



THE SUPREME COURT OF TEXAS

THE TEXAS COURT OF CRIMINAL APPEALS

Legislative Recommendations and Reports

September 2022

Judicial Commission on Mental Health

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | Introduction..... | 2 |
| II. | Legislative Research Committee | 3 |
| III. | Chapter 55 Advisory Committee | 5 |
| IV. | LRC Subcommittees | 6 |
| V. | JCMH Staff | 7 |
| VI. | Criminal Law Legislative Recommendations..... | 8 |
| VII. | Civil Law Legislative Recommendations..... | 10 |
| VIII. | Chapter 55 Advisory Committee Recommendations | 12 |
| IX. | 2022 Services Report | 19 |
| X. | Appendices of Proposed Statutory Text | 26 |
| | Appendix A | 27 |
| | Appendix B..... | 37 |
| | Appendix C..... | 43 |
| | Appendix D | 44 |
| | Appendix E..... | 45 |
| | Appendix F..... | 46 |
| | Appendix G | 47 |
| | Appendix H..... | 49 |
| | Appendix I..... | 50 |
| | Appendix J..... | 55 |
| | Appendix K..... | 56 |
| | Appendix L..... | 57 |

I. Introduction

The Texas Judicial Commission on Mental Health examines the justice system and its intersection with people who have mental health challenges. The goal is to improve these encounters and the resulting outcomes for all court participants, especially those with mental illness or an intellectual or developmental disability. As an important part of its work, the JCMH's Legislative Research Committee studies and recommends improvements to laws and rules relating to mental health and intellectual and developmental disabilities. The committee's membership comes from across the Texas state courts and health care professions, including law enforcement, physicians, mental health providers, and judges who are experts in their fields.¹

In advance of the 88th Legislative Session, the committee divided its work into (i) criminal laws relating to adults with mental illness or intellectual disability; and (ii) civil commitment law. Another committee of experts—the Chapter 55 Advisory Committee—has addressed changes to civil laws involving children and youth with mental illnesses or intellectual disability.

Criminal law proposals include amendments intended to alleviate the delay in competency restoration treatment, to improve early identification of people with mental health or substance use disorders or intellectual disability, to clarify mental health bonds in light of recent amendments to the Texas bond system, and to improve processes for adjudication of Class C misdemeanors in the justice of the peace courts for persons with mental illness or intellectual disability.

Civil law proposals relate to civil commitment, emergency detention, and court-ordered medication.

The Chapter 55 Advisory Committee evaluated Texas Family Code Chapter 55. When first adopted, Chapter 55 borrowed from laws for adults. The committee examined the specific needs of children and youth in the context of juvenile proceedings, with the aim of streamlining processes, improving the use of evaluations and experts, and expanding the use of outpatient restoration and services when appropriate and available.

The JCMH offers these proposals to the Texas Judicial Council. The Supreme Court of Texas and the Texas Court of Criminal Appeals are grateful for the work of the many who have contributed to this effort.

¹ See Order of the Supreme Court of Texas and The Texas Court of Criminal Appeals Establishing the Legislative Research Committee of the Judicial Commission on Mental Health (Supreme Court Misc. Docket No. 19-9095) (Court of Criminal Appeals Misc. Docket No. 19-010) (2019).

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VI. Criminal Law Legislative Recommendations

1) Amend Texas Code of Criminal Procedure Chapter 46B to limit inpatient competency restoration for nonviolent misdemeanors to extraordinary circumstances

Currently the State Hospital Waiting List for inpatient competency restoration services lists more than 2,400 people, and the wait for services can be more than two years. As a result, the wait for inpatient services may be double the maximum sentence for misdemeanor offenses. The amendments create out-patient treatment alternatives in nonviolent misdemeanor cases for some defendants charged with non-violent misdemeanor offenses.

This recommendation proposes that, when a defendant found to be mentally incompetent to stand trial is charged with a with a class B misdemeanor or a nonviolent misdemeanor and has not been convicted in the previous two years of an offense that resulted in bodily injury to another person, then the default procedure would be to order outpatient competency restoration (OCR) services. If there is no OCR available, either because the community does not have OCR or the defendant cannot be placed in an OCR program within 14 days of the Judge’s order, then the matter would be set for a referral to civil commitment under Code of Criminal Procedure 46B subchapter F—*Civil Commitment Charges Dismissed*.

Within this bill are other clarifying provisions, for example, to provide a functional definition of what it means for someone to be restorable in the “foreseeable future.” The definition asks whether this person is capable of being restored to competency within the statutory period allowed under subchapter D—60 days for misdemeanors and 120 days for felonies along with a possible 60-day extension.

The other provisions clarify procedures in situations when the defendant is not restorable or has not been restored within the statutory time limits.

Proposed statutory text can be found in [Appendix A](#).

2) Amend Texas Code of Criminal Procedure article 46B.084 to address deteriorating mental condition.

Currently, Texas Code of Criminal Procedure article 46B.084 does not address what happens when individuals who have been restored to competency but then deteriorate between competency restoration and the resumption of adjudicative proceedings. This amendment to 46B.084 clarifies the process to identify and reevaluate those individuals whose mental health has deteriorated while in custody.

Proposed statutory language can be found in [Appendix B](#).

3) Credit for Participation in Outpatient Competency Restoration Programs

This amendment to article 46B.009 of the Texas Code of Criminal Procedure would credit a defendant with good time for full participation and compliance with a court-ordered outpatient competency restoration program. Currently, such credit is given for periods of inpatient or jail-based competency restoration

Outpatient restoration services are required in lieu of inpatient or jail-based services when they are appropriate, and this provision would encourage their use when the circumstances indicate that outpatient treatment is appropriate. This proposal also alleviates overreliance on inpatient competency restoration when less-restrictive means are appropriate.

Proposed statutory language can be found in [Appendix C](#).

4) Use of Article 16.22 procedures for Class C Misdemeanors

Currently, Texas Code of Criminal Procedure art. 16.22 excludes individuals charged with Class C misdemeanors. Article 16.22 is intended to identify a person suspected of having a mental illness or disability. The court system often first sees people with severe mental illness in the justice and municipal courts, before their mental health deteriorates to a point where the individual is arrested on a higher-level misdemeanor or felony offense. This proposal gives the judge the discretion to order a 16.22 interview and report on persons charged with Class C misdemeanors. The aim is to give the judges who frequently interact with this population of defendants the tools to identify the issue and connect them to mental health services.

Proposed statutory language can be found in [Appendix D](#).

5) Permit Class C Misdemeanor dismissal when the defendant is found not competent.

Subject to procedural requirements, Section 8.08 of the Texas Penal Code allows justices of the peace and municipal judges to dismiss complaints alleging Class C misdemeanors in juvenile cases when the justice or judge finds probable cause exists to believe the child is unfit to proceed. Currently, there is no corollary to Section 8.08 for adults charged with Class C misdemeanors. The JCMH recommends amending Texas Code of Criminal Procedure Chapter 45 by adding article 45.0214, a corollary to section 8.08. On a motion by the state, the defendant, or person standing in parental relation, or on the court's own motion, a justice or judge is authorized to determine if probable cause exists to believe that the defendant, including a defendant with a mental illness or developmental disability, lacks the capacity to understand criminal proceedings or to assist in the defendant's own defense and is unfit to proceed and, if so, dismiss the class C misdemeanor charge.

Proposed statutory language can be found in [Appendix E](#).

6) Harmonize Mental Health Personal Bonds with Recent Amendments

The passage of S.B. 6 (87th Leg., Second Called Session, (2021)) created a conflict between the offenses that permit release on personal bond under Texas Code of Criminal Procedure art. 17.03, and offenses that permit a mental health personal bond pursuant to Texas Code of Criminal Procedure art. 17.032. The JCMH proposes an amendment to Texas Code of Criminal Procedure art. 17.03 that reconciles the conflict.

