18th Edition

Texas Laws
Relating to Mental Health

*Reflecting changes in law passed by the 82nd Legislature, Regular Session – 2011**

Throughout this book will be various statutory references to the Texas Department of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse and the Texas Department of Health. On September 1, 2004 these three agencies were combined to form the Department of State Health Services. Any reference in statue to the legacy agencies should be read to mean the Department of State Health Services.

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Most changes in law reflected in this book become effective on 9/1/11.

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Part I
Health and Safety Code

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SUBTITLE A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

PURPOSE; POLICY

Sec.531.001. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and mental retardation services at the state and local levels.

(b)Recognizing that a variety of alternatives for serving the mentally disabled exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes facilities operated by the Texas Department of Mental Health and Mental Retardation and community services provided by the department and other entities through contracts with the department.

(c)It is the goal of this state to provide a comprehensive range of services for persons with mental illness or mental retardation who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d)It is the policy of this state that, when appropriate and feasible, persons with mental illness or mental retardation shall be afforded treatment in their own communities.

(e)It is the public policy of this state that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The department shall assist the local agencies and organizations by coordinating the implementation of a statewide system of services. The department shall ensure that mental health and mental retardation services are provided. The department shall provide technical assistance for and regulation of the programs that receive funding through contracts with the department.

(f)It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and mental retardation services may be spent only to provide services to the priority populations identified in the department's long-range plan.

(g)It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the department shall assist a local law enforcement agency that desires to have an officer certified under Section 1701.404 Occupations Code.

(h) It is the policy of this state that the board serves as the state's mental health and mental retardation authority and is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and mental retardation services in this state. It is the policy of this state that, when appropriate and feasible, the board may delegate the board's authority to a single entity in each region of the state that may function as the local mental health or mental retardation authority for one or more service areas in the region.

DEFINITIONS

Sec.531.002. In this subtitle:

(1)"Board" means the Texas Board of Mental Health and Mental Retardation.

(2)"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(3)"Chemical dependency" has the meaning assigned by Section 461.002.

(4)"Commissioner" means the commissioner of mental health and mental retardation.

(5)"Community center" means a center established under Subchapter A, Chapter 534.

(6)"Department" means the Texas Department of Mental Health and Mental Retardation.

(7)"Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(8)"ICF-MR" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

(9)"Local agency" means:

(A)a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of those entities.

(10)"Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(11)"Local mental retardation authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in one or more local service areas.

(12)"Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, control, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(13)"Mental retardation services" includes all services concerned with research, prevention, and detection of mental retardation, and all services related to the education, training, habilitation, care, treatment, supervision, and control of persons with mental retardation, but does not include the education of school-age persons that the public educational system is authorized to provide.

(13-a) "Person with a developmental disability" means an individual with a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments that:

(A) manifests before the person reaches 22 years of age;

(B) is likely to continue indefinitely;

(C) reflects the individual ’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) results in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(14)"Person with mental retardation" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, care, or control in the person's home or community or in a state school.

(15)"Priority population" means those groups of persons with mental illness or mental retardation identified by the department as being most in need of mental health or mental retardation services.

(16)"Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(17)"State supported living center" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

REFERENCE TO STATE SCHOOL OR SUPERINTENDENT

Sec.531.0021. (a) A reference in law to a "state school" means a state supported living center.

(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.

CHAPTER 532. ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

COMPOSITION OF DEPARTMENT

Sec.532.001. (a) The Texas Department of Mental Health and Mental Retardation is composed of:

(1)the Texas Board of Mental Health and Mental Retardation;

(2)the commissioner of mental health and mental retardation; and

(3)a staff under the direction of the commissioner.

(b)The Department of Aging and Disability Services and the Department of State Health Services also include community services operated by those departments and the following facilities, as appropriate:

(1)the central office of each department;

(2)the Austin State Hospital;

(3)the Big Spring State Hospital;

(4)the Kerrville State Hospital;

(5)the Rusk State Hospital;

(6)the San Antonio State Hospital;

(7)the Terrell State Hospital;

(8)the North Texas State Hospital;

(9)the Abilene State Supported Living Center;

(10)the Austin State Supported Living Center;

(11)the Brenham State Supported Living Center;

(12)the Corpus Christi State Supported Living Center;

(13)the Denton State Supported Living Center;

(14)the Lubbock State Supported Living Center;

(15)the Lufkin State Supported Living Center;

(16)the Mexia State Supported Living Center;

(17)the Richmond State Supported Living Center;

(18)the San Angelo State Supported Living Center;

(19)the San Antonio State Supported Living Center;

(20)the El Paso State Supported Living Center;

(21)the Rio Grande State Center; and

(22)the Waco Center for Youth;

SUNSET PROVISION

Sec.532.002. The Texas Department of Mental Health and Mental Retardation was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that Act, this chapter expires September 1, 2015.

COMPOSITION OF BOARD

Sec.532.003. (a) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) The members must be representatives of the public who have demonstrated interest in mental health, mental retardation, developmental disabilities, or the health and human services system. At least one member must be a consumer of services for persons with mental illness or mental retardation or a family member of a consumer of those services.

(c)Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

BOARD TRAINING

Sec. 532.0035. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training session that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the department and board;

(2) the programs operated by the department;
(3) the roles and functions of the department;
(4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
(5) the current budget for the department;
(6) the results of the most recent formal audit of the department;
(7) the requirements of:
(A) the open meetings law, Chapter 551, Government Code;
(B) the public information law, Chapter 552, Government Code;
(C) the administrative procedure law, Chapter 2001,Government Code; and
(D) other laws relating to public officials, including conflict-of-interest laws; and
(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

RESTRICTIONS ON BOARD APPOINTMENT AND MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT

Sec.532.004. (a) A person is not eligible for appointment as a board member if the person or the person's spouse:
(1)owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or
(2)uses or receives a substantial amount of tangible goods, services, or funds from the department, other than:
(A)compensation or reimbursement authorized by law for board membership, attendance, or expenses; or
(B)as a parent or guardian of a client or patient receiving services from the department.

(b)An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the board or an employee of the department.

(c)A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a board member or a department employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d)A person may not serve as a member of the board or act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(e)For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

TERMS

Sec.532.005. Board members serve six-year terms.

CHAIRMAN

Sec.532.006. The governor shall designate a board member as chairman.

REMOVAL OF BOARD MEMBERS

Sec.532.007. (a) It is a ground for removal from the board if a member:
(1)is not eligible for appointment to the board at the time of appointment as provided by Section 532.004(a);
(2)does not maintain during service on the board the qualifications required by Section 532.004(a);
(3)violates a prohibition established by Section 532.004(b), (c), or (d);
(4)cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
(5)is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b)The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c)If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

Sec.532.008. **REPEALED**

REIMBURSEMENT FOR EXPENSES; PER DIEM

Sec.532.009. A board member is entitled to receive:

(1)reimbursement for actual and necessary expenses incurred in discharging the member's duties; and

(2)the per diem compensation as provided by appropriation for each day the member actually performs official duties.

BOARD MEETINGS

Sec.532.010. (a) The board shall hold at least four regular meetings each year in the city of Austin on dates set by board rule. The board shall adopt rules that provide for holding special meetings.

(b)A board meeting, other than a meeting to deliberate the appointment of the commissioner, is open to the public.

(c)The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

COMMISSIONER

Sec.532.011. (a) The commissioner of health and human services shall employ a commissioner in accordance with Section 531.0056, Government Code.

(b)To be qualified for employment as commissioner, a person must have:

(1)professional training and experience in the administration or management of comprehensive health care or human service operations; and

(2)proven administrative and management ability, preferably in the health care area.

(c)Repealed.

(d)The commissioner:

(1)has the administrative and decisional powers granted under this subtitle; and

(2)shall administer the department and this subtitle and ensure the effective administration of the department and its programs and services.

(e)The commissioner shall:

(1)establish qualifications for department personnel that balance clinical and programmatic knowledge and management experience; and

(2)standardize qualifications for personnel positions throughout the department.

(f) The commissioner shall:

(1)establish an organizational structure within the department that will promote the effective administration of this subtitle; and

(2)establish the duties and functions of the department's staff.

(g)The commissioner is responsible for implementation of the board's planning, policy, resource development and allocation, and oversight related to mental health and mental retardation services.

MEDICAL DIRECTOR

Sec.532.012. (a) The commissioner shall appoint a medical director.

(b)To be qualified for appointment as medical director, a person must:

(1)be a physician licensed to practice in this state; and

(2)have proven administrative experience and ability in comprehensive health care or human service operations.

(c)The medical director reports to the commissioner and is responsible for:

(1)oversight of the quality and appropriateness of clinical services delivered in department facilities or under contract to the department; and

(2)leadership in physician recruitment and retention and peer review.

Sec.532.013. **REPEALED**

HEADS OF DEPARTMENTAL FACILITIES

Sec.532.014. (a) The commissioner shall appoint the head of each facility the department administers.

(b)The head of a facility serves at the will of the commissioner.

RULES AND POLICIES

Sec.532.015. (a) The board shall adopt rules and develop basic and general policies to guide the department in administering this subtitle. The rules and policies must be consistent with the purposes, policies, principles, and standards stated in this subtitle.

(b)The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.

PERSONNEL

Sec.532.016. (a) The commissioner shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b)The commissioner shall develop a system of annual job performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c)The department shall provide to its members and employees, as often as necessary, information regarding their qualifications under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d)The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1)personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code;

(2)an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law; and

(3)procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) The policy statement must:

(1)be updated annually;

(2)be reviewed by the Commission on Human Rights for compliance with Subsection (d) (1); and

(3)be filed with the governor's office.

(f)The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

ANNUAL REPORTS

Sec.532.017. *repealed by S.B. 1179, 82nd Leg.,R.S.*

AUDITS

Sec.532.018. (a) The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b)The director of the internal audit unit shall report directly to the commissioner.

(c)Each audit report shall be submitted directly to the board.

PUBLIC INTEREST INFORMATION AND COMPLAINTS

Sec.532.019. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b)The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The board may provide for that notification:

(1)on each registration form, application, or written contract for services of an entity regulated under this subtitle or of an entity the creation of which is authorized by this subtitle;

(2)on a sign that is prominently displayed in the place of business of each entity regulated under this subtitle or of each entity the creation of which is authorized by this subtitle; or

(3)in a bill for service provided by an entity regulated under this subtitle or by an entity the creation of which is authorized by this subtitle.

(c)If a written complaint is filed with the department relating to an entity regulated by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the complainant and the entity regulated by the department of the status of the complaint unless notice would jeopardize an undercover investigation.

(d)The department shall keep an information file about each complaint filed with the department relating to an entity regulated by the department.

ADVISORY COMMITTEES

Sec.532.020. (a) The board shall appoint a medical advisory committee and any other advisory committees the board considers necessary to assist in the effective administration of the department's mental health and mental retardation programs.

(b)The department may reimburse committee members for travel costs incurred in performing their duties at the rates authorized for state officers and employees under the General Appropriations Act.

CITIZENS' PLANNING ADVISORY COMMITTEE

Sec.532.021. (a) The board shall appoint a citizens' planning advisory committee that is composed of:

(1)three persons who have demonstrated an interest in and knowledge of the department system and the legal, political, and economic environment in which the department operates;

(2)three persons who have expertise in the development and implementation of long-range plans; and

(3)three members of the public.

(b)In addition to the requirements of Subsection (a), at least one member must be a consumer of services for persons with mental illness or a family member of a consumer of those services, and at least one member must be a consumer of services for persons with mental retardation or a family member of a consumer of those services.

(c)The committee shall:

(1)advise the department on all stages of the development and implementation of the long-range plan required by Section 533.032;

(2)review the development, implementation, and any necessary revisions of the long-range plan;

(3)review the department's biennial budget request and assess the degree to which the request allows for implementation of the long-range plan; and

(4)advise the board on:

(A)the appropriateness of the long-range plan;

(B)any identified problems related to the implementation of the plan;

(C)any necessary revisions to the plan; and

(D)the adequacy of the department's budget request.

(d)The board shall review the committee's reports in conjunction with information provided by the department on the long-range plan or the biennial budget request.

(e)The board shall allow the committee opportunities to appear before the board as needed.

(f)Before a board meeting relating to the development, implementation, or revision of the department's long-range plan, the department shall, in a timely manner, provide the committee with any information that will be presented to the board.

(g)Before submitting the department's biennial budget request to the board for discussion or approval, the department shall, in a timely manner, provide the committee with a copy of the budget request.

(h)The department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.

(i) *repealed by S.B. 1179, 82nd Leg.,R.S.*

CHAPTER 533. POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES

Sec.533.0001. The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

GIFTS AND GRANTS

Sec.533.001. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health and mental retardation services in this state.

(b)The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health and mental retardation services available to the people of this state.

(c)The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health or mental retardation services available at the facility.

(d)The department shall use a gift or grant made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e)The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

COMPETITIVE REVIEW REQUIREMENT

Sec.533.002. The department shall establish procedures to:

(1)promote more efficient use of public funds;

(2)ensure periodic review of department management and support activities in order to:

(A)improve department operations;

(B)improve the determination of costs;

(C)increase department productivity; and

(D)remain competitive with the private sector; and

(3)ensure that the state not provide a service that is available through the private sector unless the state can provide the service at a lower cost.

USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS

Sec.533.003. (a) To develop or expand a volunteer program in a local mental health or mental retardation authority or a community center, the department may allocate available funds appropriated for providing volunteer services.

(b)The department shall develop formal policies that encourage the growth and development of volunteer services in local mental health or mental retardation authorities and community centers.

LIENS

Sec.533.004. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness or client with mental retardation in an amount equal to the amount of reimbursement sought.

(b)The amount of the reimbursement sought may not exceed:

(1)the amount the department is authorized to charge under Section 552.017 or under Subchapter D, Chapter 593, if the patient or client received the services in a department facility; or

(2)the amount the community center is authorized to charge under Section 534.017 if the patient or client received the services in a community center.

(c)The lien attaches to:

(1)all nonexempt real and personal property owned or later acquired by the patient or client or by a person legally responsible for the patient's or client's support;

(2)a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient or client to recover damages for an injury for which the patient or client was admitted to a department facility or community center; and

(3)the proceeds of a settlement of a cause of action or a claim by the patient or client for an injury for which the patient or client was admitted to a department facility or community center.

(d)To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1)the patient or client, or the person legally responsible for the patient's or client's support, owns property; or

(2)the patient or client received or is receiving services.

(e)The notice must contain:

(1)the name and address of the patient or client;

(2)the name and address of the person legally responsible for the patient's or client's support, if applicable;

(3)the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4)the name and location of the department facility or community center.

(f)Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient or client and the person legally responsible for the patient's or client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The board by rule shall prescribe the procedures to contest the charges.

(g)The county clerk shall record on the written notice the name of the patient or client, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's or client's support. The clerk shall index the notice record in the name of the patient or client and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's or client's support.

(h)The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i)To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

EASEMENTS

Sec.533.005. The department may grant a temporary or permanent easement or right-of-way on land held by the department. The department must grant an easement or right-of-way on terms and conditions the department considers to be in the state's best interest.

REPORTING OF ALLEGATIONS AGAINST PHYSICIAN

Sec.533.006. (a) The department shall report to the Texas State Board of Medical Examiners any allegation received by the department that a physician employed by or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b)The department shall provide to the Texas State Board of Medical Examiners a copy of any report or finding relating to an investigation of an allegation reported to that board.

ACCESS TO CRIMINAL HISTORY RECORD INFORMATION ON EMPLOYEES, APPLICANTS, AND VOLUNTEERS*

Sec.533.007. (a) The department, a local mental health or mental retardation authority, or a community center may deny employment or volunteer status to an applicant if:

(1)the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2)the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b)The board shall adopt rules relating to the use of information obtained under section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

***Pursuant to the repeal of substantive portions of 533.007, section 411.115 of the <u>Government Code</u> reads as follows:**

Sec.411.115. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION; LOCAL AUTHORITIES, COMMUNITY CENTERS.

(a) In this section, "local mental health authority," local mental retardation authority," and "community center" have the meanings assigned by Section 531.002, Health and Safety Code.

(b)The Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center is entitled to obtain from the department criminal history record information maintained by the department that relates to a person;

(1)who is:

(A)an applicant for employment with the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center;

(B)an employee of the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center;

(C)an applicant for employment with or an employee of a business or person that contracts with the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center to provide residential services to patients with mental illness or clients with mental retardation who were furloughed or discharged from a Texas Department of Mental Health and Mental Retardation facility or community center;

(D)a volunteer with the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center;

(E)a volunteer applicant; and

(2)who would be placed in direct contact with patients with mental illness or clients with mental retardation.

(c) Repealed

(d)Criminal history record information obtained by the mental health department, a local mental health or mental retardation authority, or a community center under Subsection (b) may not be released or disclosed to a person, other than the contractor that employs the person who is the subject of the criminal history record information, except on court order or with the consent of the person who is the subject of the criminal history record information.

(e)The Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center shall collect and destroy criminal history record information that relates to a person immediately after making an employment decision or taking a personnel action relating to the person who is the subject of the criminal history record information.

EXCHANGE OF EMPLOYMENT RECORDS

Sec.533.0075. The department, a local mental health or mental retardation authority, or a community center may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority or community center.

EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS AND MENTAL RETARDATION

Sec.533.008. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness and mental retardation in the facility's or center's service area.

(b)In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c)Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d)The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e)Each department facility and community center shall ensure that designated staff are trained to:

(1)assist clients through the Social Security Administration disability determination process;

(2)provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3)assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

EXCHANGE OF PATIENT AND CLIENT RECORDS

Sec.533.009. (a) Department facilities, local mental health or mental retardation authorities, community centers, other designated providers, and subcontractees of mental health and mental retardation services are component parts of one service delivery system within which patient or client records may be exchanged without the patient's or client's consent.

(b)The board shall adopt rules to carry out the purposes of this section.

COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY

Sec. 533.0095. (a) The executive commissioner of the Health and Human Services Commission by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) ordered by a court to receive inpatient mental health services under Chapter 574 or under Chapter 46C, Code of Criminal Procedure;

(2) committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or

(3) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

INFORMATION RELATING TO PATIENT'S CONDITION

Sec.533.010. (a) A person, including a hospital, sanitarium, nursing or rest home, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental disorders and mental disabilities.

(b)The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and mental retardation research and education in order to reduce mental disorders and mental disabilities. A summary of the study may be released for general publication.

(c)The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d)A person is not liable for damages or other relief if the person:

(1)provides information under this section;

(2)releases or publishes the findings and conclusions of the person or organization to advance mental health and mental retardation research and education; or

(3)releases or publishes generally a summary of a study.

RETURN OF PERSON WITH MENTAL RETARDATION TO STATE OF RESIDENCE

Sec.533.011. (a) The department may return a nonresident person with mental retardation who is committed to a facility for persons with mental retardation in this state to the proper agency of the person's state of residence.

(b)The department may permit the return of a resident of this state who is committed to a facility for persons with mental retardation in another state.

(c)The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to facilities for persons with mental retardation in this state or another state to the state of their residence.

(d)The superintendent of a department facility for persons with mental retardation may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with mental retardation returned to this state.

(e)The state returning a person with mental retardation to another state shall bear the expenses of returning the person.

COOPERATION OF STATE AGENCIES

Sec.533.012. (a) At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions.

(b) **repealed**

DUPLICATION OF REHABILITATION SERVICES

Sec.533.013. The department shall enter into an agreement with the Texas Rehabilitation Commission that defines the roles and responsibilities of the department and the commission regarding the agencies' shared client populations. The agreement must establish methods to prevent the duplication and fragmentation of employment services provided by the agencies.

RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS

Sec.533.014. (a) The board shall adopt rules that:

(1)relate to the responsibility of the of local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2)govern commitments to a local mental health authority;

(3)govern transfers of patients that involve a local mental health authority; and

(4)provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(b)The board's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The board shall also consider reducing patient inconvenience resulting from admissions and transfers between providers.

(c)The department shall notify each judge who has probate jurisdiction in the service area and any other person the local mental health authority considers necessary of the responsibility of the local mental health authority to make recommendations relating to the most appropriate and available treatment alternatives and the procedures required in the area.

UNANNOUNCED INSPECTIONS

Sec.533.015. The department may make any inspection of a facility or program under the department's jurisdiction without announcing the inspection.

CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS

Sec.533.016. (a) A state agency, local agency, local mental health authority or local mental retardation authority that expends public money to acquire goods and services in connection with providing or coordinating the provision of mental health or mental retardation services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

(1)Section 2155.144, Government Code, if the entity is a state agency subject to that law;

(2)Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(3)this section, if the entity is not covered by Subdivision (1) or (2).

(b)An agency or authority under Subsection (a)(3) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c)Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1)any installation costs;

(2)the delivery terms;

(3)the quality and reliability of the vendor's goods or services;

(4)the extent to which the goods or services meet the agency's or authority's needs;

(5)indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6)the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from the persons with disabilities;

(7)the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8)the cost of any employee training associated with the acquisition;

(9)the effect of an acquisition on the agency's or authority's productivity;

(10)the acquisition price; and

(11)any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d)If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the Health and Human Services Commission before considering factors other than price and meeting specifications.

(e)The state auditor or the department may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f)The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

PARTICIPATION IN DEPARTMENT PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM

Sec.533.017. The department may allow a state agency, local agency, local mental health authority or local mental retardation authority that expends public money to purchase goods and services in connection with providing or coordinating the provision of mental health or mental retardation services to purchase goods or services with the public money by participating in:

(1)a contract the department has made to purchase goods or services; or

(2)a group purchasing program established or designated by the department that offers discounts to providers of mental health and mental retardation services.

SPECIAL OLYMPICS TEXAS ACCOUNT

Sec.533.018. (a) The Texas Department of Mental Health and Mental Retardation Special Olympics Texas account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.2922, Transportation Code. Money in the account may be used only for the purposes of this section.

(b)The department administers the account. Annually, the department shall distribute the money deposited to the credit of the account to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

[Sections 533.019-533.030 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES RELATING TOPROVISION OF SERVICES

DEFINITIONS

Sec.533.031. In this subchapter:

(1)"Elderly resident" means a person 65 years of age or older residing in a department facility.

(2)"Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3)"Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

(4"Commission" means the Health and Human Services Commission.

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

(6)"ICF-MR and related waiver programs" includes ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.

(7)"Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(8)"Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

LONG-RANGE PLANNING

Sec.533.032. (a) The department shall have a long-range plan covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons the department serves are met.

(b) In developing the plan, the department shall:

(1)solicit input from:

(A)local authorities for mental health and mental retardation;

(B)community representatives;

(C)consumers of mental health and mental retardation services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D)other interested persons; and

(2)consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state schools and state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state school and state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interest parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients;

(B) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533.038; and

(D) input solicited from consumers of services of state schools and state hospitals.

(e) *repealed by S.B. 1179, 82nd Leg.,R.S.*

(f) *repealed by S.B. 1179, 82nd Leg.,R.S.*

(g) The department shall:

(1) attach the report required by Subsection (c)to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;
(E) Legislative Budget Board; and
(F) Health and Human Services Commission; and
(3) update the department's long-range plan biennially and include the report in the plan.

(h) The department shall, in coordination with the Health and Human Services Commission, evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the Health and Human Services Commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

CONTINUUM OF SERVICES IN CAMPUS FACILITIES

Sec.533.0325. The board by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services.

DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES

Sec.533.033. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1)the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2)the types of mental health services that can be most economically and effectively provided by department facilities.

(b)In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department facility.

(c)The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d)The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

(e) *repealed by S.B. 1179, 82nd Leg.,R.S.*

AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES

Sec.533.034. (a) The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health and mental retardation services.

(b) The department may adopt a schedule of initial and annual renewal compliance fees for persons that provide services under a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, and that is funded wholly or partly by the department and monitored by the department or by a designated local authority in accordance with standards adopted by the department. This subsection expires September 1, 2005.

STATE AGENCY SERVICES STANDARDS

Sec. 533.0345. (a) The department by rule shall develop model program standards for mental health and mental retardation services for use by each state agency that provides or pays for mental health or mental retardation services. The department shall provide the model standards to each agency that provides mental health or mental retardation services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health and mental retardation services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS

Sec. 533.0346. (a) The department may transfer operations of and services provided at the Amarillo State Center, Beaumont State Center, and Laredo State Center to a community center established under Chapter 534, including a newly established center providing mental retardation services or mental health and mental retardation services.

(b) The transfer may occur only on the department's approval of a plan submitted in accordance with Section 534.001(d) or of an amendment to a previously approved plan. In developing the plan or plan amendment, the center or proposed center proposing to accept the state center operation and service responsibilities shall consider input from consumers of mental health and mental retardation services and family members of and advocates for those consumers, organizations that represent affected employees, and other providers of mental health and mental retardation services.

(c) The center or proposed center proposing to accept the state center operation and service responsibilities shall publish notice of the initial planning meeting regarding the content of the plan or plan amendment and of the meeting to review the content of the proposed plan or plan amendment before it is submitted under Section 534.001(d). The notices must include the time and location of the meeting. The notice of the meeting to review the content of the plan or amendment must include information regarding how to obtain a copy of the proposed plan or amendment. The notices must be published not fewer than 30 days and not more than 90 days before the date set for the meeting in a newspaper of general circulation in each county containing any part of the proposed service area. If a county in which notice is required to be published does not have a newspaper of general circulation, the notices shall be published in a newspaper of general circulation in the nearest county in which a newspaper of general circulation is published.

(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing operations and services at a state center shall be transferred to the community center to ensure continuity of services.

(e) The Amarillo State Center is exempt from the requirements listed in Subsections (b) and (c).

LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES

Sec.533.035. (a) The executive commissioner shall designate a local mental health authority and a local mental retardation authority in one or more local service areas. The executive commissioner may delegate to the local authorities the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as the local mental health authority and the local mental retardation authority for a service area.

(b)The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health and mental retardation authority department federal and department state funds to be spent in the local service area for:

(1) community mental health and mental retardation services; and

(2)chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or mental retardation.

(b-1) This subsection expires September 1, 2009, and applies only to the determination of payment methodologies for mental health services and not to rate setting or the payment rates for intermediate care facilities for the mentally retarded, Section 1915(c) waiver programs, mental retardation service coordination, and other Medicaid services. Before the Department of State Health Services institutes a change in payment methodology for mental health services, the department shall:

(1)evaluate various forms of payment for services, including fee-for-service, case rate, capitation, and other appropriate payment methods to determine the most cost-effective and efficient form of payment for services;

(2)evaluate the effect of each proposed payment methodology on:

(A)the availability of services in urban and rural service areas;

(B)the availability of services for persons who are indigent;

(C)the cost certainty of the delivery of Medicaid rehabilitation mental health services; and

(D)the ability of the local mental health authority to meet unique local needs and develop and manage a network of providers;

(3)determine the implementation and ongoing operational costs for the state and local mental health authorities associated with each proposed payment methodology;

(4)develop an implementation plan, with the advice and assistance of the local authority network advisory committee, for any new payment methodology for mental health services that integrates the department 's findings under Subdivisions (1), (2), and (3); and

(5)report the department 's findings and the implementation plan for any new payment methodology for mental health services to the executive commissioner and the legislature not later than January 1, 2009.

(c)A local mental health and mental retardation authority, with the approval of the Department of State Health Services or the Department of Aging and Disability Services, or both, as applicable, shall use the funds received under Subsection (b) to ensure mental health, mental retardation, and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1)assembling a network of service providers;

(2)making recommendations relating to the most appropriate and available treatment alternatives for individuals in the need of mental health or mental retardation services; and

(3)procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d)A local mental health and mental retardation authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) Subject to Section 533.0358, in assembling a network of service providers, a local mental health authority may serve as a provider of services only as a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

(e) The department shall review the appropriateness of a local mental health and mental retardation authority's status as a service provider at least biennially.

(e-1) A local mental retardation authority may serve as a provider of ICF-MR and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533.0355(d); or

(2) the ICF-MR and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-MR and related waiver program qualified service provider in the local authority's service area where the service is needed.

LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE

Sec. 533.0351. (a) The executive commissioner shall establish a local authority network advisory committee to advise the executive commissioner and the Department of State Health Services on technical and administrative issues that directly affect local mental health authority responsibilities.

(b) The committee is composed of equal numbers of representatives of local mental health authorities, community mental health service providers, private mental health service providers, local government officials, advocates for individuals with mental health needs, consumers of mental health services, family members of individuals with mental health needs, and other individuals with expertise in the field of mental health appointed by the executive commissioner. In addition, the executive commissioner may appoint facilitators to the committee as necessary. In appointing the members, the executive commissioner shall also ensure a balanced representation of:

(1) different regions of this state;

(2) rural and urban counties; and

(3) single-county and multicounty local mental health authorities.

(c) Members appointed to the advisory committee must have some knowledge of, familiarity with, or understanding of the day-to-day operations of a local mental health authority.

(d) The advisory committee shall:

(1) review rules and proposed rules and participate in any negotiated rulemaking process related to local mental health authority operations;

(2) advise the executive commissioner and the Department of State Health Services regarding evaluation and coordination of initiatives related to local mental health authority operations;

(3) advise the executive commissioner and the Department of State Health Services in developing a method of contracting with local mental health authorities that will result in contracts that are flexible and responsive to:

(A) the needs and services of local communities; and

(B) the department's performance expectations;

(4) coordinate with work groups whose actions may affect local mental health authority operations;
(5) report to the executive commissioner and the Department of State Health Services on the committee's activities and recommendations at least once each fiscal quarter; and
(6) work with the executive commissioner or the Department of State Health Services as the executive commissioner directs.

(e) For any written recommendation the committee makes to the Department of State Health Services, the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(f) The committee is subject to Chapter 2110, Government Code, except that the committee is not subject to Section 2110.004 or 2110.008, Government Code. The committee is abolished on September 1, 2017, unless the executive commissioner adopts a rule continuing the committee in existence beyond that date.

(g) The Department of State Health Services may reimburse consumers of mental health services and family members of individuals with mental health needs appointed to the committee for travel costs incurred in performing their duties as provided in the General Appropriations Act.

LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA

Sec. 533.0352. .(a) Each local mental health or mental retardation authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local mental health or mental retardation authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533.032.

(c) The department and a local mental health or mental retardation authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local mental health or mental retardation authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;
(B) consumers of community-based mental health and mental retardation services and members of the families of those consumers;
(C) consumers of services of state schools for persons with mental retardation, members families of those consumers, and members of state school volunteer services councils, if a state school is located in the local service area of the local authority; and
(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;
(B) goals to minimize the need for state hospital and community hospital care;
(C) goals to ensure a client with mental retardation is placed in the least restrictive environment appropriate to the person's care;
(D) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state schools for persons with mental retardation in the local service area of the local authority;
(E) goals to divert consumers of services from the criminal justice system;
(F) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and
(G) opportunities for innovation in services and service delivery.

(e) The department and the local mental health or mental retardation authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health or mental retardation authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection

LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL

Sec. 533.03521. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the Department of State Health Services for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall approve the plan.

(e) At least biennially, the department shall review a local mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES

Sec. 533.0354. (a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

(1) ongoing and matched to the needs of the individual in type, duration, and intensity;

(2) focused on a process of recovery designed to allow the individual to progress through levels of service;

(3) guided by evidence-based protocols and a strength-based paradigm of service; and

(4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(b) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(c) The department shall enter into performance contracts between the department and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.

(d) *repealed by S.B. 1179, 82nd Leg.,R.S.*

(e) The department may use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)-(c).

LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

Sec.533.0355. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local mental retardation authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local mental retardation authority responsibilities:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial person-centered assessment, and service authorization;
(5) utilization management;
(6) safety net functions, including crisis management services and assistance in accessing facility–based care;
(7) service coordination functions;
(8) provision and oversight of state general revenue services;
(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and
(10) processes to assure accountability in performance, compliance, and monitoring.

