall order **Acquitted Person (“AP”)** to a facility designated by Health and Human Services Commission (HHSC) for an initial **30 Day Commitment*** for **Evaluation/Treatment** of AP’s present mental condition and **Report** [46C.251]

The **Report** describes procedure, techniques and test used to evaluate acquittee including:

- whether AP has mental illness or intellectual/developmental disabilities and if so whether it is **severe**;
- whether, as a result of severe MH/IDD, AP is **likely to cause serious harm to others**;
- whether AP **meets commitment criteria** under Mental Health (“MH”) Code or Person with Intellectual Disabilities Act (“PIDA”); and
- whether **treatment** can be safely/effectively provided **on outpatient basis** [46C.252]

NGRI procedures continued on next page

Court **hearing on disposition** of NGRI **acquitted person** (“AP”) following Report after Evaluation is conducted in the same manner as a hearing for involuntary commitment under MH Code or PIDA and addresses:

- whether AP has **severe mental illness** or **IDD**;
- whether, as a result of mental illness or IDD, AP is **likely to cause serious harm to another**; and
- whether appropriate treatment and supervision can be provided AP as **outpatient/community-based treatment** [46C.253(a)/(b)]

The court shall order AP to **HHSC designated facility** for **inpatient / residential treatment** for an initial **180-day commitment** if, by clear and convincing evidence, the state proves that AP:

- has **severe mental illness** or **IDD**;
- as a result of mental illness or IDD AP is **likely to cause serious harm to others**; and
- inpatient/residential treatment is necessary to protect the safety of others [46C.256]

The court shall order **outpatient/community-based treatment*** for a period of **12 months** if, by clear and convincing evidence, the state proves AP:

- has **severe mental illness** or **IDD**;
- as a result of mental illness or IDD AP is **likely to cause serious harm to others**; **however**
- the state fails to prove that inpatient/ residential treatment is necessary to protect the safety of others [46C.257]

If AP is designated by HHSC to a **Maximum Security Unit (MSU)** they must be presented to Review Board, w/in 60 days to determine if AP is **Manifestly Dangerous (MD)**. If AP is not MD they must be transferred to **non-MSU state hospital or state supported living center** [46C.260(c)]

The court shall order AP transferred to **court with probate jurisdiction** if state fails to establish standards for inpatient 46C.256 or outpatient 46C.257 commitment **but evidence provides reasonable basis for commitment** under MH Code or PIDA [46C.253(c)]

***Court may only order AP into outpatient/community-based if:**

- court **approves** comprehensive treatment/supervision **plan**; and
- plan will be **available** and **provided to AP** [46C.263(b)]

The treating **facility** or **outpatient program** has a **continuing responsibility** to determine if AP:

- continues to have a **severe mental illness** or **IDD** and is **likely to cause serious harm to others**; and
- if so, whether treatment and supervision **cannot** be safely and effectively provided as an **outpatient** [46C.258(a)]

The **head of an inpatient/residential treatment facility** must notify the committing court:

- at least **60 days** before **commitment expires** and provide report on AP’s psychological evaluation, certificate of medical examination (if required) and a recommendation for further treatment; [46C.258(c)] or
- seek commitment **modification*** if AP no longer:
 - has severe MH/IDD;
 - likely to cause serious harm to others; or
 - supervision and treatment can be safely provided on outpatient basis [46C.258(b)]

The **head of an outpatient/community-based treatment facility** must notify the committing court:

- at least **30 days** before **commitment expires** and request that the order be renewed, provide in detail the reason for the renewal and certificate of medical examination (if required); [46C.261(b)]

The court may renew commitment* for **12 months** for **inpatient/ residential treatment** or **outpatient/community-based treatment** if it is shown, by clear and convincing evidence, that continued mandatory supervision and treatment is appropriate [46C.261(h)]

♦ Courts have the ability to modify commitment from inpatient to outpatient and vice versa when deemed appropriate [46C.262 and 46C.266]