Proposed statutory language can be found in [Appendix F](#).

7) Emergency Mental Health or Intellectual Disability Services – Arrest Deferral for Nonviolent Offenses

This proposal adds new article 14.036 to Texas Code of Criminal Procedure Chapter 14. It would allow law enforcement to defer the arrest of a nonviolent person who is undergoing emergency mental health or intellectual disability health care. It would permit delay of the arrest of a patient with mental illness or intellectual disability until the patient’s condition stabilizes to avoid jailing of that person when that person is actively undergoing emergency treatment for a mental health crisis.

Proposed statutory language can be found in [Appendix G](#).

VII. Civil Law Legislative Recommendations

1) Electronic Application for Emergency Detention Warrants by Qualified Professionals at Hospitals and Mental Health Facilities

This proposal expands Texas Health and Safety Code Section 573.012 to include employees of a local mental health authority as persons authorized to make electronic application for an emergency detention warrant. Current law permits only physicians to do so.

Under current law, physicians may electronically request a warrant from a judge for an emergency mental health detention. In less populated areas, a physician may not be available to electronically request a detention when an emergency detention warrant is needed. The amendment would permit licensed professionals versed in mental health with advanced training and education to electronically make the request. Such applications for emergency detention warrants by those other than physicians would be limited to situations where the subject of the application is currently receiving care at a hospital or facility operated by a local mental health authority.

The proposed statutory change is shown in [Appendix H](#).

2) Security of Firearms Found in Possession of Persons in Emergency Detention Under a Warrant

The proposed amendment to section 573.012 of the Texas Health and Safety Code, Issuance of Warrant, adds a new subsection (d-1). This amendment authorizes a peace officer to seize a firearm found in possession of a person who is apprehended under the authority of a judge's warrant for an emergency detention.

The comparable existing provision is found in section 573.001(h), Apprehension by Peace Officer Without Warrant, which allows a peace officer to seize a firearm from a person apprehended by an officer without a warrant. This amendment will grant the peace officer the same authority in both situations. The amendment allows for an orderly disposition of a secured firearm under article 18.191 of the Texas Code of Criminal Procedure, Disposition of a Firearm from Certain Persons with Mental Illness.

Proposed statutory changes are shown in [Appendix I](#).

3) Authorization for Blood Draws for Patients Receiving Court-Ordered Medication

The proposed amendment to of the Texas Health and Safety Code Section 574.106 would permit mandatory blood draws for patients admitted to the state hospitals for involuntary psychoactive medication administration purposes. Such care is medically necessary to monitor medication levels to determine whether the medications need adjustment.

Proposed statutory changes are shown in [Appendix J](#).

4) Clarification of a Law Enforcement Officer's Duties upon Presenting an Individual for Mental Health Services

The proposed amendment to of the Texas Health and Safety Code Section 573.012 clarifies that a peace officer has no duty to remain at a facility or an emergency room once the officer delivers a person for emergency mental health services, together with the proper completed documentation.

Proposed statutory changes are shown in [Appendix K](#).

VIII. Chapter 55 Advisory Committee Recommendations

The Chapter 55 Advisory Committee (the Committee) submits these proposed revisions as a single legislative package and not as individual amendments. Details of the revisions made to each subchapter are described below. Proposed statutory changes are shown in [Appendix L](#).

1) Revisions to Subchapter A. General Provisions

A. Terminology Update

Texas Family Code section 51.20 contains the outdated term “mental retardation.” In 2015, Senate Bill 219 (84th Reg. Sess. 2015)) amended many sections of the Texas Family Code to substitute “intellectual disability” for “mental retardation.” The Committee proposes similar updates to Section 51.20 that were not made under Senate Bill 219. The Committee also recommends moving the requirements for fitness examinations and reports from this section, adopting requirements that are better suited to children and youth, and adding them to section 55.31, as discussed below.

B. Rename Section 55.01 as a Definitions Section

Texas Family Code section 55.01 currently contains a reference to the Texas Health & Safety Code definition of a mental illness. The Committee proposes renaming this section as a Definitions Section and including the full text of relevant definitions from the Texas Health & Safety Code and other sections of the Texas Family Code.

C. Replace “Commitment” with “Court-Ordered Mental Health Services” in Section 55.02 and Throughout

Both the Texas Health and Safety Code and the Texas Family Code use the word “commitment” for court-ordered mental health services. “Commitment” carries another meaning in Title 3 of the Texas Family Code: confinement in the Texas Juvenile Justice Department. The Committee recommends replacing “commitment” and “committed” in Chapter 55 with, as applicable, “court-ordered mental health services,” “court-ordered residential intellectual disability services,” “ordered,” “inpatient mental health services criteria,” and “residential disability services criteria.”

D. Include Outpatient Services in Section 55.03

Texas Family Code section 55.03 refers to the standards of care for children ordered to participate in inpatient mental health services. With the expanding use of outpatient mental health and intellectual disability services in the state, the Committee recommends adding outpatient services to the standards of care.

E. Define Criteria for Court-Ordered Examination

The Committee recommends adding Texas Family Code Section 55.04 to define a forensic mental examination, when a judge must order one for a child, and to include examiner qualifications outlined in Texas Code of Criminal Procedure article 46B.022.

F. Add Section 55.05 to Incorporate Court-Ordered Mental Health Services

The Texas Family Code refers to Texas Health & Safety Code criteria for court-ordered mental health services but does not include the full text. The Committee proposes adding section 55.05 to incorporate the criteria into the Texas Family Code.

G. Add Section 55.06 to Incorporate Criteria for Court-Ordered Intellectual Disability Services

The Texas Family Code refers to Texas Health & Safety Code criteria for court-ordered intellectual disability services but does not include the full text. The Committee proposes adding section 55.06 to incorporate the commitment criteria into the Texas Family Code.

2) Revisions to Subchapter B. Child with Mental Illness

A. Rename Chapter 55 Subchapter B

The Committee proposes renaming Texas Family Code Chapter 55 Subchapter B as “Court-Ordered Mental Health Services for Child with Mental Illness,” to clarify the purpose of Subchapter B. This proposal also refers to new sections 55.04 and 55.05 in section 55.11 and requires an examiner to determine whether the child meets the criteria for temporary or extended inpatient or outpatient mental health services.

B. Update References to Renumbered Sections in Section 55.12

Texas Family Code section 55.12 references three other sections of the Texas Family Code that the Committee proposes be renumbered. The Committee recommends updating those references in section 55.12

C. Repeal Existing Sections 55.13 and 55.14

The Committee proposes repealing sections 55.13 and 55.14, moving them to new Subchapter E, and renumbering them as new sections 55.65 and 55.68. This change and others below will move all proceedings for court-ordered mental health or intellectual disability services to Subchapter E.

D. Add Emphasis on Least Restrictive Appropriate Setting in Section 55.15

With the expansion of outpatient services in the state, the Committee recommends adding an emphasis on treating the child in the least restrictive appropriate setting.

E. Remove “Inpatient” from Sections 55.16 and 55.17

With the expansion of outpatient services in the state, the Committee proposes removing the word “inpatient” from these sections. This change allows a judge to order either inpatient or outpatient mental health services.

F. Clarify Section 55.18

To clarify that the court should dissolve any previously imposed stay before beginning additional proceedings, the Committee recommends adding the phrase “dissolve the stay and,” to this section. The Committee also recommends adding “outpatient services” in this section to include children who receive either inpatient or outpatient treatment.