(c) In determining eligibility under Subsection (b)(3), a local mental retardation authority must offer a state school as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs under Section 533.035(e-1), the executive commissioner shall require the local mental retardation authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and
(2) base any increase in the local authority's provider capacity on:
(A) the local authority's state-mandated conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;
(B) the local authority's voluntary conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;
(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or
(D) other extenuating circumstances that:
(i) are monitored and approved by the Department of Aging and Disability Services;
(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local mental retardation authority; and
(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice.

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local mental retardation authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the Department of Aging and Disability Services shall review and determine the local mental retardation authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;
(2) the number of other qualified service providers in the area; and
(3) the geographical area in which the local authority is located.

(g) The Department of Aging and Disability Services shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;
(2) to respect the rights, needs, and preferences of an individual receiving services; and
(3) to integrate individuals with mental retardation and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The Department of Aging and Disability Services shall ensure that local mental retardation authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and

service options for which the individuals are eligible in accordance with Section 533.038(d), including options such as the availability and types of ICF-MR placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

LOCAL BEHAVIORAL HEALTH AUTHORITIES

Sec. 533.0356. (a) In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.

(b) The department and the commission jointly may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The board and the commission may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461.0124.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department and commission for designation as a local behavioral health authority.

(e) The department and commission, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of the department or the commission as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and

(2) the commission.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department and commission shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department and the commission that services involving state funds that the authority oversees comply with relevant state standards.

(i) The board and the commission jointly may adopt rules to govern the operations of local behavioral health authorities. The department and the commission jointly may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES

Sec. 533.0357. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:

(1) developing and implementing a local network development plan;

(2) assembling and expanding a local provider network to increase consumer choice;

(3) creating and enforcing performance standards for providers;

(4) managing limited resources;

(5) maximizing available funding;

(6) producing the best client outcomes;

(7) ensuring consumers of mental health services have control over decisions regarding their health;

(8) developing procurement processes to protect public funds;

(9) achieving the best mental health consumer outcomes possible; and

(10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only existing resources.

(h) The Department of State Health Services shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT

Sec. 533.0358. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES

Sec. 533.0359. (a) In developing rules governing local mental health authorities under Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

REPORT ON APPLICATION FOR SERVICES

Sec.533.036. *repealed by S.B. 1179, 82nd Leg.,R.S.*

SERVICE PROGRAMS AND SHELTERED WORKSHOPS

Sec.533.037. (a) The department may provide mental health and mental retardation services through halfway houses, sheltered workshops, community centers, and other mental health and mental retardation services programs.

(b)The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c)An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d)Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1)purchase supplies, materials, services, and equipment;

(2)pay salaries of and wages to participants and employees;

(3)construct, maintain, repair, and renovate facilities and equipment; and

(4)establish and maintain a petty cash fund of not more than $100.

(e)Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f)This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

FACILITIES AND SERVICES FOR CLIENTS WITH MENTAL RETARDATION

Sec.533.038. (a) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, care, or control of clients with mental retardation.

(b)The department may specify the facility in which a client with mental retardation under the department's jurisdiction is placed.

(c)The department may maintain day classes at a department facility for the convenience and benefit of clients with mental retardation of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

(d) A person with mental retardation, or a person’s legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state schools, community ICF-MR programs, waiver services under Section 1915(c) of the federal Social Security Act (42. U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person’s legally authorized representative shall be documented in the person’s record. If the preferred programs or services are not available, the person or the person’s legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533.032.

(f) The department may spend money appropriated for the state school system only in accordance with limitations imposed by the General Appropriations Act.

CLIENT SERVICES OMBUDSMAN

Sec.533.039. (a) The commissioner shall employ an ombudsman responsible for assisting a person, or a parent or guardian of a person, who has been denied service by the department, a department program or facility, or a local mental health or mental retardation authority.

(b) The ombudsman shall:

(1) explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and

(2) assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.

SERVICES FOR CHILDREN AND YOUTH

Sec.533.040. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness or mental retardation, or both, and for their families. The department shall:

(1)prepare and review budgets for services for children;

(2)develop departmental policies relating to children's programs and service delivery; and

(3)increase interagency coordination activities to enhance the provision of services for children.

(b)The department shall designate an employee authorized in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c)The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Central Education Agency and public schools on matters relating to the prevention of and response to suicide or attempted suicide by public school students.

(d) The department and the Interagency Council on Early Childhood Intervention shall:

(1) jointly develop:

(A) a continuum of care for children younger than seven years of age who have mental illness; and

(B) a plan to increase the expertise of the department's service providers in mental health issues involving children younger than seven years of age; and

(2) coordinate, if practicable, department and council activities and services involving children with mental illness and their families.

SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH

Sec.533.041. (a) At each department mental health facility, the department shall make short-term evaluation and diagnostic services available for emotionally disturbed children and youth who are referred to the department by the Texas Department of Human Services if evaluation and diagnostic services for the children and youth are not immediately available through a local mental health authority.

(b)The Texas Department of Human Services may pay for the services according to fees jointly agreed to by both agencies. The department may use payments received under the agreement to contract for community-based residential placements for emotionally disturbed children and youth.

(c)The department shall maintain computerized information on emotionally disturbed children and youth that contains both individual and aggregate information. The purpose of the information is to allow the department to track services and placements and to conduct research on the treatment of the children and youth. The department may coordinate activities with the Texas Department of Human Services in developing the information. The department shall make the information available to the department's mental health facilities and to community centers.

MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING

Sec.533.0415. (a) The department, the Texas Department of Human Services, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the agencies involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b)The task force consists of:

(1)one clinical professional and one training staff member from each agency, appointed by that

agency; and

(2)10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c)The task force shall meet at the call of the department.

(d)The department shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e)The agencies shall review and by rule revise the memorandum not later than August each year.

EVALUATION OF ELDERLY RESIDENTS

Sec.533.042. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b)The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing home may not be able to meet the special needs of an elderly resident.

(c)In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d)The treating physician shall conduct the evaluation of an elderly resident of a department mental health facility. The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department mental retardation facility.

(e)The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health and mental retardation authority.

(f)A local mental health or mental retardation authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g)The local mental health or mental retardation authority shall have the right of access to all residents and records of residents who request continuing care services.

PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE

Sec.533.043. (a) The department shall solicit proposals from community providers to operate:

(1)community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2)transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b)The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c)A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d)A proposal to operate transitional living units may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e)The department shall require each provider to:

(1)offer adequate assurances of ability to:

(A)provide the required services;

(B)meet department standards; and

(C)safeguard the safety and well-being of each resident; and

(2)sign a memorandum of agreement with the local mental health or mental retardation authority, as appropriate, outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(f)The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(g)The appropriate local mental health or mental retardation authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

(h)The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services if the department terminates a contract.

MEMORANDUM OF UNDERSTANDING ON ASSESSMENT TOOLS

Sec.533.044. (a) The department and Texas Department of Human Services by rule shall adopt a joint memorandum of understanding that requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by the department or Texas Department of Human Services needs a guardian of the person or estate or both.

(b)The memorandum must prescribe:

(1)the facilities that must use the assessment; and

(2)the circumstances in which the facilities must use the assessment.

(c)Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS

Sec.533.045. (a) The department may place on a clozapine treatment plan each patient in a state hospital for whom the treatment is medically feasible and appropriate. The department may place a patient on a treatment plan using a drug other than clozapine if the drug produces results that are similar to or better than clozapine in treating schizophrenics.

(b)If a patient in a state hospital responds to a treatment plan required or authorized by Subsection (a) to the extent that the patient can be discharged from the hospital, the department may:

(1)assist the patient in applying for disability benefits and for Medicaid if the patient is potentially eligible;

(2)place the patient in a community setting with continuing drug treatments and with medical monitoring;

(3)provide or ensure that the patient is provided supportive housing, rehabilitation services, and job placement, as appropriate; and

(4)provide outpatient care at state hospitals or require a local mental health authority to provide outpatient care, as appropriate.

(c)The department may use facility beds vacated by patients discharged through the use of a treatment plan allowed by Subsection (a) for other appropriate uses.

FEDERAL FUNDING FOR MENTAL HEALTH SERVICES FOR CHILDREN AND FAMILIES

Sec.533.046. (a) The department shall enter into an interagency agreement with the Texas Department of Human Services to:

(1)amend the eligibility requirements of the state's emergency assistance plan under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), to include mental health emergencies; and

(2)prescribe the procedures the agencies will use to delegate to the department and to local mental health and mental retardation authorities the administration of mental health emergency assistance;

(b)The interagency agreement must provide that:

(1)the department certify to the Texas Department of Human Services the nonfederal expenditures for which the state will claim federal matching funds; and

(2)the Texas Department of Human Services retain responsibility for making final eligibility decisions.

(c)The department shall allocate to local mental health and mental retardation authorities 66 percent of the federal funds received under this section.

MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM

Sec.533.047. The department shall develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients.

GUARDIANSHIP ADVISORY COMMITTEE

Sec. 533.048. (a) In this section, “institution” means:

(1) an ICF-MR; or

(2) a state hospital, state school, or state center maintained and managed by the department.

(b) The commissioner shall appoint a guardianship advisory committee composed of nine members, five of whom must be parents of residents of institutions.

(c) The commissioner shall designate a member of the advisory committee to serve as presiding officer. The members of the advisory committee shall elect any other necessary officers.

(d) The advisory committee shall meet at the call of the presiding officer.

(e) A Member of the advisory committee serves at the will of the commissioner.

(f)A member of the advisory committee may not receive compensation for serving on the advisory committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.

(f) The advisory committee shall develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents.

PRIVATIZATION OF STATE SCHOOL

Sec. 533.049. *repealed by S.B. 1179, 82nd Leg.,R.S.*

PRIVATIZATION OF STATE MENTAL HOSPITAL

Sec. 533.050. *repealed by S.B. 1179, 82nd Leg.,R.S.*

[Sections 533.051-533.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-MR PROGRAM

Sec.533.061. REPEALED

PLAN ON LONG-TERM CARE FOR PERSONS WITH MENTAL RETARDATION

Sec.533.062. (a) The department shall biennially develop a proposed plan on long-term care for persons with mental retardation.

(b)The proposed plan must specify the capacity of the HCS waiver program for persons with mental retardation and the number and levels of new ICF-MR beds to be authorized in each region. In developing the proposed plan, the department shall consider:

(1)the needs of the population to be served;

(2)projected appropriation amounts for the biennium; and

(3)the requirements of applicable federal law.

(c)Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission for approval.

(d)The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services.

(e)The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 4413(502), Revised Statutes.

(f)After legislative action on the appropriation for long-term care services for persons with mental retardation, the Health and Human Services Commission shall adjust the plan to ensure that the number of ICF-MR beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g)After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h)The department may submit proposed amendments to the plan to the Health and Human Services Commission.

(i)In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

REVIEW OF ICF-MR RULES

Sec.533.063. (a) The department, Texas Department of Health, and Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.

(b)The departments shall jointly adopt a written policy interpretation letter that describes the proposed change and shall make a copy of the letter available to providers.

Sec.533.064. **REPEALED**

ICF-MR APPLICATION CONSOLIDATION LIST

Sec.533.065. (a) The department shall maintain a consolidated list of applications for certification for participation in the ICF-MR program.

(b)The department shall list the applications in descending order using the date on which the department received the completed application.

(c)The department shall approve applications in the order in which the applications are listed.

(d)The department shall notify the Texas Department of Health of each application for a license or for compliance with licensing standards the department approves.

INFORMATION RELATING TO ICF-MR PROGRAM

Sec.533.066. (a) At least annually, the department, Texas Department of Health, and Texas Department of Human Services shall jointly sponsor a conference on the ICF-MR program to:

(1)assist providers in understanding survey rules;

(2)review deficiencies commonly found in ICF-MR facilities; and

(3)inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-MR program.

(b)The departments also may use any other method to provide necessary information to providers, including publications.

[Sections 533.067-533.080 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

DEVELOPMENT OF FACILITY BUDGETS

Sec.533.081. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

DETERMINATION OF SAVINGS IN FACILITIES

Sec.533.082. (a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness or mental retardation in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b)In making the determination, the department shall:

(1)assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2)include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c)The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

(d)The department shall allocate to community-based mental retardation programs any savings realized in operating department facilities for persons with mental retardation.

CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY

Sec.533.083. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

MANAGEMENT OF SURPLUS REAL PROPERTY

Sec.533.084. (a) To the extent provided by this subtitle, the department may lease, transfer, or otherwise dispose of any surplus real property, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the board designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b)The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds and any interest from the proceeds may be appropriated only for improvements to the department's system of facilities.

(b-1) Notwithstanding Subsection (b) or any other law, the proceeds from the disposal of any surplus real property by the department that occurs before September 1, 2005:

(1) are not required to be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code; and

(2) may be appropriated for any general governmental purpose.

(b-2) Subsection (b-1) and this subsection expire September 1, 2005.

(c)A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The board shall adopt forms, rules, and contracts that, in the board's best judgment, will protect the state's interests. The board may reject any or all bids.

(d)This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the department may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

MENTAL HEALTH COMMUNITY SERVICES ACCOUNT

Sec. 533.0844. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental health community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

MENTAL RETARDATION COMMUNITY SERVICES ACCOUNT

Sec. 533.0846. (a) The mental retardation community services account is an account in the general revenue fund that may be appropriated only for the provision of mental retardation services by or under contract with the department.

(b) The department shall deposit to the credit of the mental retardation community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental retardation community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

FACILITIES FOR INMATE AND PAROLEE CARE

Sec.533.085. (a) With the written approval of the governor, the department may contract with:

(1)the institutional division of the Texas Department of Criminal Justice to transfer facilities to that department or otherwise provide facilities for inmates with mental illness or mental retardation in the custody of that department; and

(2)the pardons and paroles division of the Texas Department of Criminal Justice to transfer facilities to that board or otherwise provide facilities for persons with mental illness or mental retardation paroled or released under that board's supervision.

(b)An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS

Sec.533.086. (a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.

(b)Not later than September 1 of each even-numbered year, the department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons with substance abuse problems who cannot be treated in the community.

LEASE OF REAL PROPERTY

Sec.533.087. (a) The department may lease real property, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department may award a lease of real property only:

(1)at the prevailing market rate; and

(2)by competitive bid.

(b)The department shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1)a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2)a newspaper of statewide circulation.

(c)The department may lease real property or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding if:

(1)the board determines that sufficient public benefit will be derived from the lease; and

(2)the property is leased to:

(A)a federal or state agency;

(B)a unit of local government;

(C)a not-for-profit organization; or

(D)an entity related to the department by a service contract.

(d)The board shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e)The board may reject any bid.

(f)This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the department may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES

Sec. 533.108. (a) A local mental health or mental retardation authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;

(v) shelter care services;

(vi) crisis respite residential services;

(vii) outpatient integrated mental health services;

(viii) co-occurring substance abuse treatment services;
(ix) psychiatric rehabilitation and service coordination services;
(x) continuity of care services; and
(xi) services consistent with the Texas Council on Offenders with Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health or mental retardation authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health or mental retardation authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

ESTABLISHMENT

Sec.534.001. (a) A county, municipality, hospital district, school district, or an organizational combination of two or more of those local agencies may establish and operate a community center.

(b) In accordance with this subtitle a community center may be:

(1)a community mental health center that provides mental health services;

(2)a community mental retardation center that provides mental retardation services; or

(3)a community mental health and mental retardation center that provides mental health and mental retardation services.

(c)A community center is:

(1)an agency of the state, a governmental unit, and a unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code;

(2)a local government, as defined by Section 791.003, Government Code;

(3)a local government for the purposes of Chapter 2259, Government Code; and

(4)a political subdivision for the purposes of Chapter 172, Local Government Code.

(d)A community center may be established only if:

(1)the proposed center submits to the department a copy of the contract between the participating local agencies, if applicable;

(2)the department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or mental retardation program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and

(3)the department determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e)Except as provided by this section, a community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The executive commissioner by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan. In addition to the services described in a center’s plan, the center may provide other health and human services and supports as provided by a contract with or a grant received from a local, state, or federal agency.

(f)Each function performed by a community center under this title is a governmental function if the function is required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power. Notwithstanding any other law, a community center is subject to Chapter 554, Government Code.

(g)An entity is, for the purpose of operating a psychiatric center, a governmental unit and a unit of local government under Chapter 101, Civil Practice and Remedies Code, and a local government under Chapter 102, Civil Practice and Remedies Code, if the entity:

(1)is not operated to make a profit;
(2)is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and
(3)contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

PURPOSE AND POLICY

Sec.534.0015. (a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state who are mentally ill or mentally retarded.

(b)It is the policy of this state that community centers strive to develop services for persons who are mentally ill or mentally retarded, and may provide requested services to persons with developmental disabilities or with chemical dependencies, that are effective alternatives to treatment in a large residential facility.

BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY

Sec.534.002. The board of trustees of a community center established by one local agency is composed of:
(1)the members of the local agency's governing body; or
(2)not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body.

BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES

Sec.534.003. (a) The board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than nine members.

(b)The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing bodies or from among the qualified voters who reside in the region to be served by the center.

(c)When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the:
(1)method of choosing the members; or
(2)membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP

Sec.534.004. (a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:
(1)the application procedure for a position on the board of trustees;
(2)the procedure and criteria for making appointments to the board of trustees;
(3)the procedure for posting notice of and filling a vacancy on the board of trustees; and
(4)the grounds and procedure for removing a member of the board of trustees.

(b)The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

TERMS; VACANCIES

Sec.534.005. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b)A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

TRAINING

Sec. 534.006. (a) The board by rule shall establish:

(1)an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2)an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or mental retardation and representatives of boards of trustees.

(b)Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1)the enabling legislation that created the community center;

(2)the programs the community center operates;

(3)the community center's budget for that program year;

(4)the results of the most recent formal audit of the community center;

(5)the requirements of the open meetings law, V.T.C.A., Government Code Section 551.001 et seq., and the open records law, V.T.C.A. Government Code Section 552.001 et seq.;

(6)the requirements of conflict of interest laws and other laws relating to public officials; and

(7)any ethics policies adopted by the community center.

QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL

Sec. 534.0065. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b)A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

(1)owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2)uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A)compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or

(B)as a consumer or as a family member of a client or patient receiving services from the community center.

(c)The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d)A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e)A member of the board of trustees may not:

(1)refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;

(2)use a community center facility in the conduct of a business entity owned or controlled by that member;

(3)solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4)receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5)appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6)solicit or receive a political contribution from a supplier to or contractor with the community center.

(f)Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this article.

(g)In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

(1)violates Chapter 171, Local Government Code;
(2)is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c) of this section;
(3)does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c) of this section;
(4)violates a provision of Subsection (e) of this section;
(5)violates a provision of Section 534.0115; or
(6)does not execute the affidavit required by Subsection (f) of this section.

(h)If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES

Sec.534.007. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(b)This section does not apply to:
(1)a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A or salary group 9, Schedule B, of the position classification salary schedule; or
(2)a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:
(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.
(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

ADMINISTRATION BY BOARD

Sec.534.008. (a) The board of trustees is responsible for the effective administration of the community center.

(b)The board of trustees shall make policies that are consistent with the department's rules and standards.

MEETINGS

Sec.534.009. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b)Board meetings are open to the public to the extent required by and in accordance with the open meetings law (V.T.C.A. Government Code Section 551.001 et seq.).

(c) The board of trustees shall keep a record of its proceedings in accordance with the open meetings law (V.T.C.A. Government Code Section 551.001 et seq.). The record is open to public inspection in accordance with that law.

(d)The board of trustees shall send to the department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:
(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States postal service; or
(2) another method agreed to by the board of trustees and the local agency.

EXECUTIVE DIRECTOR

Sec.534.010. (a) The board of trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:
(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

PERSONNEL

Sec.534.011. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b)The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c)The board of trustees may provide workers' compensation benefits.

(d)The board of trustees shall prescribe the number of employees and their salaries. The board of trustees may choose to set salaries and benefits in compliance with a market analysis or internal salary study. If an internal salary study is used, the board of trustees shall conduct the study in accordance with the guidelines established by the commissioner.

(e)Instead of using a market analysis or internal salary study to establish salaries and benefits, the board of trustees may use the state position classification plan and the General Appropriations Act to determine the appropriate classification and relative compensation of officers and employees. The board of trustees may pay salaries in amounts less than those provided by the General Appropriations Act. For a position not on the classification plan, the board of trustees shall set the compensation according to guidelines adopted by the commissioner. The board of trustees may petition the department for approval to exclude a position from the position classification plan and to provide a stated salary for that position that exceeds the amount prescribed by the General Appropriations Act for the classified position.

(f)During a management audit of a community center, the department is entitled to confirm the method the center used to determine salaries and benefits.

NEPOTISM

Sec. 534.0115. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b)An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c)The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d)If an officer or employee is permitted to remain in employment under Subsection (b) of this section, the related member of the board of trustees may not participate in the deliberation or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

ADVISORY COMMITTEES

Sec.534.012. (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and mental retardation services.

(b)Each committee must be composed of at least three members.

(c)The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

COOPERATION OF DEPARTMENT

Sec.534.013. The department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

BUDGET; REQUEST FOR FUNDS

Sec.534.014. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center's:

(1)approved fiscal year operating budget;

(2)most recent annual financial audit; and

(3)staff salaries by position.

(b)The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind assistance to support the center.

PROVISION OF SERVICES

Sec.534.015. (a) The board of trustees may adopt rules to regulate the administration of mental health or mental retardation services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b)The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or mental retardation services.

(c)With the commissioner's approval, the board of trustees may contract with the governing body of another county or municipality to provide mental health and mental retardation services to residents of that county or municipality.

(d)A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.

FOR WHOM SERVICES MAY BE PROVIDED

Sec.534.0155. (a) This subtitle does not prevent a community center from providing services to a person with a chemical dependency, to a person with a developmental disability, or to a person with a mental disability, as defined by Section 535.001.

(b)A community center may provide those services by contracting with a public or private agency in addition to the department.

SCREENING AND CONTINUING CARE SERVICES

Sec.534.016. (a) A community center shall provide screening services for a person who requests voluntary admission to a department facility for persons with mental illness and for a person for whom proceedings for involuntary commitment to a department facility have been initiated.

(b)A community center shall provide continuing mental health and physical care services for a person referred to the center by a department facility and for whom the facility superintendent has recommended a continuing care plan.

(c)Services provided under this section must be consistent with the department's rules and standards.

(d)The commissioner may designate a facility other than the community center to provide the screening or continuing care services if:

(1)local conditions indicate that the other facility can provide the services more economically and effectively; or

(2)the commissioner determines that local conditions may impose an undue burden on the community center.

FEES FOR SERVICES

Sec.534.017. (a) A community center shall charge reasonable fees for the services the center provides, unless prohibited by other service contracts or law.

(b)The community center may not deny services to a person because of inability to pay for the services.

(c)The community center has the same rights, privileges, and powers for collecting fees for treating patients and clients that the department has by law.

(d)The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

TRUST EXEMPTION

Sec.534.0175. (a) If a client is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the client or the client's estate and is not liable for the client's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the client or the client's estate and are liable for the client's support.

(b)To qualify for the exemption provided by Subsection (a), the trust and the trustee must comply with the requirements prescribed by Sections 552.018 and 593.081.

GIFTS AND GRANTS

Sec.534.018. A community center may accept gifts and grants of money, personal property, and real property to use in providing the center's programs and services.

CONTRIBUTION BY LOCAL AGENCY

Sec.534.019. A participating local agency may contribute land, buildings, facilities, other real and personal property, personnel, and funds to administer the community center's programs and services.

ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER

Sec.534.020. (a) A community center may purchase or lease-purchase real and personal property and may construct buildings and facilities.

(b)The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

(1)the purchase or lease-purchase of that property at that price is necessary;

(2)the board of trustees documents in the official minutes the reasons why the purchase or lease purchase is necessary at that price;

(3)a majority of the board approves the transaction.

(c)The board of trustees shall establish in accordance with relevant department rules competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

APPROVAL AND NOTIFICATION REQUIREMENTS

Sec.534.021. (a) A community center must receive from the department prior written approval to acquire real property, including a building, if the acquisition involves the use of department funds or local funds required to match department funds. In addition, for acquisition of nonresidential property, the community center must notify each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire the property.

(b)A community center must notify the department and each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of department funds or local funds required to match department funds. The commissioner, on request, may waive the 30-day requirement on a case-by-case basis.

(c)The board shall adopt rules relating to the approval and notification process.

FINANCING OF PROPERTY AND IMPROVEMENTS

Sec.534.022. (a) To acquire or to refinance the acquisition of real and personal property, to construct improvements to property, or to finance all or part of a payment owed or to be owed on a credit agreement, a community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue, execute, refinance, or refund bonds, notes, obligations, or contracts. The community center may secure the payment of the bonds, notes, obligations, or contracts with a security interest in or pledge of its revenues or by granting a mortgage on any of its properties.

(a-1) For purposes of Subsection (a), "revenues" includes the following, as those terms are defined by Section 9.102, Business & Commerce Code:

(1) an account;
(2) a chattel paper;
(3) a commercial tort claim;
(4) a deposit account;
(5) a document;
(6) a general intangible;
(7) a health care insurance receivable;
(8) an instrument;
(9) investment property;
(10) a letter-of-credit right; and

(11) proceeds.

(b) Except as provided by Subsection (f), the community center shall issue the bonds, notes, or obligations in accordance with Chapters 1201 and 1371, Government Code. The attorney general must approve before issuance:

(1) notes issued in the form of public securities, as that term is defined by Section 1201.002, Government Code;

(2) obligations, as that term is defined by Section 1371.001, Government Code; and

(3) bonds.

(c)A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

(d) *repealed by S.B. 1179, 82nd Leg.,R.S.*

(e)A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligations or be liable for the acts, actions or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

CONSTRUCTION OF FACILITIES BY DEPARTMENT

Sec.534.023. (a) The department and a community center may agree that:

(1)the community center transfer ownership of real property to the department;

(2)the department construct a community-based care or alternative living facility on the property; and

(3)the department lease the constructed facility to the community center to provide mental health and mental retardation services.

(b)The agreement must include a provision for a lease-purchase arrangement between the community center and the department.

(c)The department may construct a facility at a site other than the present site of a department facility.

DEPARTMENT FUNDING FOR FACILITY RENOVATION

Sec.534.024. (a) A community center may request money from the department to renovate a building or facility the community center owns or leases.

(b)The department may provide renovation money under an agreement in which the community center repays the money and the department obtains a lien against the center's buildings or facilities in an amount equal to the amount to be repaid.

(c)The agreement must include a provision authorizing the department to withhold state contract funds if the community center fails to make timely payments.

PRIORITIES FOR FUNDING

Sec.534.025. (a) The board shall establish priorities for the use of facilities constructed under Section 534.023 or renovated under Section 534.024 and that relate to the appropriate types of community-based services and alternative living arrangements for persons with mental disabilities.

(b)The department shall use criteria based on those priorities to determine the eligibility of a proposal for facility construction or renovation.

TERMS OF CONSTRUCTION OR RENOVATION AGREEMENT

Sec.534.026. (a) In an agreement to construct a facility under Section 534.023 or to renovate a facility under Section 534.024, the department shall specify the lease or loan payments that include the amortization of the cost of the facility or renovation.

(b)The agreement must provide for reasonable interest to be paid by the community center on the total cost of the facility or renovation. The rate of interest may not exceed 50 percent of the market interest rate, as determined by

the department, that a local agency that established the community center would pay at the time the agreement is made if the agency issued revenue bonds to construct or renovate the facility payable for the same period as the period of the agreement to construct or renovate the facility.

COMMUNITY CENTERS FACILITIES CONSTRUCTION AND RENOVATION FUND

Sec.534.027. (a) The community centers facilities construction and renovation fund is in the state treasury.

(b)The fund may be used only to finance:

(1)the construction of facilities by the department under Section 534.023; and

(2)the renovation of buildings and facilities by community centers under Section 534.024.

(c)Lease payments made by a community center under Section 534.023 shall be credited to the fund and applied to the purchase of the facility by the community center.

(d)Payments made by a community center under Section 534.024 shall be credited to the fund and applied to repayment of the renovation funding and release of the lien.

TRANSFER OF TITLE; RELEASE OF LIEN

Sec.534.028. (a) When a community center has paid to the department the amount specified under the terms of a lease-purchase agreement made under Section 534.023, the department shall transfer to the center full title to the property and all improvements.

(b)When a community center has paid to the department the amount specified under the terms of a renovation agreement made under Section 534.024, the department shall release the lien against the center's buildings or facilities.

DEFAULT

Sec.534.029. (a) The department shall send to a community center that does not make a payment to the department by the due date established in the lease-purchase or renovation funding agreement a written notice of default and a statement that the center must make the overdue payments not later than the 60th day after the date on which the center receives the notice.

(b)If the community center does not make overdue lease-purchase payments within the 60-day period, the lease-purchase agreement is terminated, and the department may take possession of the facility.

(c)If the community center does not make overdue renovation funding payments within the 60-day period, the department may:

(1)withhold state contract funds in the amount of the overdue payments; or

(2)terminate the renovation funding agreement and sue to foreclose on the lien.

STATE FUNDS

Sec.534.030. (a) A community center may use state funds, including state contract funds, to operate a facility constructed under Section 534.023 or renovated under Section 534.024. The total amount of state funds used in the actual operation of the facility may not exceed an amount equal to 60 percent of the facility's total operating budget.

(b)In determining a facility's total operating budget, a community center may not include lease-purchase payments or renovation funding repayments.

(c)The construction, renovation, or operation of a facility under Sections 534.023-534.029 does not constitute grounds for a community center to receive contract funds that are in addition to the contract funds the center would otherwise receive under the board's rules governing distribution of those funds.

SURPLUS PERSONAL PROPERTY

Sec.534.031. The department may transfer, with or without reimbursement, ownership and possession of surplus personal property under the department's control or jurisdiction to a community center for use in providing mental health or mental retardation services.

RESEARCH

Sec.534.032. A community center may engage in research and may contract for that purpose.

LIMITATION ON DEPARTMENT CONTROL AND REVIEW

Sec.534.033. (a) It is the intent of the legislature that the department limit its control over, and routine reviews of, community center programs to those programs that:

(1)use department funds or use required local funds that are matched with department funds;

(2)provide core or required services;

(3)provide services to former clients or patients of a department facility; or

(4)are affected by litigation in which the department is a defendant.

(b)The department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c)The department may determine whether a particular program uses department funds or uses required local matching funds.

Sec.534.034. **REPEALED**

REVIEW, AUDIT AND APPEAL PROCEDURES

Sec. 534.035. (a) The department by rule shall establish review, audit and appeal procedures for community centers. The procedures must ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls.

(b) In a community center plan approved under Section 534.001, the center must agree to comply with the review and audit procedures established under this section.

(c) If, by a date prescribed by the commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of the commissioner, the department may sanction the center in accordance with board rules.

FINANCIAL AUDIT

Sec. 534.036. (a) The department shall prescribe procedures for financial audits of community centers. The department shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The department shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068. Before prescribing or amending the procedures, the department shall set a deadline for those state agencies and departments to submit to the department proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center. The department may not implement the procedures without the approval of the Health and Human Services Commission.

(b)Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c)The department shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center. A state agency or department may not conduct additional financial audit activities of a community center without the approval of the Health and Human Services Commission.

(d) – Expired

PROGRAM AUDIT

Sec. 534.037. (a) The department shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. The department may not implement the procedures without the approval of the Health and Human Services Commission. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b)A program audit of a community center must be performed in accordance with procedures developed under this section.

(c)This section does not prohibit a state agency or department or an entity providing funding to a community center from investigating a complaint against or performing additional contract monitoring of a community center.

(d)A program audit under this section must evaluate:

(1)the extent to which the community center is achieving the desired results or benefits established by the legislature or by a state agency or department;

(2)the effectiveness of the community center's organizations, programs, activities, or functions; and

(3)whether the community center is in compliance with applicable laws.