G. Amend Existing Section 55.19 to Expand Judicial Discretion

Texas Family Code section 55.19 currently requires the judge to transfer to adult criminal court the cases that meet the criteria delineated in section 55.19. The Committee proposes that the judge have discretion to make the transfer after holding a hearing under the same standard as a certification hearing under sections 54.02(j), (k), and (l) and making similar findings.

This change prevents the mandatory transfer to adult criminal court of the cases of persons who are alleged to have engaged in delinquent conduct prior to the age of 18 that are still pending after the person was ordered to engage in inpatient mental health services without achieving discharge or furlough.

3) Revisions to Subchapter C. Child Unfit to Proceed as a Result of Mental Illness or Intellectual Disability

A. Add Requirements to Examination and Report in Section 55.31

Currently, the Family Code Section 51.20 requirements for fitness to proceed examinations are the same requirements as used to determine competency to stand trial in adult criminal cases under Texas Code of Criminal Procedure article 46B.024. Coinciding with the removal of fitness examination and report requirements from section 51.20, the Committee proposes adding developmentally appropriate requirements for children and youth to Section 55.31 to improve the quality and value of fitness examinations and reports.

B. Clarify Ambiguity in Section 55.33 Concerning a Child Found Unfit to Proceed but Does Not Meet Criteria for Court-Ordered Services

Currently, there is an ambiguity in section 55.33 in which a child may be found unfit to proceed but does not meet the criteria for court-ordered services. This change allows the judge to order appropriate and available treatment or services for the child in this situation, in consultation with the local juvenile probation department, where previously no order for treatment or services would have been permissible. Further, it contains authority for juvenile probation departments to provide restoration classes for certain children.

C. Add Requirements to Report to the Court in Section 55.35

The Committee proposes adding requirements to Section 55.35 to improve the quality and value of reports that inpatient and outpatient service providers submit to the court upon a child's temporary commitment, as well as updating the term "outpatient center" to "alternative setting," in this section and throughout, to track the language in section 55.33.

D. Update Code References in Section 55.37

The Committee recommends updating references to renumbered Texas Family Code sections in section 55.35, as well as replacing the term "civil commitment" with "court-ordered mental health services," which tracks the language in the referenced statutes, proposed Texas Family Code section 55.05 and Subchapter A, Chapter 574, Texas Health and Safety Code.

E. Repeal Sections 55.38, 55.39, 55.41, and 55.42

The Committee recommends repealing sections 55.38, 55.39, 55.41, and 55.42 and moving them to new Subchapter E. This change and others move all proceedings for court-ordered mental health or intellectual disability services to Subchapter E.

F. Juvenile Transfers Under Section 55.44

Parallel to Subchapter B, Texas Family Code Section 55.44 currently requires the judge to transfer to adult criminal court the cases that meet the criteria delineated in section 55.44. The Committee proposes that the judge have discretion to make the transfer after holding a hearing under the same standard as a certification hearing under sections 54.02(j), (k), and (l).

This change prevents the automatic transfer to adult criminal court of the cases of persons who are alleged to have engaged in delinquent conduct prior to the age of 18, have been found unfit to proceed, and are still pending after the person was ordered to engage in inpatient mental health services without achieving discharge or furlough.

4) Revisions to Subchapter D. Lack of Responsibility for Conduct as a Result of Mental Illness or Intellectual Disability

A. Add Requirements to Examination and Report in Section 55.51

The Committee proposes adding requirements to section 55.51 to improve the quality and value of examinations and reports evaluating lack of responsibility. These additions also direct the examiner to determine whether the child meets the criteria for temporary or extended inpatient or outpatient court-ordered services.

B. Clarify Ambiguity in Section 55.52 Concerning a Child Found Not Responsible but Does Not Meet Criteria for Court-Ordered Services

A current ambiguity exists in section 55.52 wherein a child is found to lack responsibility for their conduct but does not meet criteria for court-ordered services. This change allows the judge to order appropriate and available treatment or services for the child in this situation, in consultation with the local juvenile probation department, where previously no order for treatment or services would have been permissible.

The Committee also recommends that placement in a private psychiatric inpatient facility or residential care facility be available to children who are found to lack responsibility, regardless of whether it is due to mental illness or to intellectual disability.

C. Add Requirements to Report to the Court in Section 55.54

The Committee proposes adding requirements to section 55.54 to improve the quality and value of reports that inpatient and alternative setting service providers submit to the court following a court-ordered temporary services.

D. Update Code References in Section 55.55

The Committee recommends updating references to renumbered Texas Family Code sections in section 55.55, as well as replacing the term “civil commitment” with “court-ordered mental health services,” which tracks the language in the referenced statutes, proposed Texas Family Code sections 55.05 and 55.06 and Subchapter A, Chapter 574, Texas Health and Safety Code.

E. Update Code References in Section 55.56

Certificates of Medical Examination (CMEs) are described in Subchapter A, Chapter 574, Texas Health and Safety Code. The Committee proposes updating the reference to CMEs found in Texas Family Code section 55.56, as well as updating references to renumbered Texas Family Code sections.

F. Repeal Sections 55.57, 55.58, 55.60, and 55.61

The Committee recommends repealing sections 55.57, 55.58, 55.60, and 55.61 and moving them to new Subchapter E. This change and others move all proceedings for court-ordered mental health or intellectual disability services to Subchapter E.

G. Update Terminology and Code References in Section 55.59

In keeping with updates of terminology in above sections, the Committee proposes substituting “court-ordered residential intellectual disability services,” for “commitment” and “civil commitment,” in section 55.59.

5) Addition of New Subchapter E. Proceedings for Court-Ordered Mental Health or Residential Intellectual Disability Services

A. Renumber Section 55.13 as New Section 55.65 Regarding Proceedings for Child with Mental Illness

The Committee proposes new Subchapter E for all procedures related to temporary or extended court-ordered mental health and intellectual disability services. New section 55.65 is similar to current section 55.13, with the additional requirements that the local mental health authority file a recommendation for the child’s proposed treatment, that the court identify the provider of court-ordered outpatient mental health services at least three days prior to the hearing, and that upon receipt of the court’s order for inpatient mental health services, the Health and Human Services Commission must identify a facility and seek to admit the child to that facility. If services are court-ordered, then the court must hold a detention hearing to determine whether a child should be detained or released before beginning court-ordered services.

B. Add New Section 55.66 Regarding Proceedings for Child Found Unfit to Proceed or Lacking Responsibility Due to Mental Illness

New section 55.66 is similar to current sections 55.38 and 55.57, with the added requirements that the local mental health authority file a recommendation for the child's proposed treatment, that the court identify the provider of court-ordered outpatient mental health services at least three days prior to the hearing, and that upon receipt of the court's order for inpatient mental health services, the Health and Human Services Commission must identify a facility and seek to admit the child to that facility. If mental health services are court-ordered, then the court must hold a detention hearing to determine whether the child should be detained or released before beginning court-ordered services.

C. Add New Section 55.67 Regarding Proceedings for Child Found Unfit to Proceed or Lacking Responsibility Due to Intellectual Disability

New section 55.67 is like current sections 55.41 and 55.60, with the requirements that, upon receipt of the court's order for long-term placement in a residential care facility, the Health and Human Services Commission must identify a facility and seek to admit the child to that facility. If intellectual disability services are court-ordered, the court must hold a detention hearing to determine whether the child should be detained or released before admission to the facility.

D. Add New Section 55.68 Regarding Referrals for Court-Ordered Services Proceedings

New section 55.68 is like current sections 55.14, 55.39, 55.42, 55.58, and 55.61, covering juvenile cases referred by the court to an appropriate court for the initiation of court-ordered services proceedings, with an expansion of the required documents to be transferred.

IX. 2022 Services Report

On June 28, 2022, Governor Greg Abbott, Lieutenant Governor Dan Patrick, Speaker Dade Phelan, Senate Finance Committee Chair Joan Huffman, and House Appropriations Chair Dr. Greg Bonnen announced the transfer of \$105.5 million to support additional school safety and mental health initiatives through August 31, 2023.² One initiative funded through this effort is multi-systemic therapy for children (MST), highlighted in the 2020 JCMH Legislative Recommendations and Report. The following report has been updated to provide background information on MST and other services that have been identified as funding priorities.

Judicial referral to a robust community service network is essential to assist persons with mental illness and intellectual and developmental disabilities in achieving better outcomes, reducing engagement with law enforcement and the courts, and avoiding incarceration. Individuals with untreated mental health and substance use disorders are eight times more likely to be incarcerated.³ In 2015, an estimated 30 percent of inmates were diagnosed with one or more serious mental illnesses, equating to nearly 20,000 people in Texas county jails; this number has likely increased over the past seven years.⁴ In fiscal year 2019, an estimated 35 percent of the adult population in Texas county jails had earlier encounters with either a Local Mental Health or Behavioral Health Authority.⁵

Texas faces critical shortages of licensed mental health professionals, including psychiatrists, psychologists, professional counselors, clinical social workers, marriage and family counselors, and advanced practice psychiatric nurses. In 2019, 173 Texas counties did not have a single licensed psychiatrist, which left more than 2.7 million Texans living in counties without access to a psychiatrist. An additional 24 counties only had one psychiatrist, serving over 970,000 individuals.⁶ As of June 2020, only 36 percent of Texas's mental health professional needs were met. Additionally, 214 of the state's 254 counties were considered either full or partial Health Professional Shortage Areas for Mental Health (HPSA-MH).⁷

As the number of Texans with mental illness and intellectual or developmental disabilities who intersect with the criminal justice system increases, the judiciary faces constraints to balance these

² Press Release, Office of the Texas Governor Greg Abbott, Mental Health Initiatives (June 28, 2022), <https://gov.texas.gov/news/post/governor-abbott-lt-governor-patrick-speaker-phelan-senate-finance-house-appropriations-committee-chairs-announce-additional-105.5-million-for-school-safety-mental-health-initiatives>.

³ TEX. HEALTH & HUMAN SERVS. COMM'N, TEXAS STATEWIDE BEHAVIORAL HEALTH STRATEGIC PLAN, FISCAL YEARS 2017-2021 10 (May 2016), <https://hhs.texas.gov/sites/default/files/050216-statewide-behavioral-health-strategic-plan.pdf>.

⁴ HOUSE SELECT COMM. ON MENTAL HEALTH, INTERIM REP., *H. Rep.* 85, at 11 (Tex. 2016), <http://www.houstontx.gov/txlege/static/documents/hb1486/12-2016-Mental-Health-Select-Committee-Interim-Report.pdf>.

⁵ TEX. HEALTH & HUMAN SERVS. COMM'N, ALL TEXAS ACCESS REPORT 62 (Dec. 2020), <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2020/all-texas-access-report-dec-2020.pdf>.

⁶ *Id.* (citing TEXAS DEPARTMENT OF STATE HEALTH SERVICES, *Psychiatrists*, (Nov. 13, 2019), www.dshs.texas.gov/chs/hprc/tables/2019/PSYCH19.aspx).

⁷ *Id.* (citing TEXAS DEPARTMENT OF STATE HEALTH SERVICES, *Psychiatrists*, (Nov. 13, 2019), www.dshs.texas.gov/chs/hprc/tables/2019/PSYCH19.aspx). *Texas Health and Human Services System*, HOGG FOUNDATION FOR MENTAL HEALTH, <https://hogg.utexas.edu/texas-health-and-human-services-system> (last visited Aug. 11, 2022); HOGG FOUNDATION ON MENTAL HEALTH, *A GUIDE TO UNDERSTANDING MENTAL HEALTH SYSTEMS AND SERVICES IN TEXAS* (5th Ed. 2020), <https://hogg.utexas.edu/wp-content/uploads/2020/12/MentalHealthGuide-5thEdition.pdf>.

needs with public safety concerns. Absent appropriate services, judges lack desirable options for achieving this balance.

If funded, the following would support effective administration of justice and community safety:

1. Multi-Disciplinary Response Teams

Multi-Disciplinary Response Teams (MDRTs) are “based on a community paramedicine approach that brings together paramedics, licensed mental health professionals, and specialized law enforcement officers within an integrated team . . .”⁸

Communities across the United States traditionally have primarily relied on law enforcement for the initial response to mental health emergencies.

There have been significant improvements to the criminal justice system’s response to people with mental illnesses in the last two decades, including advanced crisis intervention training for law enforcement, laws and initiatives requiring better screening for and treatment of mental illness in jails, the creation of processes to release people with mental illnesses from jails on personal bond, specialty treatment courts, treatment-oriented probation, and the use of sequential intercept mapping (SIM) as a planning tool.⁹

MDRTs aim for an appropriate community response to assure public safety, provide rapid identification and assessment of acute mental health and broader health care needs (including substance use), and provide access to assessment, treatment, and broader resources (such as housing).

The Texas MDRT approach is based on best-practice responses to medical emergencies, proven effective for other emergency 911 responses to people with chronic and complex illnesses.¹⁰ It recognizes that people in an emergency mental health crisis often have needs best met outside of a jail or hospital emergency department.¹¹

Based on the success of MDRTs in Texas, expansion and funding MDRTs as a Texas community crisis response would aim to provide individuals with the treatment and services they need *before* they intersect with the courts.

2. Multisystemic Therapy for Youth

Multisystemic Therapy (MST) is an evidenced-based plan for at-risk youth with intensive needs and their families.¹² It has proven effective for treating youth who have committed violent offenses, have serious mental health or substance abuse concerns, are at risk of out-of-home

⁸ MEADOWS MENTAL HEALTH POLICY INSTITUTE, MULTI-DISCIPLINARY RESPONSE TEAMS, TRANSFORMING EMERGENCY MENTAL HEALTH RESPONSE IN TEXAS 2 (2021), <https://mmhpi.org/wp-content/uploads/2021/06/MDRT-Transforming-Crisis-Response-in-Texas.pdf> (citing U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HEALTH RESOURCES AND SERVICES ADMINISTRATION, *Community Paramedicine Evaluation Tools*, 2012, <https://www.hrsa.gov/sites/default/files/ruralhealth/pdf/paramedicevaltool.pdf>).

⁹ *Id.* (citing 1 Munetz, M., Griffin, P. (2006). Use of the Sequential Intercept Model as an approach to decriminalization of people with serious mental illness. <https://pubmed.ncbi.nlm.nih.gov/16603751/>).

¹⁰ *Id.*

¹¹ *Id.*

¹² Scott W. Henggeler & Sonja K. Shoenwald, *Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them*, 25 SOCIAL POLICY REPORT 1, 1–20 (2011).

placement, or who have experienced abuse and neglect.¹³

The overriding goal of MST is to keep adolescents who have exhibited serious clinical problems (e.g., drug use, violence, severe criminal behavior) at home, in school, and out of trouble through intense involvement and contact with the family.