(e) – Expired

APPOINTMENT OF MANAGER OR MANAGEMENT TEAM

Sec.534.038. (a) The commissioner may appoint a manager or management team to manage and operate a community center if the commissioner finds that the center or an officer or employee of the center:

(1) intentionally, recklessly, or negligently failed to discharge the center's duties under a contract with the department;
(2) misused state or federal money;
(3) engaged in a fraudulent act, transaction, practice, or course of business;
(4) endangers or may endanger the life, health or safety of a person served by the center;
(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;
(5) failed to respond to a deficiency in a review or audit;
(7) substantially failed to operate within the functions and purposes defined in the center's plan; or
(8) otherwise substantially failed to comply with this subchapter or department rules.

(b) The department shall give written notification to the center and local agency or combination of agencies responsible for making appointments to the local board of trustees regarding:

(1) the appointment of the manager or management team; and
(2) the circumstances on which the appointment is based.

(c) The commissioner may require the center to pay costs incurred by the manager or management team.

(d) The center may appeal the commissioner's decision to appoint a manager or management team as prescribed by board rule. The filing of a notice of appeal stays the appointment unless the commissioner based the appointment on a finding under Subsection (a) (2) or (4).

POWERS AND DUTIES OF MANAGEMENT TEAM

Sec. 534.039. (a) As the commissioner determines for each appointment, a manager or management team appointed under Section 534.038 may:

(1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;
(2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;
(3) reallocate a resource and manage an asset of the center;
(4) provide technical assistance to an officer or employee of the center;
(5) require or provide staff development;
(6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;
(7) redesign, modify, or terminate a center program or service;
(8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;
(9) exercise a power or duty of an officer or employee of the center; or
(10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local board of trustees regarding the removal of a center trustee.

(b) The manager or management team shall supervise the exercise of a power or duty by the local board of trustees.

(c) The manager or management team shall report monthly to the commissioner and local board of trustees on actions taken.

(d) A manager or management team appointed under this section may not use an asset or money contributed by a county, municipality, or other local funding entity without the approval of the county, municipality, or entity.

RESTORING MANAGEMENT TO CENTER

Sec. 534.040. (a) Each month, the commissioner shall evaluate the performance of a community center managed by a manager or team appointed under Section 534.038 to determine the feasibility of restoring the center's management and operation to a local board of trustees.

(b) The authority of the manager or management team continues until the commissioner determines that the relevant factors listed under Section 534.038 (a) no longer apply.

(c) Following a determination under Subsection (b), the commissioner shall terminate the authority of the manager or management team and restore authority to manage and operate the center to the center's authorized officers and employees.

[Sections 534.041-534.050 reserved for expansion]

SUBCHAPTER B. COMMUNITY-BASED SERVICES

Sec.534.051. **REPEALED**

RULES AND STANDARDS

Sec.534.052. (a) The board shall adopt rules, including standards, the board considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local mental health or mental retardation authority under this subchapter.

(b)The department shall send a copy of the rules to each local mental health or mental retardation authority, or other provider receiving contract funds as a local mental health or mental retardation authority or designated provider.

REQUIRED COMMUNITY-BASED SERVICES

Sec.534.053. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1)24-hour emergency screening and rapid crisis stabilization services;

(2)community-based crisis residential services or hospitalization;

(3)community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(4)family support services, including respite care;

(5)case management services;

(6)medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(7)psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b)The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c)To the extent that resources are available, the department shall:

(1)ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;

(2)emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and

(3)ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

JOINT DISCHARGE PLANNING

Sec.534.0535. (a) The board shall adopt, and the department shall enforce, rules that require continuity of services and planning for patient or client care between department facilities and local mental health or mental retardation authorities.

(b)At a minimum, the rules must require joint discharge planning between a department facility and a local mental health or mental retardation authority before a facility discharges a patient or client or places the patient or client on an extended furlough with an intent to discharge.

(c)The local mental health or mental retardation authority shall plan with the department facility and determine the appropriate community services for the patient or client.

(d)The local mental health or mental retardation authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.

DESIGNATION OF PROVIDER

Sec.534.054. (a) The department shall identify and contract with a local mental health or mental retardation authority for each service area to ensure that services are provided to patient and client populations determined by the department. A local mental health or mental retardation authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(b)The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1)cannot negotiate a contract with a local mental health or mental retardation authority to ensure that a specific required service for priority populations is available in that service area; or

(2)determines that a local mental health or mental retardation authority does not have the capacity to ensure the availability of that service.

CONTRACTS FOR CERTAIN COMMUNITY SERVICES

Sec.534.055. (a) A mental health or mental retardation authority and a private provider shall use a contract designed by the department as a model contract for the provision of services at the community level for persons with mental retardation or mental illness, including residential services, if the contract involves the use of department funds or funds for which the department has oversight responsibility.

(b)The department shall design one or more model contracts and shall retain copies of each model contract in the central office of the department.

(c)A model contract must:

(1)require that the services provided by the private provider be based on the patient's or client's individual treatment plan;

(2)provide that a community-based residential facility that is a family home as defined in the Community Homes for Disabled Persons Location Act (Tex. Hum. Res. Code Ann. Chapter 123.) may house only disabled persons as defined in Section 123.002 of that Act; and

(3)prohibit the use of the facility for purposes such as restitution centers, homes for substance abusers, or halfway houses.

(4) outline a dispute resolution procedure.

(d)The department shall design a competitive procurement or similar system that a mental health or mental retardation authority shall use in awarding an initial contract under this section.

(e)The system must require that each mental health or mental retardation authority:

(1)ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2)make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3)review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(f)Each mental health or mental retardation authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1)price;

(2)the ability of the bidder to perform the contract and to provide the required services;

(3)whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4)the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5)whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6)whether necessary or desirable support and ancillary services are available to the bidder;

(7)the character, responsibility, integrity, reputation, and experience of the bidder;

(8)the quality of the facilities and equipment available to or proposed by the bidder;

(9)the ability of the bidder to provide continuity of services; and

(10)the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

COORDINATION OF ACTIVITIES

Sec.534.056. A local mental health or mental retardation authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

RESPITE CARE

Sec.534.057. (a) The board shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b)The rules must:

(1)encourage the use of existing local providers;

(2)encourage family participation in the choice of a qualified provider;

(3)establish procedures necessary to administer this section, including procedures for:

(A)determining the amount and type of in-home respite care to be authorized;

(B)reimbursing providers;

(C)handling appeals from providers;

(D)handling complaints from recipients of in-home respite care;

(E)providing emergency backup for in-home respite care providers; and

(F)advertising for, selecting, and training in-home respite care providers; and

(4)specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c)The board shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The board shall establish the standards from information obtained from the families of patients and clients receiving in-home respite care and from providers of in-home respite care. The board may obtain the information at a public hearing or from an advisory group.

(d)The service and performance standards established by the board under Subsection (c) must:

(1)prescribe minimum personnel qualifications the board determines are necessary to protect health and safety;

(2)establish levels of personnel qualifications that are dependent on the needs of the patient or client; and

(3)permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the board determines that additional training is necessary.

STANDARDS OF CARE

Sec.534.058. (a) The department shall develop standards of care for the services provided by a local mental health or mental retardation authority and its subcontractors under this subchapter.

(b)The standards must be designed to ensure that the quality of the community-based services is consistent with the quality of care available in department facilities.

(c)In conjunction with local mental health or mental retardation authorities, the department shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES

Sec.534.059. (a) The department shall evaluate a local mental health or mental retardation authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health or mental retardation authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local mental health or mental retardation authority may appeal the department's decision to impose a sanction on the authority. The board by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health or mental retardation authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health or mental retardation authority to monthly distributions.

PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES

Sec.534.060. (a) The department shall develop mechanisms for monitoring the services provided by a local mental health or mental retardation authority.

(b)The department shall review the program quality and program performance results of a local mental health or mental retardation authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health or mental retardation authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the

authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES

Sec. 534.0601. (a) The department shall coordinate with each agency or department of the state that contracts with a local mental health or mental retardation authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local mental health or mental retardation authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local mental health or mental retardation authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the Health and Human Services Commission.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health or mental retardation authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

FINANCIAL AUDITS OF LOCAL AUTHORITIES

Sec. 534.0602. (a) The department shall prescribe procedures for a financial audit of a local mental health or mental retardation authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The department shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health or mental retardation authority. The department shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the department must set a deadline for agencies and departments of the state that contract with local mental health and mental retardation authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health or mental retardation authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the Health and Human Services Commission.

ADDITIONAL FINANCIAL AUDIT ACTIVITY

Sec. 534.0603. (a) The department shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health or mental retardation authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health or mental retardation authority without the approval of the Health and Human Services Commission.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES

Sec.534.061. (a) The department shall develop mechanisms for periodically monitoring the services of a provider who contracts with a local mental health or mental retardation authority to provide services for persons with mental retardation or mental illness at the community level, including residential services, if state funds or funds for which the state has oversight responsibility are used to pay for at least part of the services.

(b) The local mental health or mental retardation authority shall monitor the services to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(c)Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health or mental retardation authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(d)The department may withdraw funding from a local mental health or mental retardation authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations and

(2) the authority has not taken appropriate action to remedy the problem in accordance with board rules.

(e)The board by rule shall prescribe procedures a local mental health or mental retardation authority must follow in remedying a problem with a provider.

Sec.534.062. REPEALED

PEER REVIEW ORGANIZATION

Sec.534.063. The department shall assist a local mental health or mental retardation authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

CONTRACT RENEWAL

Sec.534.064. The commissioner may refuse to renew a contract with a local mental health or mental retardation authority and may select other agencies, entities or organizations to be the local mental health or mental retardation authority if the department's evaluation of the authority's performance indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES

Sec.534.065. (a) A mental health or mental retardation authority shall review a contract scheduled for renewal that:

(1)is between the authority and a private provider;

(2)is for the provision of mental health or mental retardation services at the community level, including residential services; and

(3)involves the use of department funds or funds for which the department has oversight responsibility.

(b)The mental health or mental retardation authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c)The mental health or mental retardation authority and private provider shall negotiate a contract renewal at arms length and in good faith.

(d)This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

LOCAL MATCH REQUIREMENT

Sec.534.066. (a) The department shall include in a contract with a local mental health or mental retardation authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the board of the authority based on the authority's financial capability and its overall commitment to other mental health or mental retardation programs, as appropriate.

(b)The department shall establish, for community services divisions of department facilities that provide community-based services required under this subchapter, a local match requirement that is consistent with the requirements applied to local mental health or mental retardation authorities.

(c)Patient fee income, third-party insurance income, services and facilities contributed by the local mental health or mental retardation authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health or mental retardation authority. The department may disallow or reduce the value of services claimed as support.

FEE COLLECTION POLICY

Sec.534.067. The department shall establish a uniform fee collection policy for all local mental health or mental retardation authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES

Sec.534.0675. The board by rule, in cooperation with local mental health and mental retardation authorities, consumers, consumer advocates, and service providers shall establish a uniform procedure that each local mental health or mental retardation authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal such decisions.

AUDITS

Sec.534.068. (a) As a condition to receiving funds under this subtitle, a local mental health or mental retardation authority, except a state facility designated as an authority, must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health or mental retardation authority shall use an invitation-for-proposal process as prescribed by the Department to select the auditor.

(b)The audit must meet the minimum requirements as shall be, and be in the form and in number of copies as may be, prescribed by the department and approved by the state auditor.

(c)The local mental health or mental retardation authority shall file the required number of copies of the audit report with the department by the date prescribed by the department. From the copies furnished the department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee.

(d) The local mental health or mental retardation authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copy a statement detailing the reasons for refusal.

(e)The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f)The department shall annually submit to the Governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS

Sec.534.069. (a) The board by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness or mental retardation.

(b)The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1)the purposes for which start-up funds may be used;

(2)the ownership of capital property and equipment obtained by the use of start-up funds; and

(3)the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

USE OF PROSPECTIVE PAYMENT FUNDS

Sec.534.070. (a) Each mental health or mental retardation authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b)The board by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c)The department may not provide prospective payment funds to a mental health or mental retardation authority that fails to submit the quarterly reports required by this section.

(d)In this section "prospective payment funds" means money the department prospectively provides to a mental health or mental retardation authority to provide community services to certain persons with mental retardation or mental illness.

ADVISORY COMMITTEE

Sec. 534.071. A local mental health or mental retardation authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health and mental retardation services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

HEALTH MAINTENANCE ORGANIZATION CERTIFICATE OF AUTHORITY

Sec.534.101. (a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by the department under Subchapter A.

(b)Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by the department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant Chapter 843, Insurance Code.

(c)Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the nonprofit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. The department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by the department in each community center's plan required under Subchapter A.

(d)The board of the nonprofit corporation shall:

(1)provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2)provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e)The nonprofit corporation shall provide:

(1)public notice before verification and disclosure of services to be provided by the community center through any capitated or other at-risk payment arrangements by the nonprofit corporation;

(2)an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3)published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4)public access and review of all relevant documentation.

(f)A nonprofit corporation operating under this subchapter:

(1)is subject to the requirements of Chapters 551 and 552, Government Code;

(2)shall solicit public input on the operations of the nonprofit corporation and allow public access to information on the operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and

(3)shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

LAWS AND RULES

Sec.534.102. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 842, Insurance Code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and rules of the Texas Department of Insurance.

APPLICATION OF LAWS AND RULES

Sec.534.103. A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance

organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

APPLICATION OF SPECIFIC LAWS

Sec.534.104. (a)A nonprofit health maintenance organization created under Section 534.101 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b)Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

CONSIDERATION OF BIDS

Sec.534.105. The department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

CONDITIONS FOR CERTAIN CONTRACTS

Sec. 534.106. A contract between the department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

CHAPTER 535. SUPPORT SERVICES

SUBCHAPTER A. ASSISTANCE FOR PERSONS WITH MENTAL DISABILITIES

DEFINITIONS

Sec.535.001. In this chapter:

(1)"Assistance" means a subsidy granted by the department to provide support services to a client.

(2)"Client" means a person with a mental disability who lives independently or a family who receives assistance under this chapter.

(3)"Family" means a group that consists of a person with a mental disability and that person's parent, sibling, spouse, child, or legal guardian. The group may include others.

(4)"Legal guardian" means a person appointed by a court of competent jurisdiction to exercise powers over a person with a mental disability.

(5)"Mental illness" has the meaning assigned by Section 571.003.

(6)"Mental retardation" has the meaning assigned by Section 591.003.

(7)"Other support programs" means:

(A)all forms of local, state, or federal support services other than assistance;

(B)contract programs; or

(C)support services provided by public or private funds for persons with mental disabilities or their families.

(8)"Parent" means a natural, foster, surrogate, or adoptive parent.

(9)"Person with a mental disability" means:

(A)a person with mental illness;

(B)a person with mental retardation;

(C)a person with a pervasive developmental disorder; or

(D)a person younger than four years of age who is eligible for early childhood intervention services.

(10)"Pervasive developmental disorder" means a disorder that begins in childhood and that meets the criteria for a pervasive developmental disorder established in the Diagnostic and Statistical Manual, Edition III-R.

ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM

Sec.535.002. (a) The department shall adopt rules, procedures, guidelines, and standards to implement and administer this chapter, including:

(1)procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for selecting clients;

(2)standards and procedures for approving qualified programs and support services;

(3)procedures for conducting a periodic review of clients;

(4)procedures and guidelines for determining when assistance duplicates other support programs or results in excessive support to a client;

(5)rules establishing reasonable payment rates for qualified programs and support services under this chapter; and

(6)rules establishing a copayment system in accordance with Section 535.009.

(b)If feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter. However, the department may not designate a local mental health or mental retardation authority as a provider of services if other providers are available.

ELIGIBILITY

Sec.535.003. (a) A family, or a person with a mental disability who lives independently, may apply for assistance.

(b)The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need. In addition, a person with a mental disability who lives independently must be 18 years of age or older.

(c)The department shall determine eligibility and the need for support services from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the department on request. The department, if it considers necessary, may require and shall provide any additional evaluations.

(d)The department shall determine the applicant's needs and the support services for which the applicant is eligible after consulting with the applicant.

(e)In determining eligibility for support services under this chapter, the department shall determine if the applicant is eligible to receive the services from other support programs and may deny the application if it determines that the applicant is eligible to receive services that are available from another support program. If the department denies the application, the department shall provide to the applicant information on and referral to the appropriate support program.

(f)A local or state agency may not consider assistance received under this subchapter in determining eligibility for another support program unless that consideration is required by federal regulations.

(g)The department shall provide the applicant an opportunity for a hearing to contest the denial of an application.

PROVISION OF ASSISTANCE AND SUPPORT SERVICES

Sec.535.004. (a) The department shall provide assistance to compensate a client for present and future expenses incurred to maintain in the community a family member with a mental disability or a person with a mental disability who lives independently, including:

(1)the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of the person with a mental disability;

(2)medical, surgical, therapeutic, diagnostic, and other health services related to the person's mental disability;

(3)counseling or training programs that assist a family in providing proper care for the family member with a mental disability or assist the person with a mental disability who lives independently, and that provide for the special needs of the family or person;

(4)attendant care, home health aid services, homemaker services, and chore services that provide support with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(5)respite support for a family that is the client;

(6)transportation services for the person with a mental disability; and

(7)transportation, room, and board costs incurred by the family or the person with a mental disability

during evaluation or treatment of the person with a mental disability that have been preapproved by the department.

(b)The department by rule may add services and programs for which the department may provide assistance.

SUPPORT SERVICES FOR CERTAIN CLIENTS

Sec.535.005. The department may contract with the Texas Department of Human Services to provide support services to clients of the Texas Department of Human Services who are mentally disabled and eligible to receive assistance under this chapter.

LIMITATION OF DUTY

Sec.535.006. The department's duty to provide assistance under this subchapter is determined and limited by the funds specifically appropriated to administer this chapter.

PAYMENT OF ASSISTANCE

Sec.535.007. (a) The department may grant assistance of not more than $3,600 a year to a client. The department may distribute the assistance periodically or in a lump sum, according to the client's needs. The commissioner or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(b)In addition to the assistance authorized by Subsection (a), the department may award to a client a onetime grant of assistance of not more than $3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a mental disability. The commissioner or the commissioner's designee may individually grant additional amounts to clients.

(c)The department shall consult with the client to determine the manner of distribution of the assistance. On agreement of the person with a mental disability or the head of the family, as appropriate, the department may distribute the assistance directly to the client or to a qualified program or provider of services serving the client.

SELECTION OF PROGRAMS OR PROVIDERS

Sec.535.008. (a) Each client may select the client's program or provider of services, except that the client may select only a program or provider that complies with the department's support services standards.

(b)The department shall require each program or provider to comply with the department's support services standards relating to the provision of support services and may disapprove payments to a program or provider that does not comply with the rules.

(c)The department shall assist each client in locating and selecting qualified programs and services.

COPAYMENT SYSTEM

Sec.535.009. The department shall establish a copayment system with each client using a sliding scale for payments determined according to:

(1)the client's need for assistance to acquire the necessary support services; and

(2)the client's ability to pay for those services.

CHARGE

Sec.535.010.(a) The department by rule shall establish a reasonable charge for each authorized support service.

(b)The department's liability for the cost of a support service is limited to the amount of the charge established by the department for the service less the amount of any copayment required from the client.

CLIENT RESPONSIBILITY FOR PAYMENT

Sec.535.011. Each client shall pay:

(1)the client's required copayment; and

(2)the amount of charges in excess of the amount the department establishes for the service or the amount incurred in excess of the maximum amount of assistance authorized by this chapter to be provided by the department.

REVIEW OF CLIENT'S NEEDS

Sec.535.012. (a) The department shall regularly review each client's needs as established by the department.

(b)The department shall review each client's needs when there is a change in the circumstances that were considered in determining eligibility or the amount of the required copayment.

NOTIFICATION OF CHANGE IN CIRCUMSTANCES

Sec.535.013. The department shall require each client to notify the department of a change in circumstances that were considered in determining eligibility or the amount of the required copayment.

CRIMINAL PENALTY

Sec.535.014. (a) A person commits an offense if the person, in obtaining or attempting to obtain assistance under this chapter for himself or another person:

(1)makes or causes to be made a statement or representation the person knows to be false; or

(2)solicits or accepts any assistance for which the person knows he, or the person for whom the solicitation is made, is not eligible.

(b)An offense under this section is a felony of the third degree.

[Sections 535.015-535.020 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF BOARDING HOMES

REPEALED

[Chapters 536-550 reserved for expansion]

SUBTITLE B. STATE FACILITIES

CHAPTER 551. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE FACILITIES

DEFINITIONS

Sec.551.001. In this subtitle:

(1)"Board" means the Texas Board of Mental Health and Mental Retardation.

(2)"Commissioner" means the commissioner of mental health and mental retardation.

(3)"Department" means the Texas Department of Mental Health and Mental Retardation.

(4)"Department facility" means a facility under the department's jurisdiction for persons with mental illness or mental retardation.

PROHIBITION OF INTEREST

Sec.551.002. A member of the board, the superintendent of a department facility, or a person connected with a department facility may not:

(1)sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or

(2)have an interest in a contract with a department facility.

DEPOSIT OF PATIENT OR CLIENT FUNDS

Sec.551.003. (a) The superintendent of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

(b)The superintendent may deposit or invest those funds in:

(1)a bank in this state;

(2)federal bonds or obligations; or

(3)bonds or obligations for which the faith and credit of the United States are pledged.

(c)The superintendent may combine the funds of facility patients or clients only to deposit or invest the funds.

(d)The facility's business manager shall maintain records of the amount of funds on deposit for each facility patient or client.

BENEFIT FUND

Sec.551.004. (a) The superintendent may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent is the trustee of the fund.

(b)The superintendent may spend money from the benefit fund for:

(1)educating or entertaining the patients or clients;

(2)barber or cosmetology services for the patients or clients; and

(3)the actual expense incurred in maintaining the fund.

DISBURSEMENT OF PATIENT FUNDS

Sec.551.005. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent and business manager.

FACILITY STANDARDS BY DEPARTMENT OF HEALTH

Sec.551.006. (a) The Texas Department of Health by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b)The Texas Department of Health shall approve department facilities that meet applicable standards and, when requested, shall certify the approval to the Texas Department of Human Services or the United States Health Care Financing Administration.

BUILDING AND IMPROVEMENT PROGRAM

Sec.551.007. (a) The department shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b)The department may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The department shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

(c)The board shall adopt rules in accordance with this section and other applicable law relating to awarding contracts for the construction of buildings and improvements. The department shall award contracts for the construction of buildings and improvements to the qualified bidder who makes the lowest and best bid.

(d)The department may not award a construction contract for an amount that exceeds the amount of funds available for the project.

(e)The department shall require each successful bidder to give a bond payable to the state in an amount equal to the amount of the bid and conditioned on the faithful performance of the contract.

(f)The department may reject any or all bids.

(g)The department may waive, suspend, or modify a provision of this section that might conflict with a federal statute, rule, regulation, or administrative procedure if the waiver, suspension, or modification is essential to the receipt of federal funds for a project. If a project is financed entirely from federal funds, a standard required by a federal statute, rule, or regulation controls.

TRANSFER OF FACILITIES

Sec.551.008. (a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner of the Texas Youth Commission.

(b)In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of facilities, equipment, and land appurtenant to the facilities.

HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT

Sec. 551.009. (a) The Department of State Health Services shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16-bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care.

(d) The crisis stabilization unit may not be used to provide care to:

(1) children; or

(2) adults sentenced to a state mental facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16-bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16-bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

[Sections 551.010-551.020 reserved for expansion]

SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT AND BUSINESS MANAGER

Sec.551.021. REPEALED

POWERS AND DUTIES OF SUPERINTENDENT

Sec.551.022. (a) The superintendent of a department facility is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1)oversee the admission and discharge of patients and clients;

(2)keep a register of all patients and clients admitted to or discharged from the facility;

(3)supervise repairs and improvements to the facility;

(4)ensure that facility money is spent judiciously and economically;

(5)keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6)keep a full record of the facility's operations.

(d) In accordance with board rules and departmental operating procedures, the superintendent may:

(1)establish policy to govern the facility that the superintendent considers will best promote the patients' and clients' interest and welfare;

(2)appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3)remove an officer, teacher, or employee for good cause.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

Sec.551.023. REPEALED

SUPERINTENDENT'S DUTY TO ADMIT COMMISSIONER AND BOARD MEMBERS

Sec.551.024. (a) The superintendent shall admit into every part of the department facility the commissioner and members of the board.

(b)The superintendent shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner or board member.

(c)The superintendent shall give to the commissioner or a board member any requested copy, abstract, or report.

DUTY TO REPORT MISSING PATIENT OR CLIENT

Sec.551.025. If a person receiving inpatient mental retardation services or court-ordered inpatient mental health services in a department facility leaves the facility without notifying the facility or without the facility's consent, the facility superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

BUSINESS MANAGER

Sec.551.026. (a) The business manager is the chief disbursing officer of the department facility.

(b)The business manager is directly responsible to the superintendent.

[Sections 551.027-551.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT CARE

MEDICAL AND DENTAL TREATMENT

Sec.551.041. (a) The department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to the department's care. The department may perform this duty through an authorized agent.

(b)The department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing home or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c)If the department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent of a department facility shall order:

(1)medical treatment or services for the person on the advice and consent of three physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine; or

(2)dental treatment or services for the person on the advice and consent of a dentist licensed by the State Board of Dental Examiners and of two physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine.

(d)This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

OUTPATIENT CLINICS

Sec.551.042. (a) If funds are available, the department may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.

(b)As necessary to establish and operate the clinics, the department may:

(1)acquire facilities;

(2)hire personnel;

(3)adopt rules; and

(4)contract with persons, corporations, and local, state, and federal agencies.

MENTAL HYGIENE CLINIC SERVICE

Sec.551.043. (a) The department may establish a mental hygiene clinic service through its agents and facilities.

(b)The clinic service shall cooperate with the Central Education Agency and local boards of education in studying the mental and physical health of children:

(1)with serious retardation in school progress or in mental development; or

(2)who have personality development problems.

OCCUPATIONAL THERAPY PROGRAMS

Sec.551.044. (a) The department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b)The superintendent of a department facility may, in accordance with department rules, contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c)The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' benefit fund, the patients' trust fund, or a revolving fund for use by the patients. A patient may keep the finished product if the patient purchases the material for the product from the state.

(d)The department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to board policy.

CHAPTER 552. STATE HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

HOSPITAL DISTRICTS

Sec.552.001. (a) The department shall divide the state into hospital districts.

(b)The department may change the districts.

(c)The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

[Sections 552.002-552.010 reserved for expansion]

SUBCHAPTER B. INDIGENT AND NONINDIGENT PATIENTS

DEFINITION

Sec.552.011. In this subchapter, "patient" means a person admitted to a state hospital under the management and control of the department.

CLASSIFICATION AND DEFINITION OF PATIENTS

Sec.552.012. (a) A patient is classified as either indigent or nonindigent.

(b)An indigent patient is a patient who:

(1)possesses no property;

(2)has no person legally responsible for the patient's support; and

(3)is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c)A nonindigent patient is a patient who:

(1)possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or

(2)has a person legally responsible for the patient's support.

SUPPORT OF INDIGENT AND NONINDIGENT PATIENTS

Sec.552.013. (a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b)The state shall support, maintain, and treat indigent and nonindigent patients at the expense of the state.

(c)The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d)A patient who does not own a sufficient estate shall be maintained at the expense:

(1)of the patient's spouse, if able to do so; or

(2)if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

CHILD SUPPORT PAYMENTS FOR BENEFIT OF PATIENT

Sec.552.014. (a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b)The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c)A parent who receives child support payments for a patient is liable for the charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d)The department may file a motion to modify a court order that establishes a child support obligation for a patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

(1)the patient's parent fails to pay child support as required by the order; or

(2)the patient's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e)In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

INVESTIGATION TO DETERMINE MEANS OF SUPPORT

Sec.552.015. (a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the payment of the costs of the patient's support, maintenance, and treatment.

(b)The department may have citation issued and witnesses summoned to be heard on the investigation.

FEES

Sec.552.016. (a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b)The department may use the projected cost of providing inpatient services to establish the maximum fee that may be charged to a payer.

(c)The department may establish the maximum fee according to one or a combination of the following:

(1)a statewide per capita;

(2)an individual facility per capita; or

(3)the type of service provided.

(d)Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

(1)who is not an individual; and

(2)whose method of determining the rate of reimbursement to a provider results in the excess.

SLIDING FEE SCHEDULE

Sec.552.017. (a) The department by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b)The department shall set the fee according to the parents' net taxable income and ability to pay.

(c)The parents may elect to have their net taxable income determined by their current financial statement or most recent federal income tax return.

(d)In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e)The department shall evaluate and, if necessary, revise the fee schedule at least once every five years.

TRUST PRINCIPALS

Sec.552.018. (a) If a patient is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the patient or the patient's estate and is not liable for the patient's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or the patient's estate and are liable for the patient's support.

(b)To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c)A trustee of the trust shall, on the department's request, provide to the department a financial statement that shows the value of the trust estate.

(d)The department may petition a district court to order the trustee to provide a financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a financial statement if the court finds that the trustee has failed to provide the statement.

(e)For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1)a guardianship established under the Texas Probate Code;

(2)a trust established under Chapter 142, Property Code;

(3)a facility custodial account established under Section 551.003;

(4)the provisions of a divorce decree or other court order relating to child support obligations;

(5)an administration of a decedent's estate; or

(6)an arrangement in which funds are held in the registry or by the clerk of a court.

FILING OF CLAIMS

Sec.552.019. (a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction:

(1)to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment; or

(2)if the liability arises under Subchapter D, Chapter 593, to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(b)On a sufficient showing, the court may enter judgment against:

(1)the person responsible for the patient for the costs of the patient's support, maintenance, and treatment; or

(2)the person responsible for the resident for the costs of the resident's support and maintenance.

(c)Sufficient evidence to authorize the court to enter judgment is:

(1)a verified account, sworn to by the superintendent or director of the hospital in which the patient is being treated, or has been treated, as to the amount due; or

(2)a verified account, sworn to by the superintendent or director of the residential care facility in which the person with mental retardation resided or has resided, as to the amount due.

(d)The judgment may be enforced as in other cases.

(e)The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f)The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g)In this section:

(1)"Person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

(2)"Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(3)"Resident" means a person admitted to a residential care facility operated by the department for persons with mental retardation.

[Sections 552.020-552.030 reserved for expansion]

CHAPTER 553. STATE SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

EPILEPSY

Sec.553.001. A person may not be denied admission to a state institution or school because the person suffers from epilepsy.

[Sections 553.002-553.020 reserved for expansion]

SUBCHAPTER B. STATE SCHOOLS

Sec.553.021. **REPEALED**

SAN ANTONIO STATE SCHOOL

Sec.553.022. (a) The San Antonio State School is for the education, care, and treatment of persons with mental retardation.

(b)The Texas Department of Mental Health and Mental Retardation may enter into agreements with the Texas Department of Health for use of the excess facilities of the Texas Center for Infectious Disease in the operation of the school.

CHAPTER 554. STATE CENTERS AND HOMES

SUBCHAPTER A. WACO CENTER FOR YOUTH

ADMISSION OF CERTAIN JUVENILES

Sec.554.001. (a) The department shall use the Waco Center for Youth as a residential treatment facility for emotionally disturbed juveniles who:

(1)have been admitted under Subtitle C to a facility of the department; or

(2)are under the managing conservatorship of the Texas Department of Family and Protective Services and have been admitted under Subtitle C to the Waco Center for Youth.

(b)An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

SERVICES

Sec.554.002. (a) The department shall provide without charge appropriate education services for all clients residing at the Waco Center for Youth.