The primary goals of MST are to: (1) reduce youth criminal activity; (2) reduce other types of antisocial behavior, such as drug abuse; and (3) achieve these outcomes at a cost savings by decreasing rates of incarceration and out-of-home placement.¹⁴ MST addresses the core causes of such conduct, including, the network of systems caring for them such as, family, peers, school, and neighborhood.¹⁵

In Texas in 2020, there were an estimated 20,000 children and youth (ages 6–17) either currently or at high risk for out-of-home or out-of-school placement because of their mental health needs.¹⁶

Texas currently has three MST programs (Harris County, El Paso County, and Nueces County) with a total of four teams that operate primarily through juvenile justice dollars. The current teams are meeting less than 3% of the estimated need on an annual basis.¹⁷

MST would give judges a proven tool to increase positive outcomes in cases that come before their courts and therefore supports the expansion and funding of MSTs across Texas.

3. Outpatient Competency Restoration (OCR) Services and Jail-Based Competency Restoration (JBCR) Services

Competency restoration is a legal process to ensure that a defendant is competent to participate in his or her criminal trial. Competency restoration can be provided in a jail, a state hospital, another psychiatric hospital, or in an outpatient setting.¹⁸

HHSC contracts with entities to provide competency restoration services in non-state hospital or state supported living center settings. Inpatient competency restoration services are highly relied upon by the judiciary in Texas. The waitlist for these services continues to increase.

Outpatient Competency Restoration (OCR) and Jail-Based Competency Restoration (JBCR) services are valuable tools for judges because they serve as an alternative to inpatient competency restoration services at the state hospital.

Outpatient Competency Restoration

Outpatient competency restoration services are designed for those persons who have been found

¹³ MST Services, *MST Research at a Glance* (2018), https://cdn2.hubspot.net/hubfs/295885/MST%20Redesign/Marketing%20Kit/Marketing%20Kit%20Collateral%20Digital%20Files/Case%20Study%20and%20Reports/Report%20-%20RAAG_Short_outcomestudies_summary_2018.pdf

¹⁴ See Meadows Mental Health Policy Institute, *Multisystemic Therapy for Texas Youth 2* (Feb. 2020), <https://mmhpi.org/wp-content/uploads/2020/09/MSTinTexas.pdf>.

¹⁵ *Id.*

¹⁶ *Id.* at 1.

¹⁷ See *id.*

¹⁸ TEX. HEALTH & HUMAN SERVS. COMM'N, *All Texas Access Report* 64 (Dec. 2020) <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2020/all-texas-access-report-dec-2020.pdf>.

incompetent to stand trial and who can safely receive competency restoration in the community.¹⁹

The OCR services allow for the provision of competency restoration services where a person resides, and are provided in their home, crisis respite facilities, OCR transitional houses, and LMHA/LBHA clinic offices. The OCR services can be a better alternative to inpatient restoration services for successful treatment and long-term recovery.²⁰ The purpose of the programs is to divert individuals from the criminal justice system and provide competency restoration, mental health treatment, and promote community reintegration in the least restrictive setting.²¹

OCR has the potential to redirect persons who would normally be committed to a state hospital into a community setting. To be effective, an OCR program requires well-coordinated relationships with the local judicial system and other community stakeholders which takes time to develop.²²

OCR programs were established by 80th Legislature in 2007 and expanded in 2011 and 2018.

As of 2020, there were thirteen OCR programs in Texas; each of these programs is different depending on the needs and demographics of the county in which it is located. The thirteen OCR programs are funded at \$4.7 million each fiscal year with general-revenue funds. From inception in 2007 through November 2019, these programs served over 1,723 individuals. The average length of stay for an individual receiving OCR services is 176 days.²³

In 2021, through a \$1 million federal Mental Health Block Grant funding from the Substance Abuse and Mental Health Service Administration (SAMHSA), Texas Health and Human Services Commission expanded the number of outpatient competency restoration contracted providers in Texas from 13 to 18, focusing on rural communities.²⁴ The expanded program will serve an estimated 114 people over the biennium.²⁵

Jail-Based Competency Restoration (JBCR) Services

JBCR programs provide competency restoration services in a jail setting to individuals who are determined incompetent to stand trial and eligible for jail-based competency restoration services by the court. Participants are screened for eligibility for OCR services and must be determined ineligible for OCR prior to being admitted into a JBCR program. JBCR allows for individuals to

¹⁹ Tex. Code Crim. Pro. arts. 46B.0711, 46B.072; TEX. HEALTH & HUMAN SERVS. COMM'N, *All Texas Access Report* 76 (Dec. 2020) <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2020/all-texas-access-report-dec-2020.pdf>.

²⁰ TEX. HEALTH & HUMAN SERVS. COMM'N, *All Texas Access Report* at 64.

²¹ *Id.*; see also *Competency Restoration*, HHS TEXAS <https://www.hhs.texas.gov/providers/behavioral-health-services-providers/competency-restoration> (last visited Aug. 14, 2022).

²² *Id.*

²³ Lucrece Pierre-Carr, Manager, Crisis Servs. Unit, Med. and Soc. Servs. Div., Tex. Health and Human Servs. Comm'n, La Quinta Swan, Program Specialist, Crisis Servs. Unit, Med. and Soc. Servs. Div., Tex. Health and Human Servs. Comm'n, Presentation at the Second Annual Statewide Judicial Summit on Mental Health: Texas Competency Restoration: Outpatient and Jail Based (Nov. 18, 2019).

²⁴ *News Release Texas Health and Human Services Commission July 2, 2021*, HHS TEXAS <https://www.hhs.texas.gov/news/2021/07/hhsc-expands-outpatient-competency-restoration-services-texas> (last visited Aug. 14, 2022). The five contractors to receive funds are Bluebonnet Trails Community Services, \$223,334; Center for Life Resources, \$165,000; LifePath Systems, \$223,333; MHMR Services for the Concho Valley, \$165,000; and Pecan Valley Centers, \$223,333.

²⁵ *News Release Texas Health and Human Services Commission July 2, 2021*, HHS TEXAS <https://www.hhs.texas.gov/news/2021/07/hhsc-expands-outpatient-competency-restoration-services-texas> (last visited Aug. 14, 2022).

be treated locally and in a timelier manner than waiting for any treatment until reaching the state hospital. Individuals may remain on the state hospital waitlist while receiving jail-based treatment. There are multiple benefits to remaining on the state hospital waitlist and beginning a JBCR program.

- 1) Patients can begin treatment and services before going to the state hospital to decrease the overall amount of time necessary at the state hospital.
- 2) JBCR Patients can continue to the state hospital's inpatient restoration services, and if they are not-successfully treated in the jail-based restoration setting they have not lost their place on the waiting list.
- 3) Patients can be removed from the state hospital waitlist, and immediately resume the criminal case in their home county, upon a second evaluation and a court finding that they have regained competency in the JBCR program.

Some Texas communities are beginning to use JBCR as a step-down between inpatient competency restoration services and out-patient competency restoration services, which is another way to provide a more complete continuum of care to individuals at the intersection of criminal justice and mental health systems.

Additional funding and development of these programs in more Texas counties would assist in reducing the wait times for restoration services which cause many defendants with mental health and IDD issues to languish in local jails. It will also allow courts to more efficiently move cases through their dockets.

4. Continuity of Psychoactive Medication: Availability and Formulation

The lack of continuity in psychoactive medications is a service gap seen throughout the state that produces ripple effects felt in almost every aspect of the courts and justice system.

If the availability and distribution of psychoactive medications became standardized for the state hospitals, LMHA's, substantial improvements in mental health care could result merely by consistent and appropriate administration of medication. State medical providers should develop a standard formulary list for state facilities, counties, jails, and LMHAs follow.²⁶ The State of Texas can negotiate medication rates on a statewide basis, which could save the State and counties money, rather than having counties pick and choose the medications to fund.²⁷

In the last biennium, Rider 39 for Post Discharge Medications for Competency Restoration allowed HHSC to reimburse LMHAs/LBHAs (for up to 90 days post release) medications for restored individuals coming from a state mental health facility. Rider 39 also dictated that the 90-day supply of medication should be as prescribed in the Continuity of Care Plan. Continuation of a program like Rider 39 should be considered to address the lack of medication continuity for patients in state hospitals and the criminal justice system.