(b)The department shall pay for those services from funds appropriated to the center for that purpose.

(c)A client of the center who is not a resident of the Waco Independent School District may receive education services from the Waco Independent School District only with the prior approval of the superintendent of the district.

[Sections 554.003-554.010 reserved for expansion]

SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 571. GENERAL PROVISIONS

SHORT TITLE

Sec.571.001. This subtitle may be cited as the Texas Mental Health Code.

PURPOSE

Sec.571.002. The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

(1)facilitating treatment in an appropriate setting;

(2)enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;

(3)eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;

(4)protecting the person's right to a judicial determination of the person's need for involuntary treatment;

(5)defining the criteria the state must meet to order involuntary care and treatment;

(6)establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;

(7)safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and

(8)safeguarding the rights of the person who voluntarily requests inpatient care.

DEFINITIONS

Sec.571.003. In this subtitle:

(1)"Board" means the Texas Board of Mental Health and Mental Retardation.

(2)"Commissioner" means the commissioner of mental health and mental retardation.

(3)"Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.

(4)"Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.

(5)"Department" means the Texas Department of Mental Health and Mental Retardation.

(6)"Facility administrator" means the individual in charge of a mental health facility.

(7)"General hospital" means a hospital operated primarily to diagnose, care for, and treat physically ill persons.

(8)"Hospital administrator" means the individual in charge of a hospital.

(9)"Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A)a facility operated by the department;

(B)a private mental hospital licensed by the Texas Department of Health;

(C)a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D)a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E)an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health; or

(F)a hospital operated by a federal agency.

(10)"Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

(11)"Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(12)"Mental health facility" means:

(A)an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B)a community center or a facility operated by a community center; or

(C)that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided.

(13)"Mental hospital" means a hospital:

(A)operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B)operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14)"Mental illness" means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:

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

(B)grossly impairs behavior as demonstrated by recent disturbed behavior.

(15)"Non-physician mental health professional" means:

(A)a psychologist licensed to practice in this state and designated as a health-service provider;

(B)a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C)a licensed clinical social worker;

(D)a licensed professional counselor licensed to practice in this state; or

(E)a licensed marriage and family therapist licensed to practice in this state.

(16)"Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

(17)"Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18)"Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(19)"Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(20)"Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21)"State mental hospital" means a mental hospital operated by the department.

LEAST RESTRICTIVE APPROPRIATE SETTING

Sec.571.004. The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

(1)is available;

(2)provides the patient with the greatest probability of improvement or cure; and

(3)is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM

Sec.571.005. (a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b)The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c)The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

DEPARTMENT POWERS

Sec.571.006. The department may:

(1)adopt rules as necessary for the proper and efficient treatment of persons with mental illness;

(2)prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(3)require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(4)regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(5)visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

TREATMENT METHODS

Sec.571.0065. (a) The board by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b)A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the board.

(c)A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the board.

(d) – *repealed by S.B. 71, 82nd Leg., R.S.*

PRESCRIPTION MEDICATION INFORMATION

Sec. 571.0066. (a) The board by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b)At a minimum, the required information must:

(1)identify the major types of prescription medications; and

(2)specify for each major type:

(A)the conditions the medications are commonly used to treat;
(B)the beneficial effects on those conditions generally expected from the medications;
(C)side effects and risks associated with the medications;
(D)commonly used examples of medications of the major type; and
(E)sources of detailed information concerning a particular medication.

(c)The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

RESTRAINT AND SECLUSION

Sec. 571.0067. A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

DELEGATION OF POWERS AND DUTIES

Sec.571.007. (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b)Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c)The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE

Sec.571.008. (a) The department may return a nonresident patient committed to a department mental health facility to the proper agency of the patient's state of residence.

(b)The department may permit the return of a resident of this state who is committed to a mental health facility in another state.

(c)The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to mental health facilities in this state or another state to the states of their residence.

(d)A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to this state from another state where the person was committed.

(e)The state returning a committed patient to another state shall bear the expenses of returning the patient.

EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT

Sec.571.009. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, senility, alcoholism, or mental deficiency.

AGENT FOR SERVICE OF PROCESS

Sec.571.010. (a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b)The person receiving process shall sign a certificate with the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c)The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

APPLICATION TO PERSONS CHARGED WITH CRIME

Sec.571.011. (a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b)The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

COURT HOURS; AVAILABILITY OF JUDGE OR MAGISTRATE

Sec.571.012. The probate court or court having probate jurisdiction shall be open for proceedings under this subtitle during normal business hours. The probate judge or magistrate shall be available at all times at the request of a person apprehended or detained under Chapter 573, or a proposed patient under Chapter 574 .

METHOD OF GIVING NOTICE

Sec.571.013. Except as otherwise provided by this subtitle, notice required under this subtitle may be given by delivering a copy of the notice or document in person or in another manner directed by the court that is reasonably calculated to give actual notice.

FILING REQUIREMENTS

Sec.571.014. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b)The county clerk shall file each paper after endorsing on it:

(1)the date on which the paper is filed;

(2)the docket number; and

(3)the clerk's official signature.

(c)A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this code would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for an extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This section does not affect another provision of this code requiring the release or discharge of a person.

(d)If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

INSPECTION OF COURT RECORDS

Sec.571.015. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b)A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1)the use, inspection, or copying is justified and in the public interest; or

(2)the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c)In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d)The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e)This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

REPRESENTATION OF STATE

Sec.571.016. Unless specified otherwise, in a hearing held under this subtitle, including a hearing held under Subchapter G, Chapter 574:

(1)the county attorney shall represent the state; or

(2)if the county has no county attorney, the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

EXTENSION OF DETENTION PERIOD

Sec.571.0165. (a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b)The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c)This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

PROCEEDINGS ON BEHALF OF THE STATE

Sec.571.0166. All applications under this subtitle shall be filed on behalf of the State of Texas and styled "The State of Texas for the Best Interest and Protection of (NAME) the (patient or proposed patient)."

HABEAS CORPUS PROCEEDINGS

Sec. 571.0167. (a) A petition for a writ of habeas corpus arising from a commitment order must be filed in the court of appeals for the county in which the order is entered.

(b) The state shall be made a party in a habeas corpus proceeding described in Subsection (a). The appropriate attorney prescribed by Section 571.016 shall represent the state.

(c) In a habeas corpus proceeding in which a state inpatient mental health facility or a physician employed by a state inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

COMPENSATION OF COURT-APPOINTED PERSONNEL

Sec.571.017. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subtitle.

(b)The compensation paid shall be taxed as costs in the case.

COSTS

Sec.571.018. (a) The costs for a hearing or proceeding under this subtitle shall be paid by:

(1)the county that initiates emergency detention procedures under Subchapter A or B, Chapter 573; or

(2)if no emergency detention procedures are initiated, the county that accepts an application for court-ordered mental health services, issues an order for protective custody, or issues an order for temporary mental health services.

(b)The county responsible for the costs of a hearing or proceeding under Subsection (a) shall pay the costs of all subsequent hearings or proceedings for that person under this subtitle until the person is discharged from mental health services. The costs shall be billed by the clerk of the court conducting the hearings.

(c)Costs under this section include:

(1)attorney's fees;

(2)physician examination fees;

(3)compensation for court-appointed personnel listed under Section 571.017;

(4)expenses of transportation to a mental health facility or to a federal agency not to exceed $50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;

(5)costs and salary supplements authorized under Sections 574.031(i) and (j); and

(6)prosecutor's fees authorized under Section 574.031(k).

(d)A county is entitled to reimbursement for costs actually paid by the county from:

(1)the patient; or

(2)a person or estate liable for the patient's support in a department mental health facility.

(e)The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(f)A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(g)A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(h)The state or a county may not pay any costs for a patient committed to a private mental hospital unless:

(1)a public facility is not available; and

(2)the commissioners court of the county authorizes the payment, if appropriate.

(i)The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Government Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1)the costs relate to services provided or to be provided in a private mental hospital; or

(2)the person charged with the costs is a person or estate liable for the patient's support in a department mental health facility.

(j)When an inpatient mental health facility as defined under Section 571.003(9)(B)or(E) files an affidavit with the clerk of the court certifying that it has received no compensation or reimbursement for the treatment of a person for whom court costs have been paid or advanced, the judge of the probate court shall order the clerk of the court to refund the costs.

LIMITATION OF LIABILITY

Sec.571.019. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b)A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or testimony when acting without malice.

(c)A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1)a written request for the patient's release was filed and not withdrawn; and

(2)the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

CRIMINAL PENALTIES

Sec.571.020. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility.

(b)A person commits an offense if the person knowingly violates a provision of this subtitle.

(c)An individual who commits an offense under this section is subject on conviction to:

(1)a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2)confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3)both fine and confinement.

(d)A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e)If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1)a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3)both fine and confinement.

(f)If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

ENFORCEMENT OFFICERS

Sec.571.021. The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.

INJUNCTION

Sec.571.022. (a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b)On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c)Venue may be maintained in Travis County or in the county in which the violation occurred.

(d)The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

CIVIL PENALTY

Sec.571.023. (a) A person is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this statute. In determining the amount of the civil penalty, the court shall consider:

(1)the person's or facility's previous violations;

(2)the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3)whether the health and safety of the public was threatened by the violation;

(4)the demonstrated good faith of the person or facility; and

(5)the amount necessary to deter future violations.

(b)The department or party bringing the suit may:

(1)combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or

(2)file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c)At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d)On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e)The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f)A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g)The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

NOTICE OF SUIT

Sec.571.024. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

ADMINISTRATIVE PENALTY

Sec.571.025. (a) The board may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b)The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c)The amount of the penalty shall be based on:

(1)the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2)enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3)the history of previous violations;

(4)the amount necessary to deter future violations;

(5)efforts to correct the violation; and

(6)any other matter that justice may require.

(d)If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e)Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f)Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g)If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h)If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i)The notice of the board's order given to the person under the Administrative Procedure Act (V.C.T.A. Government Code, Section 2001.001 et seq.) must include a statement of the right of the person to judicial review of the order.

(j)Within 30 days after the date the board's order is final as provided by Section 2001.144, Administrative Procedure Act (V.C.T.A. Government Code, Section 2001.001 et seq.), the person shall:

(1)pay the amount of the penalty;

(2)pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3)without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k)Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1)stay enforcement of the penalty by:

(A)paying the amount of the penalty to the court for placement in an escrow account; or

(B)giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2)request the court to stay enforcement of the penalty by:

(A)filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B)giving a copy of the affidavit to the commissioner by certified mail.

(l)The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m)If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n)Judicial review of the order of the board:

(1)is instituted by filing a petition as provided by Section 2001.171, Administrative Procedure Act (V.T.C.A. Government Code, Section 2001.001 et seq.); and

(2)is under the substantial evidence rule.

(o)If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p)When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q)A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r)All proceedings under this section are subject to the Administrative Procedure Act (V.T.C.A. Government Code, Section 2001.001 et seq.).

RECOVERY OF COSTS

Sec.571.026. If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

ADVISORY COMMITTEE ON INPATIENT MENTAL HEALTH SERVICES

Sec.571.027. (a) The board shall appoint an advisory committee on inpatient mental health services to advise the board on:

(1)issues and policies related to the provision of mental health services in a facility described by Section 571.003(9)(B) or (E);

(2)coordination and communication between the department, the Texas Department of Health, and facilities described by Section 571.003(9)(B) or (E) to address consistency between the agencies in interpretation and enforcement of agency policies and other rules; and

(3)training for inpatient mental health facility surveyors or investigators.

(b)The board shall appoint to the committee:

(1)three representatives of hospitals, at least two of whom represent a facility described by Section 571.003(9)(B) or (E);

(2)three consumers of mental health services, each of whom has received treatment in a facility described by Section 571.003(9)(B) or (E);

(3)two physicians licensed under Chapter 162 Occupations Code, who practice psychiatry and are board certified in psychiatry, at least one of whom is board certified in child and adolescent psychiatry; and

(4)one family member of a person who has been a consumer of mental health services provided by a facility described by Section 571.003(9)(B) or (E).

(c)The Texas Board of Health shall provide the advisory committee with two persons to represent the Texas Department of Health. The representatives may address the advisory committee on any issue relevant to a matter before the advisory committee, but the representatives may not vote on any matter. The Texas Board of Health shall consider designating an inpatient mental health facility surveyor or investigator to be a representative under this subsection.

(d)Except for persons who represent the Texas Department of Health designated under Subsection (c), members of the advisory committee serve staggered four-year terms. A member's term expires on August 31 of the fourth year following the member's appointment.

(e)The board shall fill vacancies on the board in the same manner as the original appointment.

(f)The committee shall meet not fewer than four times each calendar year.
(g)Section 2110.008, Government Code, does not apply to the advisory committee.

CHAPTER 572. VOLUNTARY INPATIENT MENTAL HEALTH SERVICES

REQUEST FOR ADMISSION

Sec.572.001. (a) A person 16 years of age or older or a person younger than 16 years of age who is or has been married may request admission to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age who is not and has not been married may request the admission of the person to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested.

(b)An admission request must be in writing and signed by the person requesting the admission.

(c)A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age only with the person’s consent.

(d)The administrator of an inpatient mental health facility may admit a minor who is 16 years of age or older or a person younger than 16 years of age who is or has been married to an inpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e)A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

(1)the person's discharge; or
(2)the period prescribed by Section 572.004.

ADMISSION

Sec.572.002. The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient services is filed if the administrator or the designee determines:

(1)from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient services;
(2)that the person has been informed of the person's rights as a voluntary patient; and
(3)that the admission was voluntarily agreed to:
(A)by the person if the person is:
(i)16 years of age or older; or
(ii)younger than 16 years of age and is or has been married; or
(B)by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age and is not and has not been married.

INFORMATION ON MEDICATIONS

Sec.572.0022. (a) A mental health facility shall provide to a patient in patient's primary language, if possible, and in accordance with board rules information relating to prescription medication ordered by the patient's treating physician.

(b)The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

INTAKE, ASSESSMENT, AND ADMISSION

Sec.572.0025. (a) The board shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b)The rules governing the intake process shall establish minimum standards for:

(1)reviewing a prospective patient's finances and insurance benefits;
(2)explaining to a prospective patient the patient's rights; and
(3)explaining to a prospective patient the facility's services and treatment process.

(c)The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by board rules.

(d)The rules governing the assessment process shall prescribe:

(1)the types of professionals who may conduct an assessment;

(2)the minimum credentials each type of professional must have to conduct an assessment; and

(3)the type of assessment that professional may conduct.

(e)In accordance with board rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f)A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1)the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order, the order must be from:

(A)an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within 72 hours of the admission; or

(B)an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within 72 hours of the admission; and

(2)the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g)An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician before admission.

(h)In this section:

(1)"Admission" means the formal acceptance of a prospective patient to a facility.

(2)"Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3)"Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

RIGHTS OF PATIENTS

Sec.572.003. (a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b)In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

(1)to be reviewed periodically to determine the person's need for continued inpatient treatment; and

(2)to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c)A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

(1)orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or

(2)through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d)The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The department by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

DISCHARGE

Sec.572.004. (a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b)The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c)The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d)A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e)If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f)The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

(1)a written withdrawal of the request for discharge is filed; or

(2)an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g)A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged.

(h)The patient or other person who files a request for discharge of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

APPLICATION FOR COURT-ORDERED TREATMENT

Sec.572.005. (a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

(1)a request for release of the patient has been filed with the facility administrator; or

(2)in the opinion of the physician responsible for the patient's treatment opinion, the patient meets the criteria for court-ordered mental health services and:

(A)is absent from the facility without authorization;

(B)is unable to consent to appropriate and necessary psychiatric treatment; or

(C)refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:

(i)there is no reasonable alternative to the treatment recommended by the physician; and

(ii)the patient will not benefit from continued inpatient care without the recommended treatment.

(b)The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

CHAPTER 573. EMERGENCY DETENTION

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

APPREHENSION BY PEACE OFFICER WITHOUT WARRANT

Sec.573.001. (a) A peace officer, without a warrant, may take a person into custody if the officer:

(1)has reason to believe and does believe that:

(A)the person is mentally ill; and

(B)because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2)believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b)A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1)the person's behavior; or

(2)evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c)The peace officer may form the belief that the person meets the criteria for apprehension:

(1)from a representation of a credible person; or

(2)on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d)A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1)the nearest appropriate inpatient mental health facility; or

(2)a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(e)A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f)A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

PEACE OFFICER'S APPLICATION FOR DETENTION

Sec.573.002. (a) A peace officer shall immediately file an application for detention after transporting a person to a facility under Section 573.001.

(b)The application for detention must contain:

(1)a statement that the officer has reason to believe and does believe that the person evidences mental illness;

(2)a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3)a specific description of the risk of harm;

(4)a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5)a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6)a detailed description of the specific behavior, acts, attempts, or threats; and

(7)the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

Sec. 573.003. (a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is mentally ill; and

(2) because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

(b) A substantial risk of serious harm to the ward or others under Subsection (a)(2) may be demonstrated by:

(1) the ward's behavior; or

(2) evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

GUARDIAN'S APPLICATION FOR EMERGENCY DETENTION

Sec. 573.004. (a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

(1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;

(2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;

(3) a specific description of the risk of harm;

(4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained;

(5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

[Sections 573.005-573.010 reserved for expansion]

SUBCHAPTER B. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY APPREHENSION AND DETENTION

APPLICATION FOR EMERGENCY DETENTION

Sec.573.011. (a) An adult may file a written application for the emergency detention of another person.

(b)The application must state:

(1)that the applicant has reason to believe and does believe that the person evidences mental illness;

(2)that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3)a specific description of the risk of harm;

(4)that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5)that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6)a detailed description of the specific behavior, acts, attempts, or threats; and

(7)a detailed description of the applicant's relationship to the person whose detention is sought.

(c)The application may be accompanied by any relevant information.

ISSUANCE OF WARRANT

Sec.573.012. (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1)presented personally to the court; or

(2)retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b)The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1)the person evidences mental illness;

(2)the person evidences a substantial risk of serious harm to himself or others;

(3)the risk of harm is imminent unless the person is immediately restrained; and

(4)the necessary restraint cannot be accomplished without emergency detention.

(c)A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:

(1)the person's behavior; or

(2)evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(d)The magistrate shall issue to an on duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(e)A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1)the nearest appropriate inpatient mental health facility; or

(2)a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f)The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g)If there is more than one court with probate jurisdiction in a county, an administrative order regarding a presentation of an application must be jointly issued by all of the judges of those courts.

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

[Sections 573.013-573.020 reserved for expansion]

SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS

PRELIMINARY EXAMINATION

Sec.573.021. (a) A facility shall temporarily accept a person for whom an application for detention is filed.

(b)A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-

hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an
additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c)A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

(d)A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e)A person may not be detained in a private mental health facility without the consent of the facility administrator.

EMERGENCY ADMISSION AND DETENTION

Sec.573.022. (a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

(1)is acceptable to the facility;

(2)states that after a preliminary examination it is the physician's opinion that:

(A)the person is mentally ill;

(B)the person evidences a substantial risk of serious harm to himself or others;

(C)the described risk of harm is imminent unless the person is immediately restrained; and

(D)emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

(3)includes:

(A)a description of the nature of the person's mental illness;

(B)a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C)the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

RELEASE FROM EMERGENCY DETENTION

Sec.573.023. (a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b)A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(2) no longer applies.

TRANSPORTATION AFTER RELEASE

Sec.573.024. (a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

(1)the location of the person's apprehension;

(2)the person's residence in this state; or

(3)another suitable location.

(b)Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c)If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d)The county in which the person was apprehended shall pay the costs of transporting the person.

RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION

Sec. 573.025. (a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:

(1)to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;

(2)to a reasonable opportunity to communicate with and retain an attorney;

(3)to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention unless the person is arrested or objects;

(4)to be released from a facility as provided by Section 573.023;

(5)to be advised that communications with a mental health professional may be used in proceedings for further detention; and

(6)to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023.

(b)A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section:

(1)orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2)through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

TRANSPORTATION AFTER DETENTION

Sec. 573.026. A person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045.

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES

Sec.574.001. (a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b)Except as provided by Subsection (f), the application must be filed with the county clerk in the county in which the proposed patient:

(1)resides;

(2)is found; or

(3)is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c)If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d)An application may be transferred to the county in which the person is being detained under Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer under this subsection does not preclude the proposed patient from filing a motion to transfer under Subsection (c).

(e)An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

(f)An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

FORM OF APPLICATION

Sec.574.002. (a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b)The application must state whether the application is for temporary or extended mental health services. An application for extended inpatient mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. An application for extended outpatient mental health services must state that the person has received:

(1) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c)Any application must contain the following information according to the applicant's information and belief:

(1)the proposed patient's name and address;

(2)the proposed patient's county of residence in this state;

(3)a statement that the proposed patient is mentally ill and meets the criteria in Section 574.034 or 574.035 for court-ordered mental health services; and

(4)whether the proposed patient is charged with a criminal offense.

APPOINTMENT OF ATTORNEY

Sec.574.003. (a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b)The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c)The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

DUTIES OF ATTORNEY

Sec.574.004. (a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b)The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c)The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d)Before a hearing, the attorney shall:

(1)review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;

(2)interview supporting witnesses and other witnesses who will testify at the hearing; and

(3)explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e)The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f)The attorney shall discuss with the proposed patient:

(1)the procedures for appeal, release, and discharge if the court orders participation in mental health services; and

(2)other rights the proposed patient may have during the period of the court's order.

(g)To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h)The attorney is responsible for a person's legal representation until:

(1)the application is dismissed;

(2)an appeal from an order directing treatment is taken;

(3)the time for giving notice of appeal expires by operation of law; or

(4)another attorney assumes responsibility for the case.

SETTING ON APPLICATION

Sec.574.005. (a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b)The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c)The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

NOTICE

Sec.574.006. (a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b)A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

(1)parent, if the proposed patient is a minor;

(2)appointed guardian, if the proposed patient is the subject of a guardianship; or

(3)each managing and possessory conservator that has been appointed for the proposed patient.

(c)Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d)Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that person has evidence to present upon any proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

DISCLOSURE OF INFORMATION

Sec.574.007. (a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b)If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1)the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;

(2)the reasons voluntary outpatient services are not considered appropriate for the proposed patient;

(3)the name, address, and telephone number of each witness who may testify at the hearing;

(4)a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and

(5)a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

(c)At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

(d)Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of this subsection. The waiver must be made by the proposed patient:

(1)orally and in the presence of the court; or

(2)in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

COURT JURISDICTION AND TRANSFER

Sec.574.008. (a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b)If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c)If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended mental health services before the original order expires.

(d)If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

ASSOCIATE JUDGES

Sec.574.0085. (a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioner's court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b)To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c)An associate judge shall be paid as determined by the commissioner's court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioner's courts of the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d)An associate judge who serves a single court serves at the will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e)To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f)Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g)A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h)A witness appearing before an associate judge is subject to the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i)At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge's report, the associate judge shall transmit to the referring court all papers relating to the case, with the associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j)If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k)An associate judge appointed under this section has the judicial immunity of a county judge.

(l)An associate judge appointed in accordance with this section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

REQUIREMENT OF MEDICAL EXAMINATION

Sec.574.009. (a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b)If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c)The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d)If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two Certificates of Medical Examination for Mental Illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY

Sec.574.010. (a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b)If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS

Sec.574.011. (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

(1)the name and address of the examining physician;

(2)the name and address of the person examined;

(3)the date and place of the examination;

(4)a brief diagnosis of the examined person's physical and mental condition;

(5)the period, if any, during which the examined person has been under the care of the examining physician;

(6)an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7)the examining physician's opinion that:

(A)the examined person is mentally ill; and

(B)as a result of that illness the examined person is likely to cause serious harm to himself or to others or is:

(i)suffering severe and abnormal mental, emotional, or physical distress;

(ii)experiencing substantial mental or physical deterioration of his ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health or safety; and

(iii)not able to make a rational and informed decision as to whether to submit to treatment.

(b)The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c)If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d)If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e)The certificate must include the detailed reason for each of the examining physician's opinions under this section.

RECOMMENDATION FOR TREATMENT

Sec.574.012. (a) The local mental health authority in the county in which an application is filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c)If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d)The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e)This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f)This section does not apply to a person for whom treatment in a private mental health facility is proposed.

LIBERTY PENDING HEARING

Sec.574.013. The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

COMPILATION OF MENTAL HEALTH COMMITMENT RECORDS

Sec.574.014. (a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Texas Judicial Council each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Texas Judicial Council shall make the reported information available to the department annually.

(b)Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

[Sections 574.015-574.020 reserved for expansion]

SUBCHAPTER B. PROTECTIVE CUSTODY

MOTION FOR ORDER OF PROTECTIVE CUSTODY

Sec.574.021. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b)The motion may be filed by the county or district attorney or on the court's own motion.

(c)The motion must state that:

(1)the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2)the belief is derived from:

(A)the representations of a credible person;

(B)the proposed patient's conduct; or

(C)the circumstances under which the proposed patient is found.

(d)The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.

(e)The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

ISSUANCE OF ORDER

Sec.574.022. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1)that a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill; and

(2)the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(b)The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c)The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

(d)The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(e)The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the facility administrator designated to detain the proposed patient agrees to the detention.

APPREHENSION UNDER ORDER

Sec.574.023. (a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b)The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

(c)A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(d)A person may not be detained in a private mental health facility without the consent of the facility administrator.

APPOINTMENT OF ATTORNEY

Sec.574.024. (a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b)Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

(1)that the proposed patient has been placed under a protective custody order;

(2)the grounds for the order; and

(3)the time and place of the hearing to determine probable cause.

PROBABLE CAUSE HEARING

Sec.574.025. (a) A hearing must be held to determine if:

(1)there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that he cannot be at liberty pending the hearing on court-ordered mental health services; and

(2)a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill.

(b)The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c)The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may practice law in the court the master serves. The associate judge is entitled to reasonable compensation.

(d)The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e)The magistrate or associate judge may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f)The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

ORDER FOR CONTINUED DETENTION

Sec.574.026. (a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b)The magistrate or associate judge shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c)A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d)The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his attorney _____
(attorney)
have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on ___ _____.
(date of notice)

I have examined the certificate of medical examination for mental illness and _____.
(other evidence considered)

Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself (yes ___ or no ___) or others (yes ___ or no ___) such that (s)he cannot be at liberty pending final hearing because _____ _____.
(reasons for finding; type of risk found)

DETENTION IN PROTECTIVE CUSTODY

Sec.574.027. (a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b)The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c)A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d)The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

RELEASE FROM DETENTION

Sec.574.028. (a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b)Arrangements shall be made to return a person released under Subsection (a) to:

(1)the location of the person's apprehension;

(2)the person's residence in this state; or

(3)another suitable location.

(c)A facility administrator shall discharge a person held under a protective custody order if:

(1)the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2)a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3)the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

[Sections 574.029-574.030 reserved for expansion]

SUBCHAPTER C. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES

GENERAL PROVISIONS RELATING TO HEARING

Sec.574.031. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

(b)On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in the county courthouse.

(c)The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.

(d)The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(e)The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this subtitle.

(f)The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

(g)The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.

(h)A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative

region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payments of costs under Section 571.018.

(i)A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

(j)Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k)Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental heath proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

RIGHT TO JURY

Sec.574.032. (a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b)A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c)A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d)The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.

(e)A court may not require a jury fee.

(f)In a hearing before a jury, the jury shall determine if the proposed patient is mentally ill and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

RELEASE AFTER HEARING

Sec.574.033. (a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is mentally ill and meets the applicable criteria for court-ordered mental health services.

(b)If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.

ORDER FOR TEMPORARY MENTAL HEALTH SERVICES

Sec.574.034. (a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1)the proposed patient is mentally ill; and

(2)as a result of that mental illness the proposed patient:

(A)is likely to cause serious harm to himself;

(B)is likely to cause serious harm to others; or

(C)is:

(i)suffering severe and abnormal mental, emotional, or physical distress;

(ii)experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii)unable to make a rational and informed decision as to whether or not to submit to treatment.

(b)The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1)the judge finds that appropriate mental health services are available to the patient; and

(2)the judge or jury finds, from clear and convincing evidence, that:

(A)the proposed patient is mentally ill;

(B)the nature of the mental illness is severe and persistent;

(C)as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i)suffer severe and abnormal mental, emotional, or physical distress; and

(ii)experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient services; and

(D)the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i)any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii)specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment.

(c)If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d)To be clear and convincing under this Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1)the likelihood of serious harm to the proposed patient or others; or

(2)the proposed patient's distress and the proposed patient's deterioration of ability to function.

(e)To be clear and convincing under Subsection (b)(2), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1)the proposed patient's distress;

(2)the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community; and

(3)the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(f)The proposed patient and the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient and the proposed patient's attorney do not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony. In addition, the court may consider the testimony of a non-physician mental health professional as provided by section 547.031(f).

(g)An order for temporary inpatient or outpatient mental health services shall state that treatment is authorized for not longer than 90 days. The order may not specify a shorter period.

(h)A judge may not issue an order for temporary inpatient or outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i)A judge may advise, but may not compel, the proposed patient to:

(1) receive treatment with psychoactive medication as specified by the outpatient mental health services treatment plan;

(2) participate in counseling; and

(3)refrain from the use of alcohol or illicit drugs.

ORDER FOR EXTENDED MENTAL HEALTH SERVICES

Sec.574.035. (a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1)the proposed patient is mentally ill;

(2)as a result of that mental illness the proposed patient:

(A)is likely to cause serious harm to himself;

(B)is likely to cause serious harm to others; or

(C)is:

(i)suffering severe and abnormal mental, emotional, or physical distress;

(ii)experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii)unable to make a rational and informed decision as to whether or not to submit to treatment;

(3)the proposed patient's condition is expected to continue for more than 90 days; and

(4)the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b)The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1)the judge finds that appropriate mental health services are available to the patient; and

(2)the jury, or the judge if the right to a jury is waived, finds from clear and convincing evidence that:

(A)the proposed patient is mentally ill;

(B)the nature of the mental illness is severe and persistent;

(C)as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i)suffer severe and abnormal mental, emotional, or physical distress; and

(ii)experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient services; and

(D)the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i)any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii)specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment;

(E)the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c)If the jury or judge finds that the proposed patient meets the commitment criteria prescribed under Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d)The jury or judge is not required to make the finding under Subsection (a)(4) or (b)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(e)To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1)the likelihood of serious harm to the proposed patient or others; or

(2)the proposed patient's distress and the proposed patient's deterioration of ability to function.

(f)To be clear and convincing under Subsection (b)(2), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1)the proposed patient's distress;

(2)the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community; and

(3)the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(g)The court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

(h)An order for extended inpatient or outpatient mental health services shall state that treatment is authorized for not longer than 12 months. The order may not specify a shorter period.

(i)A judge may not issue an order for extended inpatient or outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j)A judge may advise, but may not compel, the proposed patient to:

(1)receive treatment with psychoactive medication as specified by the outpatient mental health services treatment plan;

(2)participate in counseling; and

(3)refrain from the use of alcohol or illicit drugs.

ORDER OF CARE OR COMMITMENT

Sec.574.036. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be mentally ill and to meet the criteria for court-ordered temporary or extended mental health services.

(b)The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c)The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d)The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e)The judge may enter an order:

(1)committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or

(2)committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(b) or 574.035(b).

COURT-ORDERED OUTPATIENT SERVICES

Sec.574.037. (a) The court, in an order that directs a patient to participate in outpatient mental health services, shall identify a person who is responsible for those services. The person identified must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services in the region in which the committing court is located.

(b)The person responsible for the services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c)The person responsible for the services shall inform the court of:

(1)the patient's failure to comply with the court order; and

(2)any substantial change in the general program of treatment that occurs before the order expires.

(d)A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e)A patient may not be detained in a private mental health facility without the consent of the facility administrator.