²⁶ See, TEX. HEALTH & HUMAN SERVS. COMM'N., PSYCHIATRIC DRUG FORMULARY (2020), <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/facilities-regulation/psychiatric/psychiatric-drug-formulary.pdf> (HHSC already has a Psychiatric Drug Formulary, created by The HHSC Psychiatric Executive Formulary Committee, for use by State Hospitals, SSLCs, and Community Mental Health Centers.)

²⁷ See, TEX. HEALTH & HUMAN SERVS. COMM'N., Vendor Drug Program, <https://www.txvendordrug.com/formulary> (an example of this suggestion).

5. Peer Support Services

Peer support is provided by people in recovery from mental health or substance use issues who are employed to use their lived experiences to support and promote the recovery of others engaged in behavioral health services.²⁸

H.B. 1486, 85th Legislature, Regular Session, 2017, recognized that peer specialists are an excellent resource in mitigating the mental health professional workforce shortage.²⁹ This bill directed the development and adoption of rules for peer support as a Medicaid benefit and defined training requirements for peer specialists.³⁰

Peer services have been shown to improve outcomes such as reducing hospitalizations, improving self-determination and symptom management, increasing social support, and bettering one's quality of life.³¹ Peers promote recovery and enhance the stability of individuals engaged in services. If individuals are engaged in services, they tend to go into crisis less, thus avoiding jail and ER visits.³² Research suggests that peer specialist services decrease substance use, increase patient activation and engagement in care, reduce utilization of inpatient and emergency care, reduce mental health symptoms, increase recovery and wellbeing, and improve physical health and health behaviors.³³

Texas Mental Health Peer Specialists

Certified Mental Health Peer Specialists (MHPS), Certified Recovery Support Peer Specialists (RSPS), and Peer Specialist Supervisors (PSS) use their lived experiences with behavioral health issues to help recipients of HHSC-funded services.³⁴ These peer specialists provide services in adult mental health home and community-based service programs, youth empowerment services, and mental health rehabilitative services. They are funded by Medicaid Waivers, Medicaid benefits, and through a sub-grant in the HHSC Recovery Support Services grant.

In Harris County, for example, the Judge Ed Emmett Mental Health Diversion Center uses peer

²⁸ W. Kuhn, et al., *Integration of Peer Specialists Working in Mental Health Service Settings*, 51 COMMUNITY MENTAL HEALTH JOURNAL 453-58 (2015) <https://doi.org/10.1007/s10597-015-9841-0>.

²⁹ Find further discussion of the Health Professional Workforce Shortage in Texas on page 19 of this report.

³⁰ THE UNIVERSITY OF TEXAS AT AUSTIN, TEXAS INSTITUTE FOR EXCELLENCE IN MENTAL HEALTH, *Texas Peer Support Medicaid Benefit: An Explorative Study of Utilization 3* (Aug. 2021) https://sites.utexas.edu/mental-health-institute/files/2021/12/2021-Texas-Peer-Support-Medicaid-Benefit-An-Explorative-Study-of-Utilization_REPORTS.pdf; THE UNIVERSITY OF TEXAS AT AUSTIN, TEXAS INSTITUTE FOR EXCELLENCE IN MENTAL HEALTH, *An Examination of Youth Peer Support in Texas: 2021 Report 1* (Aug. 2021) <https://sites.utexas.edu/mental-health-institute/files/2021/10/Youth-Peer-Support-Report-2021-Final.pdf>.

³¹ THE UNIVERSITY OF TEXAS AT AUSTIN, TEXAS INSTITUTE FOR EXCELLENCE IN MENTAL HEALTH, *Texas Peer Support Medicaid Benefit: An Explorative Study of Utilization 1-2* (Aug. 2021), https://sites.utexas.edu/mental-health-institute/files/2021/12/2021-Texas-Peer-Support-Medicaid-Benefit-An-Explorative-Study-of-Utilization_REPORTS.pdf (citing Mental Health America, *Evidence for Peer Support* (2018) <https://www.mhanational.org/sites/default/files/Evidence%20for%20Peer%20Support%20May%202018.pdf>).

³² *Id.* at 162.

³³ THE UNIVERSITY OF TEXAS AT AUSTIN, TEXAS INSTITUTE FOR EXCELLENCE IN MENTAL HEALTH, *Peers in Texas: Workforce Outcomes 1* (Aug. 2021), https://sites.utexas.edu/mental-health-institute/files/2021/12/2021-Peers-in-Texas%E2%96%A1-Workforce-Outcomes_REPORTS.pdf.

³⁴ *Texas Health and Human Services System*, HOGG FOUNDATION FOR MENTAL HEALTH, <https://hogg.utexas.edu/texas-health-and-human-services-system> (last visited Aug. 12, 2022); THE UNIVERSITY OF TEXAS AT AUSTIN, TEXAS INSTITUTE FOR EXCELLENCE IN MENTAL HEALTH, *Peer Specialist Certification and Training Evaluation: The Via Hope Peer Specialist Training and Certification Program 1* <https://sites.utexas.edu/mental-health-institute/files/2018/11/3.-SOW-A2-PSTC-Evaluation-Report.pdf>.

support to assist in engaging the client in the program and making them feel comfortable.³⁵ The goal of the program is to have a peer support person be the first person with which an incoming patient has contact.³⁶

Texas Mental Health Re-entry Peer Specialists

Individuals incarcerated in county jails with mental illness face difficulties in their transition from an incarcerated environment back into the community. HHSC, in partnership with LMHAs and county sheriffs, maintains a program using trained certified peer support specialists that provide support to inmates diagnosed with a mental illness during incarceration as they move from county jails into clinically appropriate community-based care.³⁷

Upon release from jail, peer specialists assist the newly released participants with accessing clinical community services.

Barriers to use of Peer Specialists

The lack of peer support services available throughout the state represents a service gap. Additionally, state regulations and/or individual policies of employers or institutions may prohibit individuals with criminal convictions from gaining employment at TDCJ, county jails, mental health facilities, and mental health rehabilitative services (including private provider services).³⁸

Expansion of peer supports generally and specifically for re-entry would promote positive mental health recovery and help reduce the recidivism in this population. Continued funding and increased access to programs that help defendants re-integrate into society is key to preventing individuals from cycling repeatedly through the justice system.

³⁵ Kim Ogg, Harris County Dist. Attorney, Presentation at JCMH Judicial Summit on Mental Health: Judge Ed Emmet Mental Health Jail Diversion Center (Nov. 19, 2019) <https://www.youtube.com/watch?v=jtdUf3nk7c4>, <http://texasjcmh.gov/media/3uknlbr4/the-harris-center-for-mh-and-idd.pdf>.

³⁶ *Id.*

³⁷ TEX. HEALTH & HUMAN SERVS. COMM'N, REPORT ON THE MENTAL HEALTH PEER SUPPORT RE-ENTRY PROGRAM 4 (Dec. 2020) <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2020/hb1-mental-health-peer-support-reentry-program-dec-2020.pdf>

³⁸ CENTER FOR PUBLIC POLICY PRIORITIES, FROM RECIDIVISM TO RECOVERY: THE CASE FOR PEER SUPPORT IN TEXAS CORRECTIONAL FACILITIES 22 (2014).

X. Appendices of Proposed Statutory Text

Appendix A

Amend 46B to limit or create alternatives to the use of competency restoration services and/or competency proceedings in certain misdemeanor cases.