[Sections 574.038-574.040 reserved for expansion]

SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION OF PATIENT

DESIGNATION OF FACILITY

Sec.574.041. (a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

(1) a mental health facility deemed suitable by the local mental health for the area;

(2)a private mental hospital under Section 574.042;

(3)a hospital operated by a federal agency under Section 574.043; or

(4)an inpatient mental health facility of the institutional division of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health facility operated by the department.

(c)A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the commitment is made.

INFORMATION ON MEDICATIONS

Sec.574.0415. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with board rules information relating to prescription medication ordered by the patient's treating physician.

(b)The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

COMMITMENT TO PRIVATE FACILITY

Sec.574.042. The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

(1)an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and

(2)written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

COMMITMENT TO FEDERAL FACILITY

Sec.574.043. (a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b)A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c)The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.

(d)The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

COMMITMENT TO FACILITY OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Sec.574.044. The court shall commit an inmate patient to an inpatient mental health facility of the institutional division of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist for the institutional division under Section 500.057, Government Code.

TRANSPORTATION OF PATIENT

Sec.574.045. (a) The court may authorize, in the following order of priority, the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:

(1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code;

(2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;

(3) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses;

(4) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;

(5) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located; or

(6) the sheriff or constable.

(a-1) A person who under Subsection (a)(1), (2), or (6) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c)The patient's friends and relatives may accompany the patient at their own expense.

(d)A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e)The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f)The patient may not be transported with a state prisoner.

(g)The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient’s physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

LIST OF QUALIFIED TRANSPORTATION SERVICE PROVIDERS

Sec. 574.0455. (a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The Department of State Health Services shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

WRIT OF COMMITMENT

Sec.574.046. The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

TRANSCRIPT

Sec.574.047. (a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b)The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the

patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

ACKNOWLEDGMENT OF PATIENT DELIVERY

Sec.574.048. The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

(1)give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2)file a copy of the statement with the clerk of the committing court.

[Sections 574.049-574.060 reserved for expansion]

SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS

MODIFICATION OF ORDER FOR INPATIENT TREATMENT

Sec.574.061. (a) The facility administrator of a facility to which a patient is committed for inpatient mental health services may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient mental health services.

(b)The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the request.

(c)The patient shall be given notice of the request.

(d)On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e)If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f)If the court modifies the order, the court shall identify a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g)The person responsible for the services must comply with Section 574.037(b).

(h)A modified order may not extend beyond the term of the original order.

MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT

Sec.574.062. (a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b)The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c)The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d)The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on the agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the motion is filed.

(e)If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

ORDER FOR TEMPORARY DETENTION

Sec.574.063. (a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b)The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

(1)the patient meets the criteria described by Section 574.065(a); and

(2)detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c)The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d)At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e)Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1)that the patient has been placed under a temporary detention order;

(2)the grounds for the order; and

(3)the time and place of the modification hearing.

APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER

Sec.574.064. (a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1)the nearest appropriate inpatient mental health facility; or

(2)a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(b)A patient may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1)the patient meets the criteria described by Section 574.065(a); and

(2)detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c)If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the hearing set under Section 574.062 is completed.

(d)A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

(1)after a probable cause hearing held within 72 hours after the patient's detention begins; or

(2)after a modification hearing held within the period prescribed by Section 574.062.

(e)A patient released from an inpatient mental health facility under Subsection (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f)A person detained under this section may not be detained in a non-medical facility used to detain persons charged with or convicted of a crime.

ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES

Sec.574.065. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered mental health services prescribed by Section 574.034(a) or 574.035(a).

(b)The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c)The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d)A modification may include:

(1)incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2)providing for commitment to an inpatient mental health facility.

(e)A court may not extend the provision of mental health services beyond the period prescribed in the original order.

RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES

Sec.574.066. (a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b)The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c)The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d)The court shall appoint an attorney to represent the patient when an application is filed.

(e)The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f)A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g)If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h)The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

MOTION FOR REHEARING

Sec.574.067. (a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b)Pending the hearing, the court may:

(1)stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2)if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

REQUEST FOR REEXAMINATION

Sec.574.068. (a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b)The request must be filed in the county in which the patient is receiving the services.

(c)The court may, for good cause shown:

(1)require that the patient be reexamined;

(2)schedule a hearing on the request; and

(3)notify the facility administrator of the facility providing mental health services to the patient.

(d)A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e)After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f)The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g)If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

HEARING ON REQUEST FOR REEXAMINATION

Sec.574.069. (a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

(1)a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2)a certificate has not been filed and the patient has not been discharged.

(b)At the time the hearing is set, the judge shall:

(1)appoint an attorney to represent a patient who does not have an attorney; and

(2)give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c)The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d)The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e)The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035.

(f)The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

APPEAL

Sec.574.070. (a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b)Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c)When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d)Pending the appeal, the trial judge in whose court the cause is pending may:

(1)stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2)if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e)The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

[Sections 574.071-574.080 reserved for expansion]

SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF COURT-ORDERED MENTAL HEALTH SERVICES

CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE

Sec.574.081. (a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(b)The physician shall prepare the plan as prescribed by department rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility.

(c)The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for sufficient medication on furlough or discharge to last until the patient can see a physician; and

(2) the person or entity that is responsible for providing and paying for the medication.

(d)The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1)the services are provided by:

(A)a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B)any other provider that agrees to accept the referral; and

(2)the provision of care by the center or provider is appropriate.

(e)The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f)A patient who is to be discharged may refuse the continuing care services.

(g)A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h)Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B)or (E) provide or pay for a medication for a patient.

PASS OR FURLOUGH FROM INPATIENT CARE

Sec.574.082. (a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b)A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c)The pass or furlough may be subject to specified conditions.

(d)When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

RETURN TO FACILITY UNDER CERTIFICATE OF FACILITY ADMINISTRATOR OR COURT ORDER

Sec.574.083. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection(c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:

(1)the patient is absent without authority from the facility;

(2)the patient has violated the conditions of a pass or furlough; or

(3)the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d)A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

REVOCATION OF FURLOUGH

Sec.574.084. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b)A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c)The hearing is informal and the patient is entitled to present information and argument.

(d)The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e)A hearing officer who revokes a furlough shall place in the patient's file:

(1)a written notation of the decision; and

(2)a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f)The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

DISCHARGE ON EXPIRATION OF COURT ORDER

Sec.574.085. The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

DISCHARGE BEFORE EXPIRATION OF COURT ORDER

Sec.574.086. (a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b)The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

(1)a furlough under Section 574.082; or

(2)a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c)A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

CERTIFICATE OF DISCHARGE

Sec.574.087. The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES

Sec. 574.088. (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(1) the person is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's disability to purchase a firearm is in the public interest.

TRANSPORTATION PLAN FOR FURLOUGH OR DISCHARGE

Sec. 574.089. (a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

(1) who is responsible for transporting the person;

(2) when the person will be transported; and
(3) where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER ORDER FOR INPATIENT MENTAL HEALTH SERVICES

DEFINITIONS

Sec.574.101. In this subchapter:

(1) "Capacity" means a patient's ability to:

(A)understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B)make a decision whether to undergo the proposed treatment.

(2)"Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:

(A)imminent probable death or substantial bodily harm to the patient because the patient:

(i)overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii)is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self- protection; or

(B)imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3)"Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A)antipsychotics or neuroleptics;

(B)antidepressants;

(C)agents for control of mania or depression;

(D)antianxiety agents;

(E)sedatives, hypnotics, or other sleep-promoting drugs; and

(F)psychomotor stimulants.

APPLICATION OF SUBCHAPTER

Sec.574.102. This subchapter applies to the application of medication to a patient subject to an order for inpatient mental health services under this chapter or other law.

ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES

Sec.574.103. (a) In this section “ward” has the meaning assigned by Section 601, Texas Probate Code.

(b) A person may not administer a psychoactive medication to a patient who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;

(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or

(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward’s expressed preferences regarding treatment with psychoactive medication.

PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING

Sec.574.104. (a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;
(2) the physician determines that the medication is the proper course of treatment for the patient;
(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed for the patient; and
(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:
(1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;
(2) each medication the physician wants the court to compel the patient to take;
(3) whether an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed;
(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;
(5) the physician's diagnosis of the patient; and
(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c)An application filed under this section is separate from an application for court-ordered mental health services.

(d)The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034 or 574.035 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under Section 574.034 or 574.035 and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e)Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

RIGHTS OF PATIENT

Sec.574.105. A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(1)representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2)meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(3)receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4)be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5)be present at the hearing;

(6)request from the court an independent expert; and

(7)oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION

Sec.574.106. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:
(1) is under a court order to receive inpatient mental health services; or
(2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065.

(l) For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

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

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

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

(1) the patient's expressed preferences regarding treatment with psychoactive medication;

(2) the patient's religious beliefs;

(3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c)A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d)A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e)A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f)If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(g)As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h)An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the patient's

diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i)The classes of psychoactive medications in the order must conform to classes determined by the department.

(j)An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k)This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.

FINDING THAT PATIENT PRESENTS A DANGER

Sec. 574.1065. In making a finding under Section 574.106 (a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the patient's present mental condition;

(2) whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and

(3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

COSTS

Sec.574.107. (a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

(1) a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or

(2) a patient who:

(A) is awaiting trial after having been determined to be competent to stand trial; and

(B) was ordered to receive mental health services as described by Section 574.106(a)(2).

APPEAL

Sec.574.108. (a) A patient may appeal an order under this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b)An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

EFFECT OF ORDER

Sec.574.109. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b)The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

EXPIRATION OF ORDER

Sec.574.110. (a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

(1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

SUBCHAPTER H. VOLUNTARY ADMISSION FOR CERTAIN PERSONS FOR WHOM MOTION FOR COURT- ORDERED SERVICES HAS BEEN FILED

APPLICABILITY

Sec. 574.151. This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034 or 574.035, and who requests voluntary admission to an inpatient mental health facility:

(1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or

(2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

CAPACITY TO CONSENT TO VOLUNTARY ADMISSION

Sec. 574.152. A person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

RIGHTS OF PERSON ADMITTED TO VOLUNTARY INPATIENT TREATMENT

Sec. 574.153. (a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient mental health services.

(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

PARTICIPATION IN RESEARCH PROGRAM

Sec. 574.154. Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:

(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility's institutional review board; and

(2) the institutional review board specifically reviews the patient's consent under the approved protocol.

SUBCHAPTER I. USE OF VIDEO TECHNOLOGY AT PROCEEDINGS

APPLICATION OF SUBCHAPTER

574.201. This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

CERTAIN TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED

§ 574.202. (a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court's discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

USE OF SECURE ELECTRONIC COMMUNICATION METHOD IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER.

Sec. 574.203. (a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

(1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:

(A) the proposed patient or the attorney representing the proposed patient; and

(B) the county or district attorney, as appropriate;

(2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge, associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

(3) on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge, associate judge, or by the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

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

CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES

SUBCHAPTER A. ADMISSION PROCEDURES

AUTHORIZATION FOR ADMISSION

Sec.575.001. (a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b)The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL

Sec.575.002. This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

ADMISSION OF ALCOHOLICS AND PERSONS CHARGED WITH CRIMINAL OFFENSE

Sec.575.003. This subtitle does not affect the admission to a state mental health facility of:

(1)an alcoholic admitted under Chapter 462; or

(2)a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

[Sections 575.004-575.010 reserved for expansion]

SUBCHAPTER B. TRANSFER PROCEDURES

TRANSFER TO DEPARTMENT MENTAL HEALTH FACILITY OR LOCAL MENTAL HEALTH AUTHORITY

Sec.575.011. (a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:

(1)another inpatient mental health facility operated by the department ; or

(2)a mental health facility deemed suitable by the local mental health authority if the authority consents.

(b)A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c)A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d)The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.

(e)The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

TRANSFER OF PERSON WITH MENTAL RETARDATION TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT

Sec.575.012. (a) An inpatient mental health facility may not transfer a patient who is also a person with mental retardation to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b)The department shall maintain an appropriate number of hospital-level beds for persons with mental retardation who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE SCHOOL

Sec.575.013. (a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state school for persons with mental retardation if an examination of the patient indicates that the patient has symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school are in the patient's best interest.

(b)A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state school shall be furnished to the committing court.

(c)The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

TRANSFER TO PRIVATE MENTAL HOSPITAL

Sec.575.014. The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

(1)the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or applicant's expense;

(2)the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and

(3)written notice of the transfer is sent to the committing court.

TRANSFER TO FEDERAL FACILITY

Sec.575.015. The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

(1)the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;

(2)notice of the transfer is sent to the committing court; and

(3)the committing court enters an order approving the transfer.

TRANSFER FROM FACILITY OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Sec.575.016. (a) The institutional division of the Texas Department of Criminal Justice shall transfer a patient committed to an institutional division inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b)A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c)The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

TRANSFER OF RECORDS

Sec.575.017. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state school to which the patient is transferred.

CHAPTER 576. RIGHTS OF PATIENTS

SUBCHAPTER A. GENERAL RIGHTS

RIGHTS UNDER CONSTITUTION AND LAW

Sec.576.001. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b)Unless a specific law limits a right under a special procedure, a patient has:

(1)the right to register and vote at an election;

(2)the right to acquire, use, and dispose of property, including contractual rights;

(3)the right to sue and be sued;

(4)all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;

(5)the right to religious freedom; and

(6)all rights relating to domestic relations.

PRESUMPTION OF COMPETENCY

Sec.576.002. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Texas Probate Code.

WRIT OF HABEAS CORPUS

Sec.576.003. A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

EFFECT ON GUARDIANSHIP

Sec.576.004. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

CONFIDENTIALITY OF RECORDS

Sec.576.005. Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES

Sec. 576.0055. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

RIGHTS SUBJECT TO LIMITATION BY FACILITY ADMINISTRATOR

Sec.576.006. (a) A patient in an inpatient mental health facility has the right to:

(1)receive visitors;

(2)communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3)communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b)The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c)If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

NOTIFICATION OF RELEASE

Sec.576.007. (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b)The department shall notify each adult patient of the patient's right to have his family notified under this section.

NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM

Sec.576.008. A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

NOTIFICATION OF RIGHTS

Sec.576.009. A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

(1)orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or

(2)through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

NOTIFICATION OF TRUST EXEMPTION

Sec. 576.010. (a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

(1) orally, in simple, nontechnical terms in the patient's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

[Sections 576.011-576.020 reserved for expansion]

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

GENERAL RIGHTS RELATING TO TREATMENT

Sec.576.021. (a) A patient receiving mental health services under this subtitle has the right to:

(1)appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;

(2)not receive unnecessary or excessive medication;

(3)refuse to participate in a research program;

(4)an individualized treatment plan and to participate in developing the plan; and

(5)a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

ADEQUACY OF TREATMENT

Sec.576.022. (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b)The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

PERIODIC EXAMINATION

Sec.576.023. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

USE OF PHYSICAL RESTRAINT

Sec.576.024. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b)A physical restraint shall be removed as soon as possible.

(c)Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

ADMINISTRATION OF PSYCHOACTIVE MEDICATION

Sec.576.025. (a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1)the patient is having a medication-related emergency;

(2)the patient is younger than 16 years of age , or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3)the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4)the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5)the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b)Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1)the consent is given voluntarily and without coercive or undue influence;

(2)the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A)the specific condition to be treated;

(B)the beneficial effects on that condition expected from the medication;

(C)the probable health and mental health consequences of not consenting to the medication;

(D)the probable clinically significant side effects and risks associated with the medication;

(E)the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F)the proposed course of the medication;

(3)the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4)the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c)If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d)A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e)In prescribing psychoactive medication, a treating physician shall:

(1)prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2)administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f)If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1)the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2)treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g)In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

INDEPENDENT EVALUATION

Sec.576.026. (a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

LIST OF MEDICATIONS

Sec.576.027. (a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

(1)the name of the medication;

(2)the dosage and schedule prescribed for the administration of the medication; and

(3)the name of the physician who prescribed the medication.

(b)The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c)A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

LICENSE REQUIRED

Sec.577.001. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b)A community center or other entity designated by the Texas Department of Mental Health and Mental Retardation to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

DEFINITIONS

Sec.577.0011. In this chapter:

(1)"Board" means the Texas Board of Health.

(2)"Department" means the Texas Department of Health.

EXEMPTIONS FROM LICENSING REQUIREMENT

Sec.577.002. A mental health facility operated by the Texas Department of Mental Health and Mental Retardation or a federal agency need not be licensed under this chapter.

ADDITIONAL LICENSE NOT REQUIRED

Sec.577.003. A mental hospital licensed under this chapter that the Texas Department of Mental Health and Mental Retardation designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

LICENSE APPLICATION

Sec.577.004. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b)The department shall prepare the application form and make the form available on request.

(c)The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d)The application must contain:

(1)the name and location of the mental hospital or mental health facility;

(2)the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3)the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4)the bed capacity to be authorized by the license;

(5)the number, duties, and qualifications of the professional staff;

(6)a description of the equipment and facilities of the mental hospital or mental health facility; and

(7)other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e)The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

INVESTIGATION AND LICENSE ISSUANCE

Sec.577.005. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b)The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c)A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d)The license is not transferable or assignable.

FEES

Sec.577.006. (a) The department shall charge each hospital an annual license fee for an initial license or a license renewal.

(b)The board by rule shall adopt the fees authorized by Subsection (a) according to a schedule under which the number of beds in the hospital determines the amount of the fee. The fee may not exceed $15 a bed. A minimum license fee may be established. The minimum fee may not exceed $1,000.

(c)The board by rule shall adopt fees for hospital plan reviews acording to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d)The fees imposed under the schedule may not exceed the following:

Cost of Construction	Fee
(1) $ 100,000 or less	$ 500
(2) $ 100,001 - $ 600,000	$1,500
(3) $ 600,001 - $ 2,000,000	$3,000
(4) $ 2,000,001 - $ 5,000,000	$4,500
(5) $ 5,000,001 - $10,000,000	$6,000
(6) $10,000,001 and over	$7,500

(e)The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of $500 and a maximum fee of $1,000 for each survey conducted.

(f)The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The department may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter. These fees may be appropriated only to the department.

CHANGE IN BED CAPACITY

Sec.577.007. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

REQUIREMENT OF PHYSICIAN IN CHARGE

Sec.577.008. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

LIMITATION ON CERTAIN CONTRACTS

Sec.577.009. A community center or other entity the Texas Department of Mental Health and Mental Retardation designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department .

RULES AND STANDARDS

Sec.577.010. (a) The Texas Board of Mental Health and Mental Retardation shall adopt rules and standards the board considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b)The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c)The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d)The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

NOTIFICATION OF TRANSFER OR REFERRAL

Sec.577.0101. (a) The board shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b)The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1)provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2)provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3)obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c)The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

RECORDS AND REPORTS

Sec.577.011. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

DESTRUCTION OF RECORDS

Sec.577.012. (a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b)If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c)The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

INVESTIGATIONS

Sec.577.013. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b)An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

(1)inspect the facilities and conditions;

(2)observe the hospital's or facility's care and treatment program; and

(3)question the employees of the hospital or facility.

(c)An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the department in the enforcement action against the licensed mental hospital;

(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

(1) a notice of alleged violation against the licensed mental hospital, which notice shall include the provisions of law which the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;
(2) the pleadings in the administrative proceeding; and
(3) a final decision or order by the department.

OATHS

Sec.577.014. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

SUBPOENAS

Sec.577.015. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b)If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE

Sec.577.016. (a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

(1)department rules;
(2)this subtitle; or
(3)Chapters 104 and 225.

(b)The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c)The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d)The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e)A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

HEARINGS

Sec.577.017. (a) The department's legal staff may participate in a hearing under this chapter.

(b)The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

JUDICIAL REVIEW OF DEPARTMENT DECISION

Sec.577.018. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b)The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c)The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d)The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e)The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

INJUNCTION

Sec.577.019. (a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b)The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c)At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

[Section 577.020-577.050 reserved for expansion]

SUBCHAPTER B. PATIENT SAFETY PROGRAM

DUTIES OF DEPARTMENT

Sec. 577.051. The department shall develop a patient safety program for mental hospitals licensed under Section 577.001(a). The program must:

(1) be administered by the licensing program within the department; and

(2) serve as an information clearinghouse for hospitals concerning best practices and quality improvement strategies.

ANNUAL REPORT

Sec. 577.052. (a) On renewal of a license under this chapter, a mental hospital shall submit to the department an annual report that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of each of the following events during the preceding year: (1) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient; (2) the suicide of a patient in a setting in which the patient received care 24 hours a day; (3) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility; (4) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities; and (5) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended. (b) The department may not require the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

ROOT CAUSE ANALYSIS AND ACTION PLAN

Sec. 577.053. (a) In this section, "root cause analysis" means the process that identifies basic or causal factors underlying a variation in performance leading to an event listed in Section 577.052 and that:

(1) focuses primarily on systems and processes;

(2) progresses from special causes in clinical processes to common causes in organizational processes; and

(3) identifies potential improvements in processes or systems.

(b) Not later than the 45th day after the date a mental hospital becomes aware of an event listed in Section 577.052, the hospital shall:

(1) conduct a root cause analysis of the event; and

(2) develop an action plan that identifies strategies to reduce the risk of a similar event occurring in the future.

(c) The department may review a root cause analysis or action plan related to an event listed in Section 577.052 during a survey, inspection, or investigation of a mental hospital.

(d) The department may not require a root cause analysis or action plan to be submitted to the department.

(e) The department or an employee or agent of the department may not in any form, format, or manner remove, copy, reproduce, redact, or dictate from all or any part of a root cause analysis or action plan.

CONFIDENTIALITY; ABSOLUTE PRIVILEGE

Sec. 577.054. (a) Except as provided by Sections 577.055 and 577.056, all information and materials obtained or compiled by the department under this subchapter or compiled by a mental hospital under this subchapter, including the root cause analysis, annual report of the hospital, action plan, best practices report, department summary, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, subject to Section 577.053(c); and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by a mental hospital or an entity that has an ownership or management interest in a hospital.

(c) The transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

(d) Information reported by a mental hospital under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the hospital or the hospital's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. A court shall enforce this privilege for all matters covered by this subsection.

(e) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a mental hospital in compliance with or as authorized under this subchapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

ANNUAL DEPARTMENT SUMMARY

Sec. 577.055. The department annually shall compile and make available to the public a summary of the events reported by mental hospitals as required by Section 577.052. The summary may contain only aggregated information and may not directly or indirectly identify:

(1) a specific mental hospital or group of hospitals;

(2) an individual; or

(3) a specific reported event or the circumstances or individuals surrounding the event.

BEST PRACTICES REPORT AND DEPARTMENT SUMMARY

Sec. 577.056. (a) A mental hospital shall provide to the department at least one report of best practices and safety measures related to a reported event.

(b) A mental hospital may provide to the department a report of other best practices and the safety measures that are effective in improving patient safety.

(c) The department by rule may prescribe the form and format of a best practices report. The department may not require a best practices report to exceed one page in length. The department shall accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by a mental hospital to a patient safety organization.

(d) The department periodically shall:

(1) review the best practices reports;

(2) compile a summary of the best practices reports determined by the department to be effective and recommended as best practices; and

(3) make the summary available to the public.

(e) The summary may not directly or indirectly identify:

(1) a specific mental hospital or group of hospitals;

(2) an individual; or

(3) a specific reported event or the circumstances or individuals surrounding the event.

PROHIBITION

Sec. 577.057. The annual report of a mental hospital, the department summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

REPORT TO LEGISLATURE

Sec. 577.058. (a) Not later than December 1, 2006, the commissioner of public health shall:

(1) evaluate the patient safety program established under this subchapter; and

(2) report the results of the evaluation and make recommendations to the legislature.

(b) The commissioner of public health shall conduct the evaluation in consultation with mental hospitals licensed under this chapter.

(c) The evaluation must address:

(1) the degree to which the department was able to detect statewide trends in errors based on the types and numbers of events reported;

(2) the degree to which the statewide summaries of events compiled by the department were accessed by the public;

(3) the effectiveness of the department's best practices summary in improving hospital patient care; and

(4) the impact of national studies on the effectiveness of state or federal systems of reporting medical errors.

GIFTS, GRANTS, AND DONATIONS

Sec. 577.059. The department may accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

ADMINISTRATIVE PENALTY

Sec. 577.060. (a) The department may assess an administrative penalty against a person who violates this subchapter or a rule adopted under this subchapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation;

(5) any hazard posed to the public health and safety by the violation; and

(6) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this subchapter are considered to be contested cases under Chapter 2001, Government Code.

NOTICE; REQUEST FOR HEARING

Sec. 577.061. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors set forth in Section 577.060(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

HEARING; ORDER

Sec. 577.062. (a) If the person notified fails to respond in a timely manner to the notice under Section 577.061(b) or if the person requests a hearing, the department shall:

(1) set a hearing;
(2) give written notice of the hearing to the person; and
(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND

Sec. 577.063. (a) The department shall give notice of the order under Section 577.062(c) to the person notified. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;
(2) the amount of any penalty assessed; and
(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty;
(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:
    (A) paying the penalty to the court for placement in an escrow account; or
    (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or
(2) request the court to stay enforcement of the penalty by:
    (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
    (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
(2) is under the substantial evidence rule. (g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If

the person paid the penalty under Subsection (c)(1)(A) or gave a supersedeas bond under Subsection (c)(1)(A) and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

EXPIRATION

Sec. 577.064. Unless continued in existence, this subchapter expires September 1, 2007.

CHAPTER 578. GENERAL PROVISIONS

APPLICATION

Sec.578.001. This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

USE OF ELECTROCONVULSIVE THERAPY

Sec.578.002. (a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b)Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

(1)a person who is 16 years of age or older and who is voluntarily receiving mental health services; or

(2)an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

CONSENT TO THERAPY

Sec.578.003. (a) The board by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The board by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the board shall consider recommendations of the panel. Use of the consent form prescribed by the board in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b)The written consent form must clearly and explicitly state:

(1)the nature and purpose of the procedure:

(2)the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;

(3)that there is a division of opinion as to the efficacy of the procedure; and

(4)the probable degree and duration of improvement or remission expected with or without the procedure.

(c)Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall ensure that:

(1)the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2)the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3)the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A)orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B)through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4)the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5)the signed copy of the consent form is made a part of the patient's clinical record.

(d)Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e)For a patient 65 years of age or older, before each treatment series begins, the hospital, facility, or physician administering the procedure shall:

(1)ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2)make the form described by Subdivision (1) available to the patient or the patient's guardian of the person; and

(3)inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

WITHDRAWAL OF CONSENT

Sec.578.004. (a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b)Revocation of consent is effective immediately.

PHYSICIAN REQUIREMENT

Sec.578.005. (a) Only a physician may administer electroconvulsive therapy.

(b)A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B, Title 3, Occupations Code.

REGISTRATION OF EQUIPMENT

Sec.578.006. (a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b)A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by the department.

(c)The application must be accompanied by a nonrefundable application fee. The board shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d)The application must contain:

(1)the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2)any other information required by the department.

(e)The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f)The board by rule may prohibit the registration and use of equipment of a type, model, or age the board determines is dangerous.

(g)The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case under the Administrative Procedure Act (V.T.C.A. Government Code, Section 2001.001 et seq.).

REPORTS

Sec.578.007. (a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b)A report must state for each quarter:

(1)the number of patients who received the therapy, including:

(A)the number of persons voluntarily receiving mental health services who consented to the therapy;
(B)the number of involuntary patients who consented to the therapy; and
(C)the number of involuntary patients for whom a guardian of the person consented to the therapy;
(2)the age, sex, and race of the person receiving the therapy;
(3)the source of the treatment payment;
(4)the average number of nonelectroconvulsive treatments;
(5)the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;
(6)the average number of electroconvulsive treatments administered per month;
(7)the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;
(8)autopsy findings if death followed within 14 days after the date of the administration of the therapy; and
(9)any other information required by the department.

USE OF INFORMATION REPORT

Sec.578.008. (a) The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

(b)The department shall file annually with the governor and the presiding officer of each house of the legislature a written report summarizing by facility the information received under Sections 578.006 and 578.007. If the therapy is administered by a private physician on an outpatient basis, the report must include that information but may not identify the physician. The department may not directly or indirectly identify in a report issued under this section a patient who received the therapy.

[Chapters 579-590 reserved for expansion]

SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND MENTAL RETARDATION

CHAPTER 611. MENTAL HEALTH RECORDS

DEFINITIONS

Sec.611.001. In this chapter:

(1)"Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2)"Professional" means:
(A)a person authorized to practice medicine in any state or nation;
(B)a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
(C)a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE

Sec.611.002. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b)Confidential communications or records may not be disclosed except as provided by Section 611.004, or 611.0045.

(c)This section applies regardless of when the patient received services from a professional.

PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY

Sec.611.003. (a) The privilege of confidentiality may be claimed by:
(1)the patient;

(2)a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or

(3)the professional, but only on behalf of the patient.

(b)The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING

Sec.611.004. (a) A professional may disclose confidential information only:

(1)to a governmental agency if the disclosure is required or authorized by law;

(2)to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;

(3)to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4)to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5)to the patient's personal representative if the patient is deceased;

(6)to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7)to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8)in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9)to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10)to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A)will not use or disclose the information for any other purposes; and

(B)will take appropriate steps to protect the information; or

(11)to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(b)Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c)The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d)A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

RIGHT TO MENTAL HEALTH RECORD

Sec.611.0045. (a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b)The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c)If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(d)The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).

(e)If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.

(f)The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.

(g)A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the patient's commitment.

(h)If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or narrative.

(i)The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.

(j)Notwithstanding 159.002 Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.

(k)The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

LEGAL REMEDIES FOR IMPROPER DISCLOSURE OR FAILURE TO DISCLOSE

Sec.611.005. (a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b)In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.

(c)The aggrieved person also has a civil cause of action for damages.

AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDING

Sec.611.006. (a) A professional may disclose confidential information in:

(1)a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

(2)a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3)a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(4)a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(5)a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;

(6)a judicial proceeding affecting the parent-child relationship;

(7)any criminal proceeding, as otherwise provided by law;

(8)a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, or a resident of an institution, as that term is defined by Chapter 242;

(9)a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;

(10)an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:

(A)Chapter 462;
(B)Chapter 574; or
(C)Chapter 593; or
(11)a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b)On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

REVOCATION OF CONSENT

Sec.611.007. (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b)A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c)A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

REQUEST BY PATIENT

Sec.611.008. (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:

(1)make the information available for examination during regular business hours and provide a copy to the patient, if requested; or
(2)inform the patient if the information does not exist or cannot be found.

(b)Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c)A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

EXECUTION OF INTERSTATE COMPACT

Sec.612.001. This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE COMPACT ON MENTAL HEALTH

"The contracting states solemnly agree that:

"ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a)'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b)'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

"(c)'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

"(d)'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

"(e)'After-care' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

"(f)'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

"(g)'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

"(h)'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ARTICLE III

"(a)Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

"(b)The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

"(c)No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

"(d)In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

"(e)Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

"ARTICLE IV

"(a)Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

"(b)If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

"(c)In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

"ARTICLE V

"Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

"ARTICLE VI

"The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

"ARTICLE VII

"(a)No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

"(b)The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

"(c)No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(d)Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

"(e)Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

"ARTICLE VIII

"(a)Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b)The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a)No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b)To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a)Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b)The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a)A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b)Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

COMPACT ADMINISTRATOR

Sec.612.002. (a) Under the compact, the governor shall appoint the commissioner of mental health and mental retardation as the compact administrator.

(b)The compact administrator may appoint a designee to perform the administrator's duties.

Sec.612.003. **REPEALED**

GENERAL POWERS AND DUTIES OF ADMINISTRATOR

Sec.612.004. (a) The compact administrator, acting jointly with like officers of other states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b)The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c)For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

SUPPLEMENTARY AGREEMENTS

Sec.612.005. (a) The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b)If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the head of the department or agency:

(1)under whose jurisdiction the institution or facility is operated; or

(2)that will perform the service.