SECTION 1. Article 46B.025(b), Code of Criminal Procedure, is amended to read as follows:

Art. 46B.025. (b) If in the opinion of an expert appointed under Article 46B.021 the defendant is incompetent to proceed, the expert shall state in the report:

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or intellectual disability, if any, and the impact of the identified condition on the factors listed in Article 46B.024;

(2) an estimate of the period needed to restore the defendant's competency; ~~including~~

(3) whether the defendant is likely to be restored to competency in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080~~foreseeable future~~; and

~~(34)~~ prospective treatment options, if any, appropriate for the defendant.

SECTION 2. Art. 46B.055, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.055. If the defendant is found incompetent to stand trial and is:~~7~~

(a) determined likely to be restored to competency in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080, the court shall proceed under Subchapter D; or

(b) determined unlikely to be restored to competency in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080, the court shall:

(1) proceed under Subchapter E or F; or

(2) release the defendant on bail as permitted under Chapter

17.

SECTION 3. Article 46B.071, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.071. ~~(a) Except as provided by Subsection (b),~~ ~~o~~ On a determination under Article 46B.055(a) that a defendant is incompetent to stand trial and is likely to be restored to competency in the period permitted by this Subchapter, the court shall:

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

(b) if the defendant is charged with an offense punishable as a Class A misdemeanor in which the alleged conduct did not result in bodily injury to another person, and the defendant has not been convicted in the previous two years of an offense that resulted in bodily injury to another person:

(A1) release the defendant on bail under Article 46B.0711; or

~~(B2) commit the defendant to:~~

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

~~or~~

~~(ii) a mental health facility or residential care facility under Article 46B.073(f);~~ or if an outpatient competency restoration program is unavailable or the defendant cannot be placed in an outpatient competency restoration program within fourteen days of the date of the court's order,

(A) on the motion of the attorney representing the state, dismiss the charge and proceed under Subchapter F; or

(B) on the motion of the attorney representing the defendant and notice to the attorney representing the state:

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

(ii) dismiss the charge and proceed under Subchapter F on a finding that an outpatient competency restoration program is unavailable, or that the defendant cannot be placed in an outpatient competency restoration program within fourteen days of the date of

the court's order; or

(2c) if the defendant is charged with either:

(1) an offense punishable as a Class A misdemeanor in which the alleged conduct resulted in bodily injury to another person or any higher category of offense+, or

(2) an offense punishable as a Class A misdemeanor in which the alleged conduct did not result in bodily injury to another person, but the defendant has been convicted in the previous two years of an offense that resulted in bodily injury to another person:

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

(B) commit the defendant to a mental health or residential care facility or a jail-based competency restoration program under Article 46B.073(c) or (d).

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

~~(1) proceed under Subchapter E or F; or~~

~~(2) release the defendant on bail as permitted under Chapter 17.~~

SECTION 4. Article 46B.0711, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.0711. (a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(b) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a Class B misdemeanor or with an offense punishable as a Class A misdemeanor in which the alleged conduct did not result in bodily injury to another person and the defendant has not been convicted in the previous two years of an offense that resulted in bodily

injury to another person, and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court shall:

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

(2) order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days.

(c) Notwithstanding Subsection (b), the court may order a defendant to participate in an outpatient competency restoration program under this article only if:

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

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

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

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

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

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

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

SECTION 5. Article 46B.072, Code of Criminal Procedure, is amended to read as follows:

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 ensuring public safety and the effectiveness of the defendant's treatment,

if the court determines that a defendant charged with an offense punishable as a felony ~~or~~, a Class A misdemeanor in which the alleged conduct resulted in bodily injury to another person, or an offense punishable as a Class A misdemeanor in which the alleged conduct did not result in bodily injury to another person, but the defendant has been convicted in the previous two years of an offense that resulted in bodily injury to another person, and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court~~;~~

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

~~(2) shall release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a Class A misdemeanor or shall continue the defendant's release on bail.~~

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

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

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

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

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

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

(d) An order issued under this article may require the

defendant to participate in:

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

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

SECTION 6. Article 46B.073, Code of Criminal Procedure, is amended to read as follows:

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(c).

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

(1) a period of not more than 60 days, if the defendant is charged with an offense punishable as a Class A misdemeanor in which either the alleged conduct resulted in bodily injury to another person, or the alleged conduct did not result in bodily injury to another person, but the defendant has been convicted in the previous two years of an offense that resulted in bodily injury to another person; or

(2) a period of not more than 120 days, if the defendant is charged with an offense punishable as a felony.

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

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

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

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

SECTION 7. Article 46B.077(a), Code of Criminal Procedure, is amended to read as follows:

Art. 46B.077. (a) The mental health or residential care facility or jail-based competency restoration program to which the defendant is committed or the outpatient competency restoration program to which the defendant is released on bail shall:

- (1) develop an individual program of treatment;
- (2) assess and evaluate whether the defendant is likely to be restored to competency in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080

~~foreseeable future~~; and

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

SECTION 8. Article 46B.079(b)-(b-1), Code of Criminal Procedure, are amended to read as follows:

Art. 46B.079. (b) The head of the facility or jail-based competency restoration program provider shall promptly notify the court when the head of the facility or program provider believes that:

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

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

(3) the defendant is not likely to attain competency in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080~~foreseeable future~~.

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

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

(2) the defendant is not likely to attain competency in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080~~foreseeable future~~.

SECTION 9. Article 46B.090(k), Code of Criminal Procedure, is amended to read as follows:

Art. 46B.090. (k) If at any time during a defendant's participation in the jail-based restoration-of-competency pilot program the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080 ~~foreseeable future~~:

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

(2) the court shall:

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

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

SECTION 10. Article 46B.091(i), Code of Criminal Procedure, is amended to read as follows:

Art. 46B.091. (i) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the period permitted under Subchapter D, including any possible 60-day extension under Article 46B.080~~foreseeable future~~:

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

(2) the court shall:

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

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

SECTION 11. Article 46B.101, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.101. This subchapter applies to a defendant against whom a court is required to proceed according to Article 46B.084(e), Article 46B.0855, or according to the court's appropriate

determination under Article 46B.~~071~~055(b).

SECTION 12. Article 46B.151(a), Code of Criminal Procedure, is amended to read as follows:

Art. 46B.151. (a) If a court is required by Article 46B.084(f), Article 46B.0855, or by its appropriate determination under Article 46B.~~071~~055(b) to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) to proceed under this subchapter, the court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with an intellectual disability.

Appendix B

Amend multiple articles in Chapter 46B of the Texas Code of Criminal Procedure to address individuals whose condition degrades in the interim between determination of competency and resumption of adjudicative hearings or a trial.

SECTION 1. Article 46B.084, Code of Criminal Procedure, is amended to read as follows :

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

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, as soon as practicable following the date of the defendant's return to the court, the court shall provide the notice required by that subdivision to the attorney representing the state and the attorney for the defendant, and the attorney for the defendant shall meet and confer with the defendant as soon as practicable after the date of receipt of that notice.