FINANCIAL ARRANGEMENTS

Sec.612.006. The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS

Sec.612.007. (a) The compact administrator shall consult with the immediate family of any person proposed to be transferred.

(b)If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.

CHAPTER 614. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS

DEFINITIONS

Sec.614.001. In this chapter:

(1)"Board" means the Texas Board of Criminal Justice.

(2)"Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or mental retardation provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(3)"Committee" means the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

(3-a) "Continuity of care and services" refers to the process of:

(A) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of an offender with medical or mental impairments;

(B) developing a plan for meeting the treatment, care, and service needs of the offender with medical or mental impairments; and

(C) coordinating the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.

(4)"Developmental disability" means a severe, chronic disability that:

(A)is attributable to a mental or physical impairment or a combination of physical and mental impairments;

(B)is manifested before the person reaches 22 years of age;

(C)is likely to continue indefinitely;

(D)results in substantial functional limitations in three or more of the following areas of major life activity:

(i)self-care;
(ii)self-direction;
(iii)learning;
(iv)receptive and expressive language;
(v)mobility;
(vi)capacity for independent living; or
(vii)economic self-sufficiency; and

(E)reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

(5) “Mental Illness” has the meaning assigned by Section 571.003.

(6)"Mental impairment" means a mental illness, mental retardation, or a developmental disability.

(7)"Mental retardation" has the meaning assigned by Section 591.003.

(8)"Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a criminal offense and who:

(A) has a mental impairment; or
(B) is elderly, physically disabled, terminally ill, or significantly ill.

(9) “Office” means the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(10)"Person with mental retardation" means a juvenile or adult with mental retardation that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private or state school for persons with mental retardation.

COMPOSITION OF COMMITTEE; DUTIES

Sec.614.002. (a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 31 members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, mental retardation, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;
(2) one at-large member who is the judge of a district court with criminal jurisdiction;
(3) one at-large member who is a prosecuting attorney;
(4) one at-large member who is a criminal defense attorney;
(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and
(6) one at-large member whose expertise can further the mission of the committee.

(c) (1) The following entities, by September 1 of each even-numbered year, shall submit to the governor for consideration a list of five candidates from their respective fields for at-large membership on the committee:

(A) the Texas District and County Attorneys Association;
(B) the Texas Criminal Defense Lawyers Association;
(C) the Texas Association of Counties;
(D) the Texas Medical Association;
(E) the Texas Society of Psychiatric Physicians;
(F) the Texas Psychological Association;
(G) the Sheriffs' Association of Texas;
(H) the court of criminal appeals;
(I) the County Judges and Commissioners Association of Texas; and
(J) the Texas Conference of Urban Counties.

(2) The Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association may submit a candidate for membership only if the candidate has documented expertise and educational training in, as appropriate, medical forensics, forensic psychology, or forensic psychiatry.

(d) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person’s activities for compensation on behalf of a profession related to the operation of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the committee:

(1) the institutional division of the Texas Department of Criminal Justice;
(2) the Department of State Health Services;
(3) the pardons and paroles division of the Texas Department of Criminal Justice;
(4) the community justice assistance division of the Texas Department of Criminal Justice;
(5) the state jail division of the Texas Department of Criminal Justice;
(6) the Texas Juvenile Probation Commission;
(7) the Texas Youth Commission;
(8) the Department of Assistive and Rehabilitative Services;
(9) the Texas Education Agency;
(10) the Correctional Managed Health Care Committee;
(11) the Mental Health Association in Texas;
(12) the Board of Pardons and Paroles;
(13) the Commission on Law Enforcement Officer Standards and Education;
(14) the Texas Council of Community Mental Health and Mental Retardation Centers;
(15) the Commission on Jail Standards;
(16) the Texas Council for Developmental Disabilities;
(17) the Texas Association for Retarded Citizens;
(18) the National Alliance for the Mentally Ill of Texas;
(19) the Parent Association for the Retarded of Texas, Inc.;
(20) the Health and Human Services Commission; and
(21) the Department of Aging and Disability Services.

(f)In making the appointments under Subsection (b), the governor shall attempt to reflect the geographic and economic diversity of the state. Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the committee that an at-large member:

(1) does not have at the time of taking office the qualifications required by Subsection (b);
(2) does not maintain during service on the committee the qualifications required by Subsection (b);
(3) is ineligible for membership under Subsection (d);
(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;
(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee; or
(6) is absent from more than two consecutive regularly scheduled committee meetings that the member is eligible to attend.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) If the director of the committee has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(j)A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the committee, except the representative designated by the director of the Criminal Justice Policy Council must be an employee of that council.

(k) The committee shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments and perform other duties imposed by the board.

TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS; DIRECTOR

Sec.614.003. The Texas Correctional Office on Offenders with Medical or Mental Impairments shall perform duties imposed on or assigned to the office by this chapter, other law, the board, and the executive director of the Texas Department of Criminal Justice. The executive director of the Texas Department of Criminal Justice shall hire a

director of the office. The director serves at the pleasure of the executive director. The director shall hire the employees for the office.

TRAINING PROGRAM

Sec. 614.0031. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the committee and the office;
(2) the programs operated by the committee and the office;
(3) the role and functions of the committee and the office;
(4) the rules of the committee and the office;
(5) the current budget for the committee and the office;
(6) the results of the most recent formal audit of the committee and the office;
(7) the requirements of:
(A) the open meetings law, Chapter 551, Government Code;
(B) the public information law, Chapter 552, Government Code;
(C) the administrative procedure law, Chapter 2001, Government Code; and
(D) other laws relating to public officials, including conflict of interest laws; and
(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING COMPETENCY OR FITNESS TO PROCEED

Sec. 614.0032. (a) The office shall:

(1) perform duties imposed on the office by Section 508.146, Government Code; and
(2) periodically identify state jail felony defendants suitable for release under Section 15(i), Article 42.12, Code of Criminal Procedure, and perform other duties imposed on the office by that section.

(b) The office shall:

(1) with the special assistance of committee members appointed under Section 614.002(b)(1):
(A) review examinations to determine the competency of defendants in criminal cases to stand trial and examinations to determine the fitness of children to proceed with respect to adjudications of delinquent conduct or conduct indicating a need for supervision; and
(B) periodically report to the legislature and the court of criminal appeals findings made as a result of the review described by Paragraph (A); and
(2) approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure.

(c) A district or juvenile court shall submit to the office on a monthly basis all reports based on examinations described by Subsection (b).

TERMS

Sec.614.004. The at-large members of the committee serve for staggered six-year terms.

OFFICERS; MEETINGS

Sec.614.005. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor.

(b)The committee shall meet at least four times each year and may meet at other times at the call of the presiding officer or as provided by committee rule.

APPLICABILITY OF CERTAIN GOVERNMENT CODE PROVISIONS

Sec.614.006. A member of the committee is not entitled to compensation for performing duties on the committee but is entitled to receive reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

POWERS AND DUTIES

Sec.614.007. The committee shall:

(1)determine the status of offenders with medical or mental impairments in the state criminal justice system;

(2)identify needed services for offenders with medical or mental impairments;

(3)develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with medical or mental impairments that includes a case management system and the development of community-based alternatives to incarceration;

(4)cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with medical or mental impairments;

(5)evaluate programs in this state and outside this state for offenders with medical or mental impairments and recommend to the directors of state programs methods of improving the programs;

(6)collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the public;

(7)provide technical assistance to represented agencies and organizations in the development of appropriate training programs;

(8)apply for and receive money made available by the federal or state government or by any other public or private source to be used by the committee to perform its duties;

(9)distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with medical or mental impairments;

(10)develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with medical or mental impairments; and

(11)assess the need for demonstration projects and provide management for approved projects.

COMMUNITY-BASED DIVERSION PROGRAM FOR OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS

Sec.614.008. (a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly, physically disabled, terminally ill, or significantly ill and to rehabilitate those offenders.

(b) The office may contract for or employ and train a case management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the committee.

(c)The agencies represented on the committee shall perform duties and offer services as required by the office to further the purposes of the program and the committee.

BIENNIAL REPORT

Sec.614.009. Not later than February 1 of each odd-numbered year, the office shall present to the board and file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

(1)an evaluation of any demonstration project undertaken by the office;

(2)an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with mental impairments;

(3)recommendations of the office made in accordance with Section 614.007(5);

(4)an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, 614.016 and 614.018, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and

(5)any other recommendations that the office considers appropriate.

Sec. 614.010. Repealed

PUBLIC ACCESS

Sec.614.0101. The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee or office.

COMPLAINTS

Sec. 614.0102. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;
(2) the date the complaint is received by the office;
(3) the subject matter of the complaint;
(4) the name of each person contacted in relation to the complaint;
(5) a summary of the results of the review or investigation of the complaint; and
(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b)The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec.614.011. Repealed

Sec.614.012. Repealed

CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS

Sec.614.013. (a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or mental retardation authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b)The memorandum of understanding must establish methods for:

(1)identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;
(2)developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Texas Department of Mental Health and Mental Retardation, local mental health or mental retardation authorities, the Commission on Jail Standards and local jails;
(3)identifying the services needed by offenders with mental impairments to reenter the community successfully; and
(4)establishing a process to report implementation activities to the office.

(c)The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or mental retardation authorities, and community supervision and corrections departments shall:

(1)operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and
(2)actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or mental retardation authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or mental retardation authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office's biennial report under Section 614.009.

CONTINUITY OF CARE FOR ELDERLY OFFENDERS

Sec.614.014. (a) The Texas Department of Criminal Justice, the Texas Department of Human Services, and the Texas Department on Aging by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b)The memorandum of understanding must establish methods for:

(1)identifying elderly offenders in the criminal justice system;

(2)developing interagency rules, policies and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the Texas Department of Human Services, and the Texas Department on Aging; and

(3)identifying the services needed by elderly offenders to reenter the community successfully.

(c)The Texas Department of Criminal Justice, the Texas Department of Human Services, and the Texas Department on Aging shall:

(1)operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and

(2)actively seek federal grants or funds to operate and expand the program.

CONTINUITY OF CARE FOR PHYSICALLY DISABLED, TERMINALLY ILL, OR SIGNIFICANTLY ILL OFFENDERS

Sec.614.015. (a) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b)The memorandum of understanding must establish methods for:

(1)identifying offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill;

(2)developing interagency rules, policies and procedures for the coordination of care of and the exchange of information on offenders who are physically disabled, terminally ill, or significantly ill by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services; and

(3)identifying the services needed by offenders who are physically disabled, terminally ill, or significantly ill to reenter the community successfully.

(c)The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services shall:

(1)operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill; and

(2)actively seek federal grants or funds to operate and expand the program.

CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS

Sec.614.016. (a) The office, the Commission on Law Enforcement Officer Standards and Education, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill or significantly ill.

(b)The memorandum of understanding must establish methods for:

(1)identifying offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill or significantly ill;

(2)developing procedures for the exchange of information relating to offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill by the office, the Commission on Law Enforcement Officer Standards and Education, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3)adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill.

EXCHANGE OF INFORMATION

Sec.614.017. (a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

(A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;

(B) the Board of Pardons and Paroles;

(C) the Department of State Health Services;

(D) the Texas Juvenile Probation Commission;

(E) the Texas Youth Commission;

(F) the Department of Assistive and Rehabilitative Services;

(G) the Texas Education Agency;

(H) the Commission on Jail Standards;

(I) the Department of Aging and Disability Services;

(J) the Texas School for the Blind and Visually Impaired;

(K) community supervision and corrections departments and local juvenile probation departments;

(L) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(M) local jails regulated by the Commission on Jail Standards;

(N) a municipal or county health department;

(O) a hospital district;

(P) a judge of this state with jurisdiction over juvenile or criminal cases;

(Q) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(R) the Health and Human Services Commission;

(S) the Department of Information Resources;

(T) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and

(U) the Department of Family and Protective Services.

(2) "Special needs offender" includes an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

(d) An agency shall manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information.

(e) A person commits an offense if the person releases or discloses confidential information obtained under this section for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. An offense under this subsection is a Class B misdemeanor.

CONTINUITY OF CARE FOR JUVENILES WITH MENTAL IMPAIRMENTS

Sec. 614.018. (a) The Texas Juvenile Probation Commission, the Texas Youth Commission, the Department of Public Safety, the Department of State Health Services, the Department of Aging and Disability Services, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Youth Commission, the Texas Juvenile Probation Commission, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or mental retardation authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

PROGRAMS FOR JUVENILES

Sec. 614.019. (a) The office, in cooperation with the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation, the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Youth Commission and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child ’s parole.

(c) A child with mental illness or mental retardation who is discharged from the Texas Youth Commission under Section 61.077, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the commission and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or mental retardation services provided by a local mental health or mental retardation authority.

YOUTH ASSERTIVE COMMUNITY TREATMENT PROGRAM

Sec. 614.020. (a) The office may establish and maintain in Tarrant County an assertive community treatment program to provide treatment, rehabilitation, and support services to individuals in that county who:

(1) are under 18 years of age;

(2) have severe and persistent mental illness;

(3) have a history of:

(A) multiple hospitalizations;

(B) poor performance in school;

(C) placement in emergency shelters or residential treatment facilities; or

(D) chemical dependency or abuse; and

(4) have been placed on probation by a juvenile court.

(b) The program must be modeled after other assertive community treatment programs established by the Texas Department of Mental Health and Mental Retardation. The program is limited to serving not more than 30 program participants at any time.

(c) If the office creates and maintains a program under this section, the office shall provide for the program a team of licensed or degreed professionals in the clinical treatment or rehabilitation field to administer the program. A team provided under this subsection must include:

(1) a registered nurse to provide full-time direct services to the program participants; and

(2) a psychiatrist available to the program for 10 or more hours each week.

(d) In administering the program, the program's professional team shall:

(1) provide psychiatric, substance abuse, and employment services to program participants;

(2) maintain a ratio of one or more team members for each 10 program participants to the extent practicable;

(3) be available to program participants during evening and weekend hours;

(4) meet the needs of special populations;

(5) maintain at all times availability for addressing and managing a psychiatric crisis of any program participant; and

(6) cover the geographic areas served by the program.

(e) The office and the program shall cooperate with or contract with local agencies to avoid duplication of services and to maximize federal Medicaid funding.

SERVICES FOR WRONGFULLY IMPRISONED PERSONS

Sec.614.021. (a) In this section, "wrongfully imprisoned person" has the meaning assigned by Section 501.091, Government Code.

(b)The office shall develop a plan to use existing case management functions to assist wrongfully imprisoned persons who are discharged from the Texas Department of Criminal Justice in:

(1)accessing medical and dental services, including assistance in completing documents required for application to federal entitlement programs;

(2)obtaining mental health treatment and related support services through the public mental health system for as long as the wrongfully imprisoned person requires assistance; and

(3)obtaining appropriate support services, as identified by the wrongfully imprisoned person and the assigned case manager, to assist the person in making the transition from incarceration into the community.

(c)The office shall submit an annual report to the legislature on the provision of services under this section to wrongfully imprisoned persons.

CHAPTER 615. MISCELLANEOUS PROVISIONS

COUNTY RESPONSIBILITY

Sec.615.001. Each commissioners court shall provide for the support of a person with mental illness or mental retardation who is:

(1)a resident of the county;

(2)unable to provide self-support; and

(3)cannot be admitted to a state mental health or mental retardation facility.

ACCESS TO MENTAL HEALTH RECORDS BY PROTECTION AND ADVOCACY SYSTEM

Sec.615.002. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801 et seq.) is entitled to access to records relating to persons with mental illness to the extent authorized by federal law.

(b)If the patient consents to notification, the protection and advocacy system shall notify the Texas Department of Mental Health and Mental Retardation's Office of Client Services and Rights Protection if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a patient in a facility or program operated by, licensed by, certified by, or in a contractual relationship with the department.

CHAPTER 462. TREATMENT OF CHEMICALLY DEPENDENT PERSONS

SUBCHAPTER A. GENERAL PROVISIONS

DEFINITIONS

Sec.462.001. In this chapter:

(1)"Applicant" means a person who files an application for emergency detention, protective custody, or commitment of a chemically dependent person.

(2)"Certificate" means a sworn certificate of medical examination for chemical dependency executed under this chapter.

(3)"Chemical dependency" means:

(A)the abuse of alcohol or a controlled substance;

(B)psychological or physical dependence on alcohol or a controlled substance; or

(C)addiction to alcohol or a controlled substance.

(4)"Commission" means the Texas Commission on Alcohol and Drug Abuse

(5)"Controlled substance" means a:

(A)toxic inhalant; or

(B)substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(6)"Legal holiday" means a state holiday listed in Article 4591, Revised Statutes, or an officially declared county holiday applicable to a court in which proceedings under this chapter are held.

(7)"Proposed patient" means a person named in an application for emergency detention, protective custody, or commitment under this chapter.

(8)"Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(9)"Treatment" means the initiation and promotion of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(10)"Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the commission, a facility licensed by the Texas Department of Mental Health and Mental Retardation, or a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

FILING REQUIREMENTS

Sec.462.002. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a court having original jurisdiction under this chapter must be filed with the county clerk of the proper county.

(b)The county clerk shall file each paper after endorsing on it:

(1)the date on which the paper is filed;

(2)the docket number; and

(3)the clerk's official signature.

(c)A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this chapter would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this chapter requiring the release or discharge of a person.

(d)If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

COURT HOURS

Sec.462.0025. (a) The probate court or court having probate jurisdiction shall be open for proceedings under this chapter during normal business hours.

(b) The probate judge or magistrate shall be available at all times at the request of a person taken into custody or detained under Subchapter C or a proposed patient under Subchapter D.

INSPECTION OF COURT RECORDS

Sec.462.003. (a) Each paper in a docket for commitment proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the:

(1)county judge;

(2)judge of a court that has probate jurisdiction; or

(3)judge of a district court having jurisdiction in the county.

(b)A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1)the use, inspection, or copying is justified and in the public interest; or

(2)the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c)In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the statutory exemptions.

(d)The papers shall be released to an attorney representing the proposed patient in a proceeding held under this chapter.

(e)This section does not affect access of law enforcement personnel to necessary information in the execution of a writ or warrant.

REPRESENTATION OF STATE

Sec.462.004. In a hearing on court-ordered treatment held under this chapter:

(1)the county attorney shall represent the state; or

(2)if the county has no county attorney, the district attorney shall represent the state.

COSTS

Sec.462.005. (a) The laws relating to the payment of the costs of commitment, support, maintenance, and treatment and to the securing of reimbursement for the actual costs applicable to court-ordered mental health, probation, or parole services apply to each item of expense incurred by the state or the county in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this chapter.

(b)A county that enters an order of commitment or detention under this chapter is liable for payment of the costs of any proceedings related to the order, including:

(1)court-appointed attorney fees;

(2)physician examination fees;

(3)compensation for language or sign interpreters;

(4)compensation for masters; and

(5)expenses to transport a patient to a hearing or to a treatment facility.

(c)A county or the state is entitled to reimbursement from any of the following persons for costs actually paid by the county or state and that relate to an order of commitment or detention:

(1)the patient;

(2)the applicant; or

(3)a person or estate liable for the patient's support in a treatment facility.

(d)On a motion of the county or district attorney or on the court's own motion, the court may require an applicant to file a cost bond with the court.

(e)The state shall pay the costs of transporting a discharged patient to the patient's home or of returning to a treatment facility a patient absent without permission unless the patient or a person responsible for the patient is able to pay the costs.

(f)The state or the county may not pay any costs for a patient committed to a private hospital unless no public facilities are available and unless authorized by the commission or the commissioners court of the county, as appropriate.

(g)Notwithstanding Subsection (c), a person who files an application for the commitment of another while acting in the person's capacity as an employee of a local mental health authority is not liable for the payment of any costs under this section.

WRIT OF HABEAS CORPUS

Sec.462.006. This chapter does not limit a person's right to obtain a writ of habeas corpus.

LIMITATION OF LIABILITY

Sec.462.007. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, commitment, treatment, or discharge of a proposed patient or in the performance of any act required or authorized by this chapter and who acts in good faith, reasonable, and without malice or negligence is not civilly or criminally liable for that action.

(b)A physician performing a medical examination or providing information to a court in a court proceeding under this chapter or providing information to a peace officer to demonstrate the necessity to apprehend a person under Section 462.041 is considered an officer of the court and is not civilly or criminally liable for the examination or testimony when acting without malice.

(c)A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1)a written request for the patient's release was filed and not withdrawn; and

(2)the person who filed the written request for release is notified that the person assumes all responsibility for the patient on discharge.

CRIMINAL PENALTY; ENFORCEMENT

Sec.462.008. (a) A person commits an offense if the person intentionally causes, conspires with another person to cause, or assists another to cause the unwarranted commitment of a person to a treatment facility.

(b)A person commits an offense if the person knowingly violates this chapter.

(c)An individual who commits an offense under this section is subject on conviction to:

(1)a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2)confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3)both fine and confinement.

(d)A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e)If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1)a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2)confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3)both fine and confinement.

(f)If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

(g)The appropriate district or county attorney shall prosecute violations of this chapter.

CONSENT TO TREATMENT

Sec.462.009. (a) A patient receiving treatment in a treatment facility is entitled to refuse a medication, therapy, or treatment unless:

(1)the patient is younger than 18 years of age, the patient is admitted under Section 462.022(a)(3)(A), and the patient's parent, managing conservator, or guardian consents to the medication, therapy, or treatment on behalf of the patient;

(2)the patient has been adjudicated to be incompetent to manage the patient's personal affairs or to make a decision to refuse the medication, therapy, or treatment and the patient's guardian of the person or another person legally authorized to consent to medical treatment consents to the medication, therapy, or treatment on behalf of the patient; or

(3)a physician treating the patient determines that the medication is necessary to prevent imminent serious physical harm to the patient or to another individual and the physician issues a written order, or a verbal order if authenticated in writing by the physician within 24 hours, to administer the medication to the patient.

(b)The decision of a guardian or of a person legally authorized to consent to medical treatment on the patient's behalf under Subsection (a)(2) must be based on knowledge of what the patient would desire, if known.

(c)A patient's refusal to receive medication, therapy, or treatment under Subsection (a), or a patient's attempt to refuse if the patient's right to refuse is limited by that subsection, shall be documented in the patient's clinical record together with the patient's expressed reason for refusal.

(d)If a physician orders a medication to be administered to a patient under Subsection (a)(3), the physician shall document in the patient's clinical record in specific medical and behavioral terms the reasons for the physician's determination of the necessity of the order.

(e)Consent given by a patient or by a person authorized by law to consent to treatment is valid only if:

(1)the consent is given voluntarily and without coercive or undue influence;

(2)before administration of the medication, therapy, or treatment, the treating physician explains to the patient and to the person giving consent, in simple, nontechnical language:

(A)the specific condition to be treated;

(B)the beneficial effects on that condition expected from the medication, therapy, or treatment;

(C)the probable health and mental health consequences of not consenting to the medication, therapy, or treatment;

(D)the side effects and risks associated with the medication, therapy, or treatment;

(E)the generally accepted alternatives to the medication, therapy, or treatment, if any, and whether an alternative might be appropriate for the patient; and

(F)the proposed course of the medication, therapy, or treatment; and

(3)the informed consent is evidenced in the patient's clinical record by a signed form prescribed by the commission for this purpose or by a statement of the treating physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(f)A person who consents to the administration of a medication, therapy, or treatment may revoke the consent at any time and for any reason, regardless of the person's capacity. Revocation of consent is effective immediately and further medication, therapy, or treatment may not be administered unless new consent is obtained in accordance with this section.

(g)Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf applies to a series of doses of medication or to multiple therapies or treatments for which consent was previously granted. If the treating physician obtains new information relating to a medication, therapy, or treatment for which consent was previously obtained, the physician must explain the new information and obtain new consent.

[Sections 462.010-462.020 reserved for expansion]

SUBCHAPTER B. VOLUNTARY TREATMENT OR REHABILITATION

VOLUNTARY ADMISSION OF ADULT

Sec.462.021. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1)the facility is:

(A)a treatment facility licensed by the commission to provide the necessary services;

(B)a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation; or

(C)a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment; and

(2)the admission is appropriate under the facility's admission policies.

VOLUNTARY ADMISSION OF MINOR

Sec.462.022. (a) A facility may admit a minor for treatment and rehabilitation if:

(1)the facility is:

(A)a treatment facility licensed by the commission to provide the necessary services to minors; or

(B)a facility licensed by the Texas Department of Mental Health and Mental Retardation;

(C)a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment;

(2)the admission is appropriate under the facility's admission policies; and

(3)the admission is requested by:

(A)a parent, managing conservator, or guardian of the minor; or

(B)the minor, without parental consent, if the minor is 16 years of age or older.

(b)The admission of a minor under Subsection (a) is considered a voluntary admission.

(c)A person or agency appointed as the guardian or a managing conservator of a minor and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(d)In this section, “minor” means an individual younger than 18 years of age for whom the disabilities of minority have not been removed.

DISCHARGE OR RELEASE

Sec.462.023. (a) Except as provided by Subsection (b), a facility shall release a voluntary patient within a reasonable time, not to exceed 96 hours, after the patient requests in writing to be released.

(b)A facility is not required to release the patient if before the end of the 96-hour period:

(1)the patient files a written withdrawal of the request;

(2)an application for court-ordered treatment or emergency detention is filed and the patient is detained in accordance with this chapter; or

(3)the patient is a minor under the age of 16 admitted with the consent of a parent, guardian, or conservator and that person, after consulting with facility personnel, objects in writing to the release of the patient.

(c)Subsection (a) applies to a minor admitted under Section 462.022 if the request for release is made in writing to the facility by the person who requested the initial admission.

(d)If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which the person may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

DISCHARGE OR RELEASE OF MINOR 16 OR 17 YEARS OF AGE

Sec.462.0235. (a) Except as provided by this section, a facility shall release a minor who is 16 or 17 years of age within a reasonable time, not to exceed 96 hours, after:

(1) the minor requests in writing to be released; or

(2) for a minor admitted under Section 462.022(a)(3)(A), the minor's parent, managing conservator, or guardian requests the release in writing.

(b) A facility is not required to release a minor who is 16 or 17 years of age within the period described by Subsection (a) if:

(1) the request is filed with the facility by the minor before the 15th day after the date of the minor's admission to the facility; or

(2) the request is filed with the facility by the minor on or after the 15th day after the minor's date of admission to the facility and, not later than 96 hours after the request is filed:

(A) the minor files with the facility a written withdrawal of the minor's request; or

(B) an examining physician places in the minor's medical record a certificate of medical examination described by Subsection (c).

(c) The certificate of medical examination placed in a minor's medical record under Subsection (b)(2)(B) must include:

(1) the name and address of the examining physician;

(2) the name and address of the examined minor;

(3) the date and place of the examination;
(4) a brief diagnosis of the examined minor's physical and mental condition;
(5) the period, if any, during which the examined minor has been under the care of the examining physician;
(6) an accurate description of the chemical dependency treatment, if any, administered to the examined minor by or under the direction of the examining physician; and
(7) the examining physician's opinion that:
(A) the examined minor is chemically dependent;
(B) there is no reasonable alternative to the treatment the physician recommends for the examined minor; and
(C) as a result of the examined minor's chemical dependency, the minor, if released, is likely to cause serious harm to the minor or others or:
(i) would suffer severe and abnormal mental, emotional, or physical distress;
(ii) would experience a substantial mental or physical deterioration of the minor's ability to function independently that would be manifested by the minor's inability, for reasons other than indigence, to provide for the minor's basic needs, including food, clothing, health, and safety; and
(iii) would not be able to make a rational and informed decision as to whether to submit to treatment.

(d) A facility shall release a minor whose release was postponed under Subsection (b)(2)(B) on the 15th day after the date of the most recent examination for which a certificate described by Subsection (c) is performed unless the physician conducts an additional examination of the minor and places another certificate of examination described by Subsection (c) in the minor's medical record.

(e) If a minor who is 16 or 17 years of age requests to be released from a facility on or after the 60th day after the date of the minor's admission to the facility, the facility shall release the minor within a reasonable time, not to exceed 96 hours, unless:
(1) an application for court-ordered treatment of the minor or for emergency detention of the minor is filed; and
(2) the minor is detained in accordance with this chapter.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which a minor may be detained under this section. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the minor may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

APPLICATION FOR COURT-ORDERED TREATMENT DURING VOLUNTARY INPATIENT CARE

Sec.462.024. (a)An application for court-ordered treatment may not be filed against a patient receiving voluntary care under this subchapter unless:
(1)a request for release of the patient has been filed; or
(2)in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered treatment and:
(A)is absent from the facility without authorization;
(B)refuses or is unable to consent to appropriate and necessary treatment; or
(C)refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for chemical dependency that, in addition to the information required by Section 462.064, includes the opinion of the physician that:
(i)there is no reasonable alternative to the treatment recommended by the physician; and
(ii)the patient will not benefit from continued inpatient care without the recommended treatment.

(b)The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered treatment.

INTAKE, ASSESSMENT AND ADMISSION

Sec.462.025. (a) The commission shall adopt rules governing the voluntary admission of a patient to a treatment facility, including rules governing the intake and assessment procedures of the admission process.

(b)The rules governing the intake process shall establish minimum standards for:

(1)reviewing a prospective patient's finances and insurance benefits;

(2)explaining to a prospective patient the patient's rights; and

(3)explaining to a prospective patient the facility's services and treatment process.

(c)The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by commission rules.

(d)The rules governing the assessment process shall prescribe:

(1)the types of professionals who may conduct an assessment;

(2)the minimum credentials each type of professional must have to conduct an assessment; and

(3)the type of assessment that professional may conduct.

(e)In accordance with commission rule, a treatment facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f)A prospective voluntary patient may not be formally accepted for chemical dependency treatment in a treatment facility unless the facility's administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g)An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a qualified professional before admission.

(h)In this section:

(1)"Admission" means the formal acceptance of a prospective patient to a treatment facility.

(2)"Assessment" means the administrative process a treatment facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be admitted.

(3)"Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the treatment facility and the facility's treatment and services.

SUBCHAPTER C. EMERGENCY DETENTION

APPREHENSION BY PEACE OFFICER WITHOUT WARRANT

Sec.462.041. (a) A peace officer, without a warrant, may take a person into custody if the officer:

(1)has reason to believe and does believe that:

(A)the person is chemically dependent; and

(B)because of that chemical dependency there is a substantial risk of harm to the person or to others unless the person is immediately restrained; and

(2)believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b)A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1)the person's behavior; or

(2)evidence of severe emotional distress and deterioration in the person's mental or physical condition to the extent that the person cannot remain at liberty.

(c)The peace officer may form the belief that the person meets the criteria for apprehension:

(1)from a representation of credible person; or

(2)on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d)A peace office who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1)the nearest appropriate inpatient treatment facility; or

(2)if an appropriate inpatient treatment facility is not available, a facility considered suitable by the county's health authority.

(e)A person may not be detained in a jail or similar detention facility except in an extreme emergency. A person detained in a jail or a similar detention facility except in an extreme emergency. A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(f)A peace officer shall immediately file an application for detention after transporting a person to a facility under this section. The application for detention must contain:

(1)a statement that the officer has reason to believe and does believe that the person evidences chemical dependency;

(2)a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3)a specific description of the risk of harm;

(4)a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5)a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6)a detailed description of the specific behavior, acts, attempts, or threats; and

(7)the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(g)The person shall be released on completion of a preliminary examination conducted under Section 462.044 unless the examining physician determines that emergency detention is necessary and provides the statement prescribed by Section 462.044(b). If a person is not admitted to a facility, is not arrested, and does not object, arrangements shall be made to immediately return the person to:

(1)the location of the person's apprehension;

(2)the person's residence in this state; or

(3)another suitable location.

(h)The county in which the person was apprehended shall pay the costs of the person's return.

(i)A treatment facility may provide to a person medical assistance regardless of whether the facility admits the person or refers the person to another facility.

JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY DETENTION

Sec.462.042. (a) An adult may file a written application for emergency detention of a minor or another adult.

(b)The application must state:

(1)that the applicant has reason to believe and does believe that the person who is the subject of the application is a chemically dependent person;

(2)that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3)a specific description of the risk of harm;

(4)that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5)that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6)a detailed description of the specific behavior, acts, attempts, or threats; and

(7)the relationship, if any, of the applicant to the person.

(c)The application may be accompanied by any relevant information.

ISSUANCE OF WARRANT

Sec.462.043. (a) An applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (f), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1)presented personally to the court; or

(2)retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b)The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

(1)the person who is the subject of the application is a chemically dependent person;

(2)the person evidences a substantial risk of serious harm to himself or others;

(3)the risk of harm is imminent unless the person is immediately restrained; and

(4)the necessary restraint cannot be accomplished without emergency detention.

(c)The judge or magistrate shall issue a warrant for the person's immediate apprehension if the judge or magistrate finds that each criteria under Subsection (b) is satisfied.

(d)A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 462.044 to:

(1)a treatment facility; or

(2)another appropriate facility if a treatment facility is not readily available.

(e)The warrant and copies of the application for the warrant shall be served on the person as soon as possible and transmitted to the facility.

(f)If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

PRELIMINARY EXAMINATION

Sec.462.044. (a) A physician shall conduct a preliminary examination of the apprehended person as soon as possible within 24 hours after the time the person is apprehended under Section 462.041 or 462.043.

(b)The person shall be released on completion of the preliminary examination unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria specified by Section 462.043(b).

(c)A person released under Subsection (b) is entitled to reasonably prompt return to the location of apprehension or other suitable place unless the person is arrested or objects to the return.

DETENTION PERIOD

Sec.462.045. (a) A person apprehended under this subchapter may be detained for not longer than 24 hours after the time that the person is presented to the facility unless an application for court-ordered treatment is filed and a written order for further detention is obtained under Section 462.065.

(b)If the 24-hour period ends on a Saturday, Sunday, or legal holiday, the person may be detained until 4 p.m. on the next day that is not a Saturday, Sunday, or legal holiday. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

INFORMATION TO BE PROVIDED ON ADMISSION

Sec.462.046. (a) The personnel of a treatment facility shall immediately advise a person admitted under Section 462.044 that:

(1)the person may be detained for treatment for not longer than 24 hours after the time of the initial detention unless an order for further detention is obtained;

(2)if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator shall release the person;

(3)not later than the 24th hour after the hour of the initial detention, the facility administrator may file in a court having original jurisdiction under this chapter a petition to have the person committed for court-ordered treatment under Subchapter D;

(4)if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than the 72nd hour after the hour the detention begins under an order of protective custody to determine whether the person should remain detained in the facility;

(5)when the application for court-ordered services is filed, the person has the right to have counsel appointed if the person does not have an attorney;

(6)the person has the right to communicate with counsel at any reasonable time and to have assistance in contacting the counsel;

(7)the person's communications to the personnel of the treatment facility may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing;

(8)the person is entitled to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing;

(9)the person may refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused;

(10)beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life; and

(11)the person is entitled to request that a hearing be held in the county of the person's residence, if the county is in the state.

(b)The personnel of the treatment facility shall provide the information required by Subsection (a) to the person orally, in writing, and in simple, nontechnical terms.

RELEASE FROM EMERGENCY DETENTION

Sec.462.047. (a) A person detained under this subchapter shall be released if the facility administrator or the administrator's designee determines at any time during the emergency detention period that one of the criteria prescribed by Section 462.043(b) no longer applies.

(b)If a person is released from emergency detention and is not arrested and does not object, arrangements shall be made to return the person to the location of apprehension or other suitable place.

RIGHTS OF PERSON APPREHENDED OR DETAINED

Sec.462.048. (a) A person apprehended or detained under this subchapter has the right:

(1)to be advised of the location of detention, the reasons for the detention, and the fact that detention could result in a longer period of involuntary commitment;

(2)to contact an attorney of the person's choice and to a reasonable opportunity to contact that attorney;

(3)to be transported to the location of apprehension or other suitable place if the person is not admitted for emergency detention, unless the person is arrested or objects to the return;

(4)to be released from a facility as provided by Section 462.047; and

(5)to be advised that communications to a chemical dependency treatment professional may be used in proceedings for further detention.

(b)Within 24 hours after the time of admission, a person apprehended or detained under this subchapter shall be advised, orally, in writing, and in simple, nontechnical terms, of the rights provided by this section.

SUBCHAPTER D. COURT-ORDERED TREATMENT

COURT-ORDERED TREATMENT; JURISDICTION

Sec.462.061. (a) A proceeding for court-ordered treatment under this chapter shall be held in a constitutional county court, a statutory county court having probate jurisdiction, or a statutory probate court in the county in which the proposed patient resides, is found, or is receiving court-ordered treatment or treatment under Section 462.041 when the application is filed unless otherwise specifically designated.

(b)If the hearing is to be held in a constitutional county court in which the judge is not a licensed attorney, the proposed patient may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c)The commitment of a juvenile under this subchapter must be heard in a district court or statutory court that has juvenile or probate jurisdiction. The commitment of a juvenile under Section 462.081 may be heard only in a court that has juvenile jurisdiction.

APPLICATION FOR COURT-ORDERED TREATMENT

Sec.462.062. (a) A county or district attorney or other adult may file a sworn written application for court-ordered treatment of another person. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination for chemical dependency.

(b)The application must be filed with the county clerk in the county in which the proposed patient:

(1)resides;

(2)is found; or

(3)is receiving treatment services by court order or under Section 462.041.

(c)If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d)The application must be styled using the initials of the proposed patient and not the proposed patient's full name.

(e)The application must contain the following information according to the applicant's information and belief:

(1)the proposed patient's name and address, including the county in which the proposed patient resides, if known;

(2)a statement that the proposed patient is a chemically dependent person who:

(A)is likely to cause serious harm to himself or others; or

(B)will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3)a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(f)Subsection (e)(3) does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Section 51.03, Family Code.

PREHEARING PROCEDURE

Sec.462.063. (a) When the application is filed, the court shall set a date for a hearing on the merits of the application to be held within 14 days after the date on which the application is filed. The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects. The court may grant one or more continuances of the hearing on motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed.

(b)Immediately after the date for the hearing is set, the clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner the court directs.

(c)The court shall appoint an attorney to represent the proposed patient if the proposed patient does not retain an attorney of the proposed patient's choice.

(d)The court shall appoint an attorney for a proposed patient who is a minor, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney.

(e)The court shall allow a court-appointed attorney a reasonable fee for services. The fee shall be collected as costs of the court.

CERTIFICATE OF MEDICAL EXAMINATION
FOR CHEMICAL DEPENDENCY

Sec.462.064. (a) A hearing on court-ordered treatment may not be held unless there are on file with the court at least two certificates of medical examination for chemical dependency completed by different physicians each of whom has examined the proposed patient not earlier than the 30th day before the date the final hearing is held.

(b)If the certificates are not filed with the application, the court may appoint the necessary physicians to examine the proposed patient and file the certificates. The court may order the proposed patient to submit to the examinations and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations.

(c)A certificate must be dated and signed by the examining physician. The certificate must include:

(1)the name and address of the examining physician;

(2)the name and address of the proposed patient;

(3)the date and place of the examination;

(4)the period, if any, during which the proposed patient has been under the care of the examining physician;

(5)an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6)the examining physician's opinions whether the proposed patient is a chemically dependent person and:

(A)is likely to cause serious harm to himself;

(B)is likely to cause serious harm to others; or

(C)will continue to suffer abnormal mental, emotional, or physical distress and to deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

(d)The certificate must include the detailed reason for each of the examining physician's opinions under this section.

(e)If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for chemical dependency may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

ORDER OF PROTECTIVE CUSTODY

Sec.462.065. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered treatment is pending. The motion may be filed by the county or district attorney or on the court's own motion.

(b)The motion must state that:

(1)the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2)the belief is derived from:

(A)the representations of a credible person;

(B)the proposed patient's conduct; or

(C)the circumstances under which the proposed patient is found.

(c)The motion must be accompanied by a certificate of medical examination for chemical dependency prepared by a physician who has examined the proposed patient not earlier than the fifth day before the date the motion is filed.

(d)The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

(e)The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1)that a physician has stated his opinion and the detailed basis for his opinion that the proposed patient is a chemically dependent person; and

(2)the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(f)The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence that the proposed patient cannot remain at liberty. The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by this subsection from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided. The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(g)The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the administrator of the facility designated to detain the proposed patient agrees to the detention.

(h)A protective custody order shall direct a peace officer or other designated person to take the proposed patient into protective custody and transport the proposed patient immediately to a treatment facility or other suitable place for detention. The proposed patient shall be detained in the facility until a hearing is held under Section 462.066.

PROBABLE CAUSE HEARING AND DETENTION

Sec.462.066. (a) The court shall set a hearing to determine if there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others if not restrained until the hearing on the application. The hearing must be held not later than 72 hours after the protective custody order is signed unless the proposed patient waives the right to a hearing. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or on the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(b)The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master is entitled to reasonable compensation.

(c)The proposed patient and the proposed patient's attorney are entitled to an opportunity at the hearing to appear and present evidence on any allegation or statement in the certificate of medical examination for chemical dependency. The magistrate or master may consider any evidence. The state may prove its case on the certificate.

(d)The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(e)The magistrate shall order that a proposed patient be detained until the hearing on the court-ordered treatment or until the administrator of the facility determines that the proposed patient no longer meets the criteria for detention under this section if the magistrate or master determines that probable cause does exist to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered treatment.

(f)The magistrate or master shall arrange for a proposed patient detained under Subsection (e) to be returned to the treatment facility or other suitable place, along with a copy of the certificate of medical examination for chemical dependency, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (g). A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(g)The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____day of _____, 19___, the undersigned hearing officer heard evidence concerning the need for protective custody of_____(hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ (attorney) have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____(date of notice).

I have examined the certificate of medical examination for chemical dependency and _____(other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes___or no___) or others (yes___or no___) such that (s)he cannot be at liberty pending final hearing because _____(reasons for finding; type of risk found).

HEARING ON APPLICATION FOR COURT-ORDERED TREATMENT

Sec.462.067. (a) A hearing on court-ordered treatment must be before a jury unless the proposed patient and the proposed patient's attorney waive the right to a jury. The waiver may be filed at any time after the proposed patient is served with the application and receives notice of the hearing. The waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney.

(b)The proposed patient is entitled to a hearing and to be present at the hearing, but the proposed patient or the proposed patient's attorney may waive either right.

(c)A court hearing may be held at any suitable location in the county. On the request of the proposed patient's attorney, the hearing shall be held in the county courthouse.

(d)The Texas Rules of Civil Procedure and Texas Rules of Civil Evidence apply to a hearing unless the rules are inconsistent with this chapter. The hearing is on the record, and the state must prove each issue by clear and convincing evidence.

(e)In addition to the rights prescribed by this chapter, the proposed patient is entitled to:

(1)present evidence on the proposed patient's own behalf;

(2)cross-examine witnesses who testify on behalf of the applicant;

(3)view and copy all petitions and reports in the court file of the cause; and

(4)elect to have the hearing open or closed to the public.

(f)The proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit as evidence the certificates of medical examination for chemical dependency. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive the right to cross-examine witnesses, the court shall hear testimony. The testimony must include competent medical or psychiatric testimony.

RELEASE AFTER HEARING

Sec.462.068. (a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment.

(b)If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

COURT ORDER AND PLACE OF TREATMENT

Sec.462.069. (a) The court shall commit the proposed patient to a treatment facility approved by the commission to accept court commitments for not more than 90 days if:

(1)the proposed patient admits the allegations of the application; or

(2)at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

(b)The judge may, on request by the proposed patient, enter an order requiring the proposed patient to participate in a licensed outpatient treatment facility or services provided by a private licensed physician, psychologist, social worker, or professional counselor if the judge finds that the participation is in the proposed patient's best interest considering the proposed patients' impairment.

MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT

Sec.462.070. (a) The court that entered an order directing a patient to participate in outpatient care or services may set a hearing to determine if the order should be modified to specifically require inpatient treatment. The court may set the hearing on its own motion, at the request of the person responsible for the care or treatment, or at the request of any other interested person.

(b)The court shall appoint an attorney to represent the patient if a hearing is held. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 462.063 for notice before a hearing on court-ordered treatment.

(c)The hearing shall be held before the court, without a jury, and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

ORDER FOR TEMPORARY DETENTION

Sec.462.071. (a) The person responsible for a patient's court-ordered outpatient care or treatment or the administrator of the outpatient treatment facility in which a patient receives care or treatment shall file a sworn application for the patient's temporary detention pending the modification hearing.

(b)The application must state the applicant's opinion and detail the basis for the applicant's opinion that:

(1)the patient meets the criteria described by Section 462.072; and

(2)detention in an approved inpatient treatment facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c)The court may issue an order for temporary detention if the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d)At the time the order for temporary detention is signed, the court shall appoint an attorney to represent a patient who does not have an attorney.

(e)Within 72 hours after the time the detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1)that the patient has been placed under a temporary detention order;

(2)the grounds for the order; and

(3)the time and place of the modification hearing.

(f)A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1)the nearest appropriate approved inpatient treatment facility; or

(2)a suitable facility if an appropriate approved inpatient treatment facility is not available.

(g)A patient may be detained under a temporary detention order for not more than 72 hours. The exceptions applicable to the 72-hour limitation for holding a probable cause hearing for an order of protective custody under Section 462.066(a) apply to detention under this section.

(h)A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention was authorized after a modification hearing was held within the period prescribed by Subsection (g).

(i)A patient released from an inpatient treatment facility under Subsection (h) continues to be subject to the order committing the person to an approved outpatient treatment facility, if the order has not expired.

MODIFICATION OF ORDER FOR OUTPATIENT SERVICES

Sec.462.072. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient continues to meet the applicable criteria for court-ordered treatment prescribed by this chapter and that:

(1)the patient has not complied with the court's order; or

(2)the patient's condition has deteriorated to the extent that outpatient care or services are no longer appropriate.

(b)A court may refuse to modify the order and may direct the patient to continue to participate in outpatient care or treatment in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c)The court's decision to modify an order must be supported by at least one certificate of medical examination for chemical dependency signed by a physician who examined the patient not earlier than the seventh day before the date the hearing is held.

(d)A modification may include:

(1)incorporating in the order a revised treatment program and providing for continued outpatient care or treatment under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2)providing for commitment to an approved treatment facility for inpatient care.

(e)A court may not extend the provision of court-ordered treatment beyond the period prescribed in the original order.

MODIFICATION OF ORDER FOR INPATIENT TREATMENT

Sec.462.073. (a) The administrator of a facility to which a patient is committed for inpatient treatment may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient care or services.

(b)The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for chemical dependency signed by a physician who examined the patient during the preceding seven days.

(c)The patient shall be given notice of the request.

(d)On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

(e)If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f)If the court modifies the order, the court shall identify a person to be responsible for the outpatient care or services.

(g)The person responsible for the care or services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(h)A modified order may not extend beyond the term of the original order.

OUTPATIENT CARE IN CERTAIN COUNTIES

Sec.462.073l. (a) This section applies to a chemically dependent patient who is a resident of a county with a population of more than 2.4 million, according to the most recent federal decennial census, and whose inpatient commitment is modified to an outpatient commitment, who is furloughed from an inpatient facility, or who is committed to treatment on an outpatient basis.

(b)The commission shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the patient's county of residence. The services must be provided as close as possible to the patient's residence.

(c)A patient receiving services under this section shall report at least weekly to the person responsible for the patient's outpatient care and services.

(d)The person responsible for the patient's outpatient care or treatment shall notify the committing court of the patient's treatment plan and condition at least monthly until the end of the commitment period.

HOSPITALIZATION OUTSIDE TREATMENT FACILITY

Sec.462.074. (a) A patient receiving court-ordered treatment in a treatment facility may be transferred to a hospital if, in the opinion of a licensed physician, the patient requires immediate medical care and treatment.

(b)The hospital may, with the patient's consent, provide any necessary medical treatment, including surgery. The hospital may provide medical treatment without the patient's consent to the extent provided by other law.

(c)The patient shall be returned to the treatment facility if the order for court-ordered treatment has not expired at the completion of the hospital treatment.

(d)An order for court-ordered treatment may be renewed while the person is in the hospital.

RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT

Sec.462.075. (a) A court may renew an order for court-ordered treatment entered under this subchapter.

(b)An applicant who has reasonable cause to believe that a patient remains chemically dependent and that, because of the chemical dependency, the patient is likely to cause serious physical harm to himself or others may file an application to renew the original order for court-ordered treatment. The application must comply with the requirements of Section 462.062. The applicant must file the application not later than the 14th day before the date on which the previous order expires.

(c)The application must be accompanied by two new certificates of medical examination for chemical dependency. The certificates must comply with the requirements of Section 462.064.

(d)An application for renewal is considered an original application for court-ordered treatment. The provisions of this subchapter relating to notice, hearing procedure, and the proposed patient's rights apply to the application for renewal.

(e)The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f)The court shall commit the proposed patient to a treatment facility approved by the commission to accept commitments for not more than 90 days if:

(1)the proposed patient admits the allegations of the application; or

(2)at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

APPEAL

Sec.462.076. (a) The appeal of an order requiring court-ordered treatment must be filed in the court of appeals for the county in which the order is issued.

(b)Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c)When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d)Pending the appeal, the trial judge in whose court the case is pending may:

(1)stay the order and release the person from custody pending the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under Section 462.065; and

(2)if the person is at liberty, require an appearance bond in an amount set by the court.

(e)The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend any rule concerning the time for filing briefs and docketing cases.

PASS OR FURLOUGH FROM INPATIENT CARE

Sec.462.077. (a) The facility administrator may permit a patient admitted to the facility under an order for inpatient services to leave the facility under a pass or furlough.

(b)A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c)The pass or furlough may be subject to specified conditions.

(d)When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER

Sec.462.078. (a) The administrator of a facility to which a patient was admitted for court-ordered inpatient services may have an absent patient taken into custody, detained, and returned to the facility by:

(1)signing a certificate authorizing the patient's return; or

(2)filing the certificate with a magistrate and requesting the magistrate to order the patient's return.

(b)A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the certificate as prescribed by this section. The facility head may sign or file the certificate if the facility head reasonably believes that:

(1)the patient is absent without authority from the facility

(2)the patient has violated the conditions of a pass or furlough; or

(3)the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(c)A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility administrator's certificate or the court order. The peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

REVOCATION OF FURLOUGH

Sec.462.079. (a) A furlough may be revoked only after an administrative hearing held in accordance with commission rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b)A hearing officer shall conduct the hearing. The hearing officer may be a mental health or chemical dependency professional if the person is not directly involved in treating the patient.

(c)The hearing is informal, and the patient is entitled to present information and argument.

(d)The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 462.078(b)(1) or (2).

(e)A hearing officer who revokes a furlough shall place in the patient's file:

(1)a written notation of the decision; and

(2)a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f)The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

RELEASE FROM COURT-ORDERED TREATMENT

Sec.462.080. (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person when the court order expires.

(b)The administrator may discharge a patient before the court order expires if the administrator determines that the patient no longer meets the criteria for court-ordered treatment.

(c)The administrator of a facility to which the patient has been committed for inpatient services shall consider before discharging the patient whether the patient should receive outpatient court-ordered care or services in accordance with:

(1)a furlough under Section 462.077; or

(2)a modified order under Section 462.073 that directs the patient to participate in outpatient treatment.

(d)A discharge terminates the court order, and the person discharged may not be compelled to submit to involuntary treatment unless a new order is issued in accordance with this subchapter.

(e)When a person is discharged under this section, the administrator shall prepare a certificate of discharge and file it with the court that issued the order.

COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING

Sec.462.081. (a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the commission to accept court commitments for care and treatment for not more than 90 days, instead of incarceration or fine, if:

(1)the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;

(2)the court finds that the offense resulted from or was related to the defendant's chemical dependency;

(3)a treatment facility approved by the commission is available to treat the defendant; and

(4)the treatment facility agrees in writing to admit the defendant under this section.

(b)A defendant who, in the opinion of the court, is mentally ill is not eligible for sentencing under this section.

(c)The court's sentencing order is a final conviction, and the order may be appealed in the same manner as appeals are made from other judgments of that court.

(d)A juvenile court may remand a child to a treatment facility for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1)the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's chemical dependency;

(2)a treatment facility approved by the commission to accept court commitments is available to treat the child; and

(3)the facility agrees in writing to receive the child under this section.

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Part II
State Constitutional Provisions

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ARTICLE 1. Bill of Rights

Sec. 15. Right of Trial by Jury.
The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

Sec. 15-a. Commitment of Persons of Unsound Mind.
No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

ARTICLE 9. Counties

Sec. 9. Hospital Districts; Creation, Operation, Powers, Duties and Dissolution.
The legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district; providing for the levy of annual taxes at a rate not to exceed seventy-five cents (75 cents) on the One Hundred Dollar valuation of all taxable property within such district for the purpose of meeting the requirements of the district's bonds, the indebtedness assumed by it and its maintenance and operating expenses, providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified property taxpaying electors thereof voting at an election called for the purpose; and providing further that the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

Provided, however, that no district shall be created except by act of the Legislature and then only after thirty (30) days' public notice to the district affected, and in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the taxpaying voters in the district concerned.

The Legislature may also provide for the dissolution of hospital districts provided that a process is afforded by statute for:

(1) determining the desire of a majority of the qualified voters within the district to dissolve it;

(2) disposing of or transferring the assets, if any, of the district; and

(3) satisfying the debts and bond obligations, if any, of the district, in such manner as to protect the interests of the citizens within the district, including their collective property rights in the assets and property of the district, provided, however, that any grant from federal funds, however dispensed, shall be considered an obligation to be repaid in satisfaction and provided that no election to dissolve shall be held more often than once each year. In such connection, the statute shall provide against disposal or transfer of the assets of the district except for due compensation unless such assets are transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way as to benefit citizens formerly within the district.

Sec. 13. Participation of Municipalities and Other Political Subdivisions in Establishment of Mental Health, Mental Retardation or Public Health Services.
Notwithstanding any other section of this article, the Legislature in providing for the creation, establishment, maintenance and operation of a hospital district, shall not be required to provide that such district shall assume full responsibility for the establishment, maintenance, support, or operation of mental health services or mental retardation services including the operation of any community mental health centers, community mental retardation centers or community mental health and mental retardation centers which may exist or be thereafter established within the boundaries of such district, nor shall the Legislature be required to provide that such district shall assume full responsibility of public health department units and clinics and related public health activities or services, and the Legislature shall not be required to restrict the power of any municipality or political subdivision to levy taxes or issue bonds or other obligations or to expend public monies for the establishment, maintenance, support, or operation of mental health services, mental retardation services, public health units or clinics or related public health activities or services or the operation of such community mental health or mental retardation centers within the boundaries of the hospital districts; and unless a statute creating a hospital district shall expressly prohibit participation by any entity other than the hospital district in the establishment, maintenance, or support of mental health services, mental retardation services, public health units or clinics or related public health activities within or partly within the boundaries of any hospital district, any municipality or any other political subdivision or state-supported entity within the hospital district may participate in the establishment, maintenance, and support of mental health services, mental retardation services, public health units and clinics and related public health activities and may levy taxes, issue bonds or other obligations, and expend public monies for such purposes as provided by law.

ARTICLE 16. General Provisions

Sec. 6. Appropriations for Private Purposes; State Participation in Programs Financed with Private or Federal Funds for Rehabilitation of Blind, Crippled, Physically or Mentally Handicapped Persons.
(a) No appropriation for private or individual purposes shall be made, unless authorized by this Constitution. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

(b) State agencies charged with the responsibility of providing services to those who are blind, crippled, or otherwise physically or mentally handicapped may accept money from private or federal sources, designated by the private or federal source as money to be used in and establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care and treatment of the handicapped. Money accepted under this subsection is state money. State agencies may spend money accepted under this subsection, and no other money, for specific programs and projects to be conducted by local level or other private, nonsectarian associations, groups, and nonprofit organizations, in establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care or treatment of the handicapped.

The state agencies may deposit money accepted under this subsection either in the state treasury or in other secure depositories. The money may not be expended for any purpose other than the purpose for which it was given. Notwithstanding any other provision of this Constitution, the state agencies may expend money accepted under this subsection without the necessity of an appropriation, unless the Legislature, by law, requires that the money be expended only on appropriation. The Legislature may prohibit sate agencies from accepting money under this subsection or may regulate the amount of money accepted, the way the acceptance and expenditure of the money is administered, and the purposes for which the state agencies may expend the money. Money accepted under this subsection for a purpose prohibited by the Legislature shall be returned to the entity that gave the money.

This subsection does not prohibit state agencies authorized to render services to the handicapped from contracting with privately-owned or local facilities for necessary and essential services, subject to such conditions, standards, and procedures as may be prescribed by law.

Sec. 33. Salary or Compensation Payments to Agents, Officers, or Appointees Holding Other Offices; Exceptions; Non-elective Officers and Employees.
The accounting officers in this State shall neither draw nor pay a warrant or check on funds of the State of Texas, whether in the treasury or otherwise, to any person for salary or compensation who holds at the same time more than one civil office of emolument, in violation of Section 40.

Sec. 40. Holding More Than One Office; Exceptions; Right to Vote.

(a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United Sates Army, Air Force, Navy, Marine Corps, and Coast Guard, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III.

(c) It is further provided that a non-elective State officer may hold other non-elective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

(d) No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

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Part III
Family Code

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CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS OR MENTAL RETARDATION

SUBCHAPTER A. GENERAL PROVISIONS

MEANING OF "HAVING A MENTAL ILLNESS"

Sec. 55.01. For purposes of this chapter, a child who is described as having a mental illness means a child who suffers from mental illness as defined by Section 571.003, Health and Safety Code.

MENTAL HEALTH AND MENTAL RETARDATION JURISDICTION

Sec. 55.02. For the purpose of initiating proceedings to order mental health or mental retardation services for a child or for commitment of a child as provided by this chapter, the juvenile court has jurisdiction of proceedings under Subtitle C or D, Title 7, Health and Safety Code.

STANDARDS OF CARE

Sec. 55.03. (a) Except as provided by this chapter, a child for whom inpatient mental health services is ordered by a court under this chapter shall be cared for as provided by Subtitle C, Title 7, Health and Safety Code.

(b) Except as provided by this chapter, a child who is committed by a court to a residential care facility for mental retardation shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

(Sections 55.04-55.10 reserved for expansion)

SUBCHAPTER B. CHILD WITH MENTAL ILLNESS

MENTAL ILLNESS DETERMINATION; EXAMINATION

Sec. 55.11. (a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code. If ordered by the Court, the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings.

(c) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12; or

(2) if the court determines that evidence does not exist to support a finding that the child has a mental illness or that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings.

INITIATION OF COMMITMENT PROCEEDINGS

Sec. 55.12. If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, the court shall:

(1) initiate proceedings as provided by Section 55.13 to order temporary or extended mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.14 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subchapter C, Chapter 574, Health and Safety Code.

COMMITMENT PROCEEDINGS IN JUVENILE COURT

Sec. 55.13. (a) If the juvenile court initiates proceedings for temporary or extended mental health services under Section 55.12(1), the prosecuting attorney or the attorney for the child may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) The burden of proof at the hearing is on the party who filed the application.

(c) The juvenile court shall appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Section 574.009, Health and Safety Code.

(d) After conducting a hearing on an application under this section, the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services for the child; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services for the child.

REFERRAL FOR COMMITMENT PROCEEDINGS

Sec. 55.14. (a) If the juvenile court refers the child's case to the appropriate court for the initiation of commitment proceedings under Section 55.12(2), the juvenile court shall:

(1) send all papers relating to the child's mental illness to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to the clerk of a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES

Sec. 55.15. If the juvenile court or a court to which the child's case is referred under Section 55.12(2) orders mental health services for the child, the child shall be cared for, treated, and released in conformity to Subtitle C, Title 7, Health and Safety Code, except:

(1) a court order for mental health services for a child automatically expires on the 120th day after the date the child becomes 18 years of age; and

(2) the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or the juvenile court that referred the case to a court that ordered the mental health services of the intent to discharge the child at least 10 days prior to discharge.

ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS

Sec. 55.16. (a) If the court to which the child's case is referred under Section 55.12(2) orders temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's order for mental health services.

(b) If the juvenile court orders temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the proceedings under this title then pending in juvenile court shall be stayed.

MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY

Sec. 55.17. (a) If the court to which a child's case is referred under Section 55.12(2) does not order temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's decision.

(b) If the juvenile court does not order temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the juvenile court shall dissolve the stay and continue the juvenile court proceedings.

DISCHARGE FROM MENTAL HEALTH FACILITY BEFORE REACHING 18 YEARS OF AGE

Sec. 55.18. If the child is discharged from the mental health facility before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of mental health services had been made.

TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY

Sec. 55.19. (a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred under Section 55.12(2) has ordered inpatient mental health service if:

(1) the child is not discharged or furloughed from the inpatient mental health facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the inpatient mental health facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

(Sections 55.20-55.30 reserved for expansion)

SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

UNFITNESS TO PROCEED DETERMINATION; EXAMINATION

Sec. 55.31. (a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or mental retardation lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is unfit to proceed as a result of mental illness or mental retardation. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or mental retardation.

(d) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32; or

(2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

HEARING ON ISSUE OF FITNESS TO PROCEED

Sec. 55.32. (a) If the juvenile court determines that evidence exists to support a finding that a child is unfit to proceed as a result of mental illness or mental retardation, the court shall set the case for a hearing on that issue.

(b) The issue of whether the child is unfit to proceed as a result of mental illness or mental retardation shall be determined at a hearing separate from any other hearing.

(c) The court shall determine the issue of whether the child is unfit to proceed unless the child or the attorney for the child demands a jury before the 10th day before the date of the hearing.

(d) Unfitness to proceed as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed as a result of mental illness or mental retardation, the court shall:

(1) stay the juvenile court proceedings for as long as that incapacity endures; and

(2) proceed under Section 55.33.

(g) The fact that the child is unfit to proceed as a result of mental illness or mental retardation does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED

Sec. 55.33. (a) If the juvenile court or jury determines under Section 55.32 that a child is unfit to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) if the unfitness to proceed is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more that 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the unfitness to proceed is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment for mental illness on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

TRANSPORTATION TO AND FROM FACILITY

Sec. 55.34. (a) If the court issues a placement order under Section 55.33(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT

Sec. 55.35. (a) If the juvenile court issues a placement order under Section 55.33(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.33(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed.

(c) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION

Sec. 55.36. (a) If a report submitted under Section 55.35(b) states that a child is fit to proceed, the juvenile court shall find that the child is fit to proceed unless the child's attorney objects in writing or in open court not later than the second day after the date the attorney receives a copy of the report under Section 55.35(c).

(b) On objection by the child's attorney under Subsection (a), the juvenile court shall promptly hold a hearing to determine whether the child is fit to proceed, except that the hearing may be held after the date that the placement order issued under Section 55.33(a) expires. At the hearing, the court shall determine the issue of the fitness of the child to proceed unless the child or the child's attorney demands in writing a jury before the 10th day before the date of the hearing.

(c) If, after a hearing, the court or jury finds that the child is fit to proceed, the court shall dissolve the stay and continue the juvenile court proceedings as though a question of fitness to proceed had not been raised.

(d) If, after a hearing, the court or jury finds that the child is unfit to proceed, the court shall proceed under Section 55.37.

REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS

Sec. 55.37. If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.38 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.39 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS

Sec. 55.38. (a) If the juvenile court initiates commitment proceedings under Section 55.37(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services.

REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS

Sec. 55.39. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.37(2), the juvenile court shall:

(1) send all papers relating to the child's unfitness to proceed, including the verdict and judgment of the juvenile court finding the child unfit to proceed, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL RETARDATION

Sec. 55.40. If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.41 in the juvenile court for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.42 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION

Sec. 55.41. (a) If the juvenile court initiates commitment proceedings under Section 55.40(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court’s order, the Texas Department of Mental Health and Mental Retardation or appropriate community center shall admit the child to a residential care facility.

REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION

Sec. 55.42. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.40(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

RESTORATION HEARING

Sec. 55.43. (a) The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of mental illness or mental retardation; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health services;

(ii) committed by a court to a residential care facility; or

(iii) ordered by a court to receive treatment on an outpatient basis; or

(B) is discharged or currently on furlough from a mental health facility or outpatient center before the child reaches 18 years of age.

(b) At the restoration hearing, the court shall determine the issue of whether the child is fit to proceed.

(c) The restoration hearing shall be conducted without a jury.

(d) The issue of fitness to proceed must be proved by a preponderance of the evidence.

(e) If, after a hearing, the court finds that the child is fit to proceed, the court shall continue the juvenile court proceedings.

(f) If, after a hearing, the court finds that the child is unfit to proceed, the court shall dismiss the motion for restoration.

TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD

Sec. 55.44. (a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care for persons with mental retardation if:

(1) the child is not discharged or currently on furlough from the facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH

Sec. 55.45. (a) If the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, the child shall be cared for, treated, and released in accordance with Subtitle C, Title 7, Health and Safety Code, except that the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) If the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the commitment of the child to a residential care facility, the child shall be cared for, treated, and released in accordance with Subtitle D, Title 7, Health and Safety Code, except that the administrator of the residential care facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child of the intent to discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

(c) If the referred child, as described in Subsection (b), is alleged to have committed an offense listed in Section 3g,Article 42.12, Code of Criminal Procedure, the administrator of the residential care facility shall apply, in writing, by certified mail, return receipt requested, to the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child and show good cause for any release of the child from the facility for more than 48 hours. Notice of this request must be provided to the prosecuting attorney responsible for the case. The prosecuting attorney, the juvenile, or the administrator may apply for a hearing on this application.

If no one applies for a hearing, the trial court shall resolve the application on the written submission. The rules of evidence do not apply to this hearing. An appeal of the trial court ’s ruling on the application is not allowed. The release of a child described in this subsection without the express approval of the trial court is punishable by contempt.

[Sections 55.46-55.50 reserved for expansion]

SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION; EXAMINATION

Sec. 55.51. (a) A child alleged by petition to have engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or mental retardation, the child lacks substantial capacity either to appreciate the wrongfulness of the child's conduct or to conform the child's conduct to the requirements of law.

(b) On a motion by a party in which it is alleged that a child may not be responsible as a result of mental illness or mental retardation for the child's conduct, the court shall order the child to be examined under Section 51.20. The information obtained from the examinations must include expert opinion as to whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation.

(c) The issue of whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation shall be tried to the court or jury in the adjudication hearing.

(d) Lack of responsibility for conduct as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation.

(f) If the court or jury finds the child is not responsible for the child's conduct as a result of mental illness or mental retardation, the court shall proceed under Section 55.52.

(g) A child found to be not responsible for the child's conduct as a result of mental illness or mental retardation shall not be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.52.

PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT

Sec. 55.52. (a) If the court or jury finds that a child is not responsible for the child's conduct under Section 55.51, the court shall:

(1) if the lack of responsibility is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the child's lack of responsibility is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

TRANSPORTATION TO AND FROM FACILITY

Sec. 55.53. (a) If the court issues a placement order under Section 55.52(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the

child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT

Sec. 55.54. (a) If the juvenile court issues a placement order under Section 55.52(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.52(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is mentally ill or mentally retarded.

(c) The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

REPORT THAT CHILD IS NOT MENTALLY ILL OR MENTALLY RETARDED; HEARING ON OBJECTION

Sec. 55.55. (a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or mental retardation, the juvenile court shall discharge the child unless:

(1) an adjudication hearing was conducted concerning conduct that included a violation of a penal law listed in Section 53.045(a) and a petition was approved by a grand jury under Section 53.045; and

(2) the prosecuting attorney objects in writing not later than the second day after the date the attorney receives a copy of the report under Section 55.54(c).

(b) On objection by the prosecuting attorney under Subsection (a), the juvenile court shall hold a hearing without a jury to determine whether the child has a mental illness or mental retardation and whether the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(c) At the hearing, the burden is on the state to prove by clear and convincing evidence that the child has a mental illness or mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(d) If, after a hearing, the court finds that the child does not have a mental illness or mental retardation and that the child does not meet the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall discharge the child.

(e) If, after a hearing, the court finds that the child has a mental illness or mental retardation and that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall issue an appropriate commitment order.

REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS

Sec. 55.56. If a report submitted under Section 55.54(b) states that a child has a mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.57 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.58 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS

Sec. 55.57. (a) If the juvenile court initiates commitment proceedings under Section 55.56(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services.

REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS

Sec. 55.58. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.56(2), the juvenile court shall:

(1) send all papers relating to the child's mental illness, including the verdict and judgment of the juvenile court finding that the child was not responsible for the child's conduct, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

REPORT THAT CHILD HAS MENTAL RETARDATION;
INITIATION OF COMMITMENT PROCEEDINGS

Sec. 55.59. If a report submitted under Section 55.54(b) states that a child has mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of an affidavit, the juvenile court shall:

(1) initiate proceedings in the juvenile court as provided by Section 55.60 for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case to the appropriate court as provided by Section 55.61 for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION

Sec. 55.60. (a) If the juvenile court initiates commitment proceedings under Section 55.59(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility only if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court’s order, the Texas Department of Mental Health and Mental Retardation or appropriate community center shall admit the child to a residential care facility.

REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION

Sec. 55.61. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.59(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers went to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

[end of Part III]

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Part IV
Code of Criminal Procedure

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CODE OF CRIMINAL PROCEDURE

ARTICLE 16.22. Examination and transfer of defendant suspected of having a mental illness or mental retardation

(a) (1) Not later than 72 hours after receiving evidence or a statement that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, the sheriff shall notify a magistrate of that fact. A defendant's behavior or the result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment must be considered in determining whether reasonable cause exists to believe the defendant has a mental illness or is a person with mental retardation. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with mental retardation, the magistrate, except as provided by Subdivision (2), shall order an examination of the defendant by the local mental health or mental retardation authority or another qualified mental health or mental retardation expert to determine whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with mental retardation as defined by Section 591.003, Health and Safety Code. If the defendant fails or refuses to submit to examination, the magistrate may order the defendant to submit to examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination remains in the facility for a period exceeding 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 Texas Department of Mental Health and Mental Retardation for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(2) The magistrate is not required to order an examination described by Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been evaluated and determined to have a mental illness or to be a person with mental retardation by the local mental health or mental retardation authority or another mental health or mental retardation expert described by Subdivision (1). A court that elects to use the results of that evaluation may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to an examination required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Department of Aging and Disability Services for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Department of Aging and Disability Services for examination remains in the facility for a period exceeding 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 regulations in effect at the time.

(b) A written report of the examination shall be submitted to the magistrate not later than the 30th day after the date of any order of examination issued in a felony case and not later than the 10th day after the date of any order of examination issued in a misdemeanor case, and the magistrate shall provide copies of the report to the defense counsel and the prosecuting attorney. The report must include a description of the procedures used in the examination and the examiner's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with mental retardation;

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the court receives the examining expert's report relating to the defendant under Subsection (b) or elects to use the results of an evaluation described by Subsection (a)(2), the court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032; or

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or mental retardation services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code.

(d) Nothing in this article prevents the court from, pending an evaluation of the defendant as described by this article:

(1) releasing a mentally ill or mentally retarded defendant from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

ARTICLE 46.01. Mental illness after conviction – REPEALED

ARTICLE 46.02. Incompetency to stand trial – REPEALED (now Art. 46B)

ARTICLE 46.03. Insanity defense – REPEALED (now Art. 46C)

Art. 46.04. Transportation to a mental health facility or residential care facility

Sec. 1. Persons accompanying transport

(a) A patient transported from a jail or detention facility to a mental health facility or a residential care facility shall be transported by a special officer for mental health assignment certified under Section 1701.404 Occupations Code, or by a sheriff or constable.

(b) The court ordering the transport shall require appropriate medical personnel to accompany the person transporting the patient, at the expense of the county from which the patient is transported, if there is reasonable cause to believe the patient will require medical assistance or will require the administration of medication during the transportation.

(c) A female patient must be accompanied by a female attendant.

Sec. 2. Requirements for Transport

The transportation of a patient from a jail or detention facility to a mental health facility or residential care facility must meet the following requirements:

(1) the patient must be transported directly to the facility within a reasonable amount of time and without undue delay;

(2) a vehicle used to transport the patient must be adequately heated in cold weather and adequately ventilated in warm weather;

(3) a special diet or other medical precautions recommended by the patient's physician must be followed;

(4) the person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom; and

(5) the patient may not be transported with a state prisoner.

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CHAPTER 46B. INCOMPETENCY TO STAND TRIAL

SUBCHAPTER A. GENERAL PROVISIONS

DEFINITIONS

Art. 46B.001. In this chapter:

(1) "Department" means the Department of State Health Services.

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

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

(4) "Local mental retardation authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(5) "Mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

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

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

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

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

APPLICABILITY

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

INCOMPETENCY; PRESUMPTIONS

Art. 46B.003. (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.

RAISING ISSUE OF INCOMPETENCY TO STAND TRIAL

Art. 46B.004. (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.

DETERMINING INCOMPETENCY TO STAND TRIAL

Art. 46B.005. (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.

APPOINTMENT OF AND REPRESENTATION BY COUNSEL

Art. 46B.006. (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).

ADMISSIBILITY OF STATEMENTS AND CERTAIN OTHER EVIDENCE

Art. 46B.007. A statement made by a defendant during an examination or hearing 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.

RULES OF EVIDENCE

Art. 46B.008. 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.

TIME CREDITS

Art. 46B.009. 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.

MAXIMUM PERIOD OF COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE

Art. 46B.0095. (a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient treatment program under Subchapter D or E, the maximum period of restoration is two years.

(b) On expiration of the maximum restoration period under Subsection (a), the defendant may be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an

additional period in an outpatient treatment program, as appropriate, only pursuant to civil proceedings conducted under Subtitle C or D, Title 7, Health and Safety Code, by a court with probate jurisdiction.

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

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

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

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

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

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

Text as added by Acts 2011, 82nd Legislature, H.B. 2725, Bill Section 4

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

Text as added by Acts 2011, 82nd Legislature, H.B. 748, Bill Section 3

(d) The court may credit to the cumulative period described by Subsection (a):

(1) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for outpatient treatment program participation is entered under this chapter; and

(2) any good conduct time the defendant has been granted under Article 42.032 in relation to the defendant's confinement as described by Subdivision (1).

MANDATORY DISMISSAL OF MISDEMEANOR CHARGES

Text as added by Acts 2011, 82nd Legislature, H.B. 2725, Bill Section 5

Art. 46B.010. If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility, participate in an outpatient treatment program, or be subjected to both inpatient and outpatient treatment, 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.

Text as added by Acts 2011, 82nd Legislature, H.B. 748, Bill Section 4

Art. 46B.010. If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility, participate in an outpatient treatment program, or be subjected to both inpatient and outpatient treatment, 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, the court shall:

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

(B) dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration

APPEALS

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

COMPLIANCE WITH CHAPTER

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

USE OF ELECTRONIC BROADCAST SYSTEM IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER

Art. 46B.013. (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.

[Sections 46B.014-46B020 reserved for expansion]

SUBCHAPTER B. EXAMINATION

APPOINTMENT OF EXPERTS

Art. 46B.021. (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 mental retardation authority. The local mental health authority or local mental retardation 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.

EXPERTS: QUALIFICATIONS

Art. 46B.022. (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).

CUSTODY STATUS

Art. 46B.023. 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.

FACTORS CONSIDERED IN EXAMINATION

Art. 46B.024. 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) has a mental illness; or

(B) is a person with mental retardation;

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

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

(5) 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.

EXPERT'S REPORT

Art. 46B.025. (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 mental retardation, 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.

REPORT DEADLINE

Art. 46B.026. (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) As soon as practicable after the court receives a report under this article, the court shall forward the report to the Texas Correctional Office on Offenders with Medical or Mental Impairments to enable that office to discharge its duties under Section 614.0032(b), Health and Safety Code.

COMPENSATION OF EXPERTS; REIMBURSEMENT OF FACILITIES

Art. 46B.027. (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 mental retardation 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 determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

[Sections 46B.028 – 46B.051 reserved for expansion]

SUBCHAPTER C. INCOMPETENCY TRIAL

TRIAL BEFORE JUDGE OR JURY

Art. 46B.051. (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.

JURY VERDICT

Art. 46B.052. (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.

PROCEDURE AFTER FINDING OF COMPETENCY

Art. 46B.053. 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.

UNCONTESTED INCOMPETENCY

Art. 46B.054. 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.

PROCEDURE AFTER FINDING OF INCOMPETENCY

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

[Sections 46B.056 – 46B.070 reserved for expansion]

SUBCHAPTER D. PROCEDURES AFTER DETERMINATION OF INCOMPETENCY

OPTIONS ON DETERMINATION OF INCOMPETENCY

Art. 46B.071. (a) Except as provided by Subsection (b), on a determination that a defendant is incompetent to stand trial, the court shall:

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

(2) release the defendant on bail under Article 46B.072.

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

(1) proceed under Subchapter E or F; or

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

RELEASE ON BAIL

Art. 46B.072 (a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

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

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

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

(b) The court shall order a defendant released on bail under Subsection (a-1) to participate in an outpatient treatment 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 treatment program under this article only if:

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

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

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

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

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

(1) as appropriate, an outpatient treatment program administered by a community center or an outpatient treatment 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.

COMMITMENT FOR RESTORATION TO COMPETENCY

Art. 46B.073. (a) This article applies only to a defendant not released on bail who is subject to an initial restoration period based on Article 46B.071.

(b) For further examination and treatment toward the specific objective of the defendant attaining competency to stand trial, the court shall commit a defendant described by Subsection (a) to a mental health facility or residential care facility 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)), other than an offense listed in Article 17.032(a)(6), or the indictment alleges an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to the maximum security unit of any facility designated by the department, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Section 3g(a)(2), Article 42.12, 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 mental retardation authority.

COMPETENT TESTIMONY REQUIRED

Art. 46B.074. (a) A defendant may be committed to a 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.

TRANSFER OF DEFENDANT TO FACILITY OR OUTPATIENT TREATMENT PROGRAM

Art. 46B.075. An order issued under Article 46B.072 or 46B.073 must place the defendant in the custody of the sheriff for transportation to the facility or outpatient treatment program, as applicable, in which the defendant is to receive treatment for the purposes of competency restoration.

PROCEDURES ON CREDIBLE EVIDENCE OF IMMEDIATE RESTORATION

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

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

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

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

(2) the court concurs.

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

COURT'S ORDER

Art. 46B.076. (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 facility of the department to which the defendant is committed or the outpatient treatment program to which the defendant is released. The court shall also provide to the facility or outpatient treatment 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 proper facility or outpatient treatment program.

INDIVIDUAL TREATMENT PROGRAM

Art. 46B.077. (a) The facility to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail shall:

(1) develop an individual program of treatment;
(2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and
(3) report to the court and to the local mental health authority or to the local mental retardation authority on the defendant's progress toward achieving competency.

(b) If the defendant is committed to an inpatient mental health facility or to a residential care facility, the facility shall report to the court at least once during the commitment period. If the defendant is released to a treatment program not provided by an inpatient mental health facility or a residential care facility, the treatment program shall report to the court:

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

CHARGES SUBSEQUENTLY DISMISSED

Art. 46B.078. If the charges pending against a defendant are dismissed, the court that issued the order under Article 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 or the provider of outpatient treatment program, as appropriate. On receipt of the copy of the order, the facility or outpatient treatment program shall discharge the defendant into the care of the sheriff for transportation in the manner described by Article 46B.082.

NOTICE AND REPORT TO COURT

Art. 46B.079. (a) The head of the facility or the provider of the outpatient treatment program, as appropriate, not later than the 15th day before the date on which the initial 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 outpatient treatment program provider shall promptly notify the court when the head of the facility or outpatient treatment program provider believes that:

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

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

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

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

EXTENSION OF ORDER

Art. 46B.080. (a) On a request of the head of a facility or a treatment 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.

RETURN TO COURT

Art. 46B.081. 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, but not later than the date of expiration of the period for restoration specified by the court under Article 46B.072 or 46B.073.

TRANSPORTATION OF DEFENDANT

Art. 46B.082. (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 designee 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 defendant committed to a facility of the department or ordered to participate in an outpatient treatment program has not been transported to the court that issued the order under Article 46B.072 or 46B.073, as applicable, the head of the facility to which the defendant is committed or the provider of the outpatient treatment 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 department 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.

SUPPORTING COMMITMENT INFORMATION PROVIDED BY FACILITY HEAD OR OUTPATIENT TREATMETN PROGRAM PROVIDER

Art. 46B.083. (a) If the head of the facility or outpatient treatment 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 outpatient treatment program provider shall have submitted to the court a certificate of medical examination for mental illness.

(b) If the head of the facility or the outpatient treatment program provider believes that the defendant is a person with mental retardation, the head of the facility or outpatient treatment program provider shall have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

PROCEEDINGS ON RETURN OF DEFENDANT TO COURT

Art. 46B.084. (a) On the return of a defendant to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based on the report filed under Article 46B.079(c) 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 report not later than the 15th day after the date on which the court received notification under Article 46B.079. The court shall make the determination not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

(b) If a party objects under Subsection (a), 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**

(d) If the defendant is found competent to stand trial, criminal proceedings against the defendant may be resumed.

(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.

SUBSEQUENT RESTORATION PERIODS AND EXTENSIONS OF THOSE PERIODS PROHIBITED

Art. 46B.085. (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 and an extension are ordered as described by Subsection (a), any subsequent court orders for treatment must be issued under Subchapter E or F.

COURT-ORDERED MEDICATIONS

Art. 46B.086. (a) This article applies only to a defendant:

(1) who is determined under this chapter to be incompetent to stand trial;

(2) who either:

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

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

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

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

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

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

(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 correctional facility or outpatient treatment 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, Health and Safety Code, except that for a defendant in an outpatient treatment 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 a correctional facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be conducted using an electronic broadcast system as provided by Article 46B.013.

(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 correctional facility or outpatient treatment 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.

[Sections 46B.087 – 46B.100 reserved for expansion]

SUBCHAPTER E. CIVIL COMMITMENT: CHARGES PENDING

APPLICABILITY

Art. 46B.101. 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.

CIVIL COMMITMENT HEARING: MENTAL ILLNESS

Art. 46B.102. (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.

CIVIL COMMITMENT HEARING: MENTAL RETARDATION

Art. 46B.103. (a) If it appears to the court that the defendant may be a person with mental retardation, the court shall hold a hearing to determine whether the defendant is a person with mental retardation.

(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 mental retardation 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.

CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE

Art. 46B.104. A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the maximum security unit of any facility designated by the department if:
(1) the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6); or
(2) the indictment charging the offense alleges an affirmative finding under Section 3g(a)(2), Article 42.12.

TRANSFER FOLLOWING CIVIL COMMITMENT PLACEMENT

Art. 46B.105. (a) Unless a defendant is determined to be manifestly dangerous by a department review board, 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 mental retardation authority.

(b) The commissioner of mental health and mental retardation 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 mental retardation, 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 commissioner of mental health and mental retardation. The commissioner shall decide whether the defendant is manifestly dangerous.

CIVIL COMMITMENT PLACEMENT: NO FINDING OF VIOLENCE

Art. 46B.106. (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 department; or
(2) an outpatient treatment.

(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.

RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT

Art. 46B.107. (a) The release from the department, an outpatient treatment program, or a facility of a defendant committed under this chapter 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 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. 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 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.

REDETERMINATION OF COMPETENCY

Art. 46B.108. (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, or 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.

REQUEST BY HEAD OF FACILITY OR OUTPATIENT TREATMENT PROVIDER

Art. 46B.109. (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.

MOTION BY DEFENDANT, ATTORNEY REPRESENTING DEFENDANT, OR ATTORNEY REPRESENTING STATE

Art. 46B.110. (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.

APPOINTMENT OF EXAMINERS

Art. 46B.111. 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.

DETERMINATION OF RESTORATION WITH AGREEMENT

Art. 46B.112. 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.

DETERMINATION OF RESTORATION WITHOUT AGREEMENT

Art. 46B.113. (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.

TRANSPORTATION OF DEFENDANT TO COURT

Art. 46B.114. 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.

SUBSEQUENT REDETERMINATIONS OF COMPETENCY

Art. 46B.115. (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.

DISPOSITION ON DETERMINATION OF COMPETENCY

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

DISPOSITION ON DETERMINATION OF INCOMPETENCY

Art. 46B.117. If a defendant under order of commitment to a facility, or outpatient treatment provider, 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 provider.

[Sections 46B.118 – 46B.150 reserved for expansion]

SUBCHAPTER F. CIVIL COMMITMENT: CHARGES DISMISSED

COURT DETERMINATION RELATED TO CIVIL COMMITMENT

Art. 46B.151. (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 mental retardation.

(b) If it appears to the court that there is evidence to support a finding of mental illness or mental retardation, 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 department 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.

[Sections 46B.152 – 46B.170 reserved for expansion]

SUBCHAPTER G. PROVISIONS APPLICABLE TO SUBCHAPTERS E AND F

TRANSCRIPTS AND OTHER RECORDS

Art. 46B.171. (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.

CHAPTER 46C. INSANITY DEFENSE

SUBCHAPTER A. GENERAL PROVISIONS

DEFINITIONS

Art. 46C.001. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(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.

MAXIMUM PERIOD OF COMMITMENT DETERMINED BY MAXIMUM TERM FOR OFFENSE

Art. 46C.002. (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.

VICTIM NOTIFICATION OF RELEASE

Art. 46C.003. 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 Article 56.03 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 56.03(f), the clerk of the court may inspect a victim impact statement for the purpose of notification under this article.

[Articles 46C.004-46C.050 reserved for expansion]

SUBCHAPTER B. RAISING THE INSANITY DEFENSE

NOTICE OF INTENT TO RAISE INSANITY DEFENSE

Art. 46C.051. (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.

EFFECT OF FAILURE TO GIVE NOTICE

Art. 46C.052. 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.

[Articles 46C.053-46C.100 reserved for expansion]

SUBCHAPTER C. COURT-ORDERED EXAMINATION AND REPORT

APPOINTMENT OF EXPERTS

Art. 46C.101. (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.

EXPERTS: QUALIFICATIONS

Art. 46C.102. (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 experience or training:

(A) as appropriate, certification by:

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

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) experience or training consisting of:

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

(ii) at least five years of experience in performing criminal forensic evaluations for courts; and

(iii) eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court.

(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).

COMPETENCY TO STAND TRIAL: CONCURRENT APPOINTMENT

Art. 46C.103. (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.

ORDER COMPELLING DEFENDANT TO SUBMIT TO EXAMINATION

Art. 46C.104. (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 department.

(b) If a defendant who has been ordered to a facility operated by the department 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 department for examination without the consent of the head of that facility.

REPORTS SUBMITTED BY EXPERTS

Art. 46C.105. (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.

COMPENSATION OF EXPERTS

Art. 46C.106. (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 department that accepts a defendant for examination under this subchapter for expenses incurred that are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

EXAMINATION BY EXPERT OF DEFENDANT'S CHOICE

Art. 46C.107. 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.

[Articles 46C.108-46C.150 reserved for expansion]

SUBCHAPTER D. DETERMINATION OF ISSUE OF DEFENDANT'S SANITY

DETERMINATION OF SANITY ISSUE BY JURY

Art. 46C.151. (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.

DETERMINATION OF SANITY ISSUE BY JUDGE

Art. 46C.152. (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.

GENERAL PROVISIONS RELATING TO DETERMINATION OF SANITY ISSUE BY JUDGE OR JURY

Art. 46C.153. (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.

INFORMING JURY REGARDING CONSEQUENCES OF ACQUITTAL

Art. 46C.154. 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.

FINDING OF NOT GUILTY BY REASON OF INSANITY CONSIDERED ACQUITTAL

Art. 46C.155. (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.

JUDGMENT

Art. 46C.156. (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.

DETERMINATION REGARDING DANGEROUS CONDUCT OF ACQUITTED PERSON

Art. 46C.157. 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.

CONTINUING JURISDICTION OF DANGEROUS ACQUITTED PERSON

Art. 46C.158. 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.

PROCEEDINGS REGARDING NONDANGEROUS ACQUITTED PERSON

Art. 46C.159. 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.

DETENTION PENDING FURTHER PROCEEDINGS

Art. 46C.160. (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 department or a facility of the Department of Aging and Disability Services under this article only with the consent of the head of the facility.

[Articles 46C.161-46C.200 reserved for expansion]

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

DISPOSITION: NONDANGEROUS CONDUCT

Art. 46C.201. (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.

DETENTION OR RELEASE

Art. 46C.202. (a) Notwithstanding Article 46C.201(b), a person placed in a department facility or a facility of the Department of Aging and Disability Services 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.

[Articles 46C.203-46C.250 reserved for expansion]

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

COMMITMENT FOR EVALUATION AND TREATMENT; REPORT

Art. 46C.251. (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 maximum security unit of any facility designated by the department. 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, as applicable, to the department or the Department of Aging and Disability Services:

(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.

REPORT AFTER EVALUATION

Art. 46C.252. (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.

HEARING ON DISPOSITION

Art. 46C.253. (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.

EFFECT OF STABILIZATION ON TREATMENT REGIMEN

Art. 46C.254. 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.

TRIAL BY JURY

Art. 46C.255. (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.

ORDER OF COMMITMENT TO INPATIENT TREATMENT OR RESIDENTIAL CARE

Art. 46C.256. (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.

ORDER TO RECEIVE OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.257. (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.

RESPONSIBILITY OF INPATIENT OR RESIDENTIAL CARE FACILITY

Art. 46C.258. (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.

STATUS OF COMMITTED PERSON

Art. 46C.259. 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.

TRANSFER OF COMMITTED PERSON TO NONSECURE FACILITY

Art. 46C.260. (a) A person committed to a facility under this subchapter shall be committed to the maximum security unit of any facility designated by the department.

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

(c) Unless the person is determined to be manifestly dangerous by a review board within the department, 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 nonsecure unit of a facility designated by the department or the Department of Aging and Disability Services, as appropriate.

(d) The 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 commissioner. The commissioner shall decide whether the person is manifestly dangerous.

RENEWAL OF ORDERS FOR INPATIENT COMMITMENT OR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.261. (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.

COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION AFTER INPATIENT COMMITMENT

Art. 46C.262. (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.

COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.263. (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.

LOCATION OF COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.264. (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.

SUPERVISORY RESPONSIBILITY FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.265. (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.

MODIFICATION OR REVOCATION OF ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.266. (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

(3) 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.

DETENTION PENDING PROCEEDINGS TO MODIFY OR REVOKE ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

Art. 46C.267. (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.

ADVANCE DISCHARGE OF ACQUITTED PERSON AND TERMINATION OF JURISDICTION

Art. 46C.268. (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.

TERMINATION OF COURT'S JURISDICTION

Art. 46C.269. (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.

APPEALS

Art. 46C.270. (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.

End of Part IV

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Changes in law Affecting Mental Health/Forensic From 82nd Legislature, Regular Session					
Code	**Article / Section**		**Effect**	**Bill / Section**	
Health& Safety Code Health & Safety Code	532.002 532.017		Amends Repeals	SB 652 SB 1179	2.10 25(89)
Health & Safety Code	532.021	(i)	Repeals	SB 71	22(7)
Health & Safety Code	533.032	(e)	Repeals	SB 71	22(8)
Health & Safety Code	533.032	(f)	Repeals	SB 71	22(8)
Health & Safety Code	533.032	(g)	Amends	SB 71	12
Health & Safety Code	533.033	(e)	Repeals	SB 71	22(9)
Health & Safety Code	533.0354	(d)	Repeals	SB 1179	25(93)
Health & Safety Code	533.0355		Amends	SB 222	2
Health & Safety Code	533.036		Repeals	SB 71	22(10)
Health & Safety Code	533.0415	(a)	Amends	SB 71	13
Health & Safety Code	533.049	(b)	Repeals	SB 71	22(11)
Health & Safety Code	533.050	(b)	Repeals	SB 71	22(12)
Health & Safety Code	534.022	(d)	Repeals	SB 71	22(13)
Health & Safety Code	554.001	(a)	Amends	SB 957	1
Health & Safety Code	571.0065	(d)	Repeals	SB 71	22(14)
Health & Safety Code	571.016		Amends	HB 3342	1
Health & Safety Code	571.0167		Adds	HB 3342	2
Health & Safety Code	573.012		Amends	HB 1829	1
Health & Safety Code	573.012	(h)	Amends	HB 1829	1
Health & Safety Code	573.022		Amends	HB 1829	2
Health & Safety Code	574.002	(b)	Amends	SB 118	2
Health & Safety Code	574.035	(b)	Amends	SB 118	1
Health & Safety Code	574.045		Amends	HB 167	1
Health & Safety Code	574.0455		Adds	HB 167	2
Health & Safety Code	574.110	(b)	Amends	HB 748	5
Health & Safety Code	576.003		Amends	HB 2096	1
Code Criminal Procedure	46.03	4(d)(8)	Amends	HB 2124	1
Code Criminal Procedure	46B.004		Amends	HB 2725	2
Code Criminal Procedure	46B.009		Amends	HB 748	2
Code Criminal Procedure	46B.009		Amends	HB 2725	3
Code Criminal Procedure	46B.0095		Amends	HB 748	3

Changes in law Affecting Mental Health/Forensic From 82nd Legislature, Regular Session (continued)					
Code	**Article / Section**		**Effect**	**Bill / Section**	
Code Criminal Procedure	46B.0095		Amends	HB 2725	4
Code Criminal Procedure	46B.010		Amends	HB 748	4
Code Criminal Procedure	46B.010		Amends	HB 2725	5
Code Criminal Procedure	46B.022	(a)	Amends	HB 2725	6
Code Criminal Procedure	46B.024		Amends	HB 2725	7
Code Criminal Procedure	46B.025		Amends	HB 2725	8
Code Criminal Procedure	46B.025	(a)	Amends	HB 2725	8
Code Criminal Procedure	46B.025	(b)	Amends	HB 2725	8
Code Criminal Procedure	46B.071		Amends	HB 2725	9
Code Criminal Procedure	46B.072		Amends	HB 2725	10
Code Criminal Procedure	46B.072	(a)	Amends	HB 2725	10
Code Criminal Procedure	46B.072	(b)	Amends	HB 2725	10
Code Criminal Procedure	46B.072	(c)	Amends	HB 2725	10
Code Criminal Procedure	46B.073	(a)	Amends	HB 2725	11
Code Criminal Procedure	46B.073	(b)	Amends	HB 2725	11
Code Criminal Procedure	46B.0755		Adds	HB 2725	12
Code Criminal Procedure	46B.077	(a)	Amends	HB 2725	13
Code Criminal Procedure	46B.079		Amends	HB 2725	14
Code Criminal Procedure	46B.080	(b)	Amends	HB 2725	15
Code Criminal Procedure	46B.080	(c)	Amends	HB 2725	15
Code Criminal Procedure	46B.084	(a)	Amends	HB 2725	16
Code Criminal Procedure	46B.086	(a)	Amends	HB 2725	17
Code Criminal Procedure	46B.086	(c)	Amends	HB 2725	17
Code Criminal Procedure	46B.101		Amends	HB 2725	18
Code Criminal Procedure	46B.151	(a)	Amends	HB 2725	19
Code Criminal Procedure	46C.003		Adds	HB 2124	1