(a-1) (1) Following the defendant's return to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based only on the most recent report that is filed under Article 46B.079(c) and based on notice under that article, other than notice under Subsection (b)(1) of that article, and on other medical information or personal history information relating to the defendant. A party may object in writing or in open court to the findings of the most recent report not later than the 15th day after the date on which the court received the applicable notice under

Article 46B.079. If no party objects to the findings of the most recent report within the specified period, ~~t~~The court shall make the determination not later than the 20th day after the date on which the court received the applicable notice under Article 46B.079, or not later than the fifth day after the date of the defendant's return to court, whichever occurs first, ~~regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).~~

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, if no party objects to the findings of the most recent report within the specified period, the court shall make the determination described by that subdivision not later than the 20th day after the date on which the court received notification under Article 46B.079, ~~regardless of whether a party objects to the report as described by that subdivision and the issue is set for a hearing under Subsection (b).~~

(b) If a party objects under Subsection (a-1) and raises a suggestion that the defendant may no longer be competent to stand trial, the court shall determine by informal inquiry no later than the fifth day following the objection whether there is some evidence from any credible source that the defendant may no longer be competent. If after an informal inquiry the court determines that evidence exists to support a finding of incompetency, the court shall order a further examination under Subchapter B to determine whether the defendant is incompetent to stand trial. ~~Following receipt of the expert's report,~~ the issue shall be set for a hearing not later than the tenth day after receipt of the report. 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)(1) If the defendant is found competent to stand trial, on the court's own motion criminal proceedings against the defendant in the case shall be resumed not later than the 14th day after the date of the court's determination under this article that the defendant's competency has been restored.

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

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

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

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

SECTION 2. Article 46B.0855, Code of Criminal Procedure, is added to read as follows:

Art. 46B.0855. If the court has found the defendant competent to stand trial under Article 46B.084(d)(1), but the criminal proceedings against the defendant were not resumed within the period specified by that subsection, and either party thereafter suggests by motion, or the trial court suggests on its own motion, that the defendant may no longer be competent to stand trial, the court shall

follow the procedures set forth in Subchapters A and B, except any subsequent court orders for treatment must be issued under Subchapter E or F.

SECTION 3. Article 46B.104, Code of Criminal Procedure, is amended to read as follows:

CIVIL COMMITMENT PLACEMENT [~~:- FINDING OF VIOLENCE]~~

Art. 46B.104. (a) A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the facility designated by the commission [~~if:~~

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

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

(b) The court shall send a copy of the order to the applicable facility.

(c) For a defendant whose initial commitment is, per Article 46B.055(b), under this Subchapter, the court shall also provide to the facility 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.

(7) the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the applicable facility.

SECTION 4. Article 46B.109, Code of Criminal Procedure, is amended to read as follows:

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 and shall file a report as provided by Article 46B.025 with the court, state the reason for their determination, and include a list of the types and dosages of medications prescribed for the defendant while the defendant was receiving services in the facility or through the program. The court shall provide to the attorney representing the defendant and the attorney representing the state copies of any written statement or report required under this article to enable any objection to the findings in the written statement or report to be made in a timely manner as provided by Article 46B.1115.

SECTION 5. Article 46B.1115, Code of Criminal Procedure, is added to read as follows:

PROCEEDINGS ON REQUEST OR MOTION

Art. 46B.1115. 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 the restoration of competency, the timelines for any objection to the written statement and report filed under Article 46B.109(b) and conducting a hearing on the defendant's competency are the same as provided by Article 46B.084.

SECTION 6. Article 46B.114, Code of Criminal Procedure, is amended to read as follows :

Art. 46B.114. (a) 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 prompt 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.~~]

(b) If before the 15th day after the date on which the court received notification under Article 46B.109 a defendant committed to a facility or ordered to participate in an outpatient competency restoration program has not been transported to the court that issued the order under this subchapter, the head of the facility or provider of the outpatient competency restoration program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse the Health and Human Services Commission or program provider, as appropriate, for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

SECTION 7. Repeal §§ 574.035(d) and 574.0355(b), Health & Safety Code

Appendix C

Good time credits for defendants released to outpatient competency restoration programs.

Amendment to Texas Code of Criminal Procedure, Art. 46B.009 as follows:

(a) 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.

(b) A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence any period that the person either was ordered to and participated in, or was committed to and attended, an outpatient competency restoration program.

Appendix D

Amend Texas Code of Criminal Procedure art. 16.22 to include Class C misdemeanors.

Amendment to Texas Code of Criminal Procedure art. 16.22 as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

(a)(1) Not later than 12 hours after the sheriff or municipal jailer having custody of a defendant ~~for an offense punishable as a Class B misdemeanor or any higher category of offense~~ receives credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the sheriff or municipal jailer shall provide written or electronic notice to the magistrate. . . .

(A)

(B)

(2) The magistrate is not required to order the interview and collection of other information under Subdivision (1) if:

(A) the defendant is no longer in custody; ~~or if~~

(B) the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability expert described by Subdivision (1); or

(C) the defendant was only arrested on or has only been charged with an offense punishable as a class C misdemeanor.

(3) A court that elects to use the results of a ~~that~~ previous determination described by Subdivision (2)(B) may proceed under Subsection (c).

(4) [~~3~~] If the defendant fails or refuses to submit to the interview

Appendix E

Statutory authority for justices of the peace and municipal court judges to dismiss Class C misdemeanors when a defendant lacks capacity to proceed.

Amend Chapter 45 of the Texas Code of Criminal Procedure as follows:

Art. 45.0214. DEFENDANT WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITY, LACK OF CAPACITY

(a) On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, a justice or judge shall determine whether probable cause exists to believe that a defendant, including a defendant with a mental illness or developmental disability lacks the capacity to understand the proceedings in criminal court or to assist in the defendant's own defense and is unfit to proceed.

(b) If the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state, the court may dismiss the complaint.

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 44.01, Code of Criminal Procedure.

(d) In this section, a "defendant" includes a child as defined by Article 45.058(h), Code of Criminal Procedure.

Appendix F

Amend Texas Code of Criminal Procedure art. 17.03 to clarify conditions for release for offenses a 17.03 personal bond and conditions for release on a 17.032 mental health bond.

Amend Code of Criminal Procedure art. 17.03(b-2) as follows:

(b-2) Except as provided by Articles 15.21, [17.032,] 17.033, and 17.151, a defendant may not be released on personal bond if the defendant:

(1) is charged with an offense involving violence;

or

(2) while released on bail or community supervision for an offense involving violence, is charged with committing:

(A) any offense punishable as a felony; or

(B) an offense under the following provisions

of the Penal Code:

(i) Section 22.01(a)(1) (assault);

(ii) Section 22.05 (deadly conduct);

(iii) Section 22.07 (terroristic threat);

or

(iv) Section 42.01(a)(7) or (8) (disorderly conduct involving firearm).

Appendix G

Deferral of Arrest for Nonviolent Offenders Receiving Emergency Mental Health or Intellectual Disability Services

Amendment to Chapter 14, Code of Criminal Procedure, by adding new Article 14.036, as follows:

Art. 14.036. Deferral of Arrest for Nonviolent Offenders Receiving Emergency Mental Health or Intellectual Disability Services.

(a) In this article, "violent offense" shall mean an offense listed in Art. 17.032 of this code. This article does not apply to a person who is charged with or subject to arrest for a violent offense or for criminal mischief under Art. 28.03, Texas Penal Code, other than misdemeanor offenses as specified by Art. 28.03(b)(1)-(3).

(b) In this article "detained person" shall refer to a person who is being detained under Chapter 573, or Chapter 574, Subchapter B, of the Texas Health and Safety Code, who subsequent to the detention engages in conduct that would constitute a criminal offense at the facility where the person is being detained for emergency mental health services.

(c) Unless there are exigent circumstances that in an officer's judgment require an immediate arrest without allowing a period for emergency mental health services, an officer who has probable cause to make a warrantless arrest of a detained person in a situation described in subsection (b) shall defer the arrest of the detained person until after the detained person has completed the detention for emergency mental health services.

(d) A subsequent arrest of a detained person for whom an arrest was deferred will require a warrant based on probable cause.

(e) The facility where the detained person is located shall notify the law enforcement agency that sought the arrest of the detained person at least 12 hours prior to releasing the detained person

and will provide the address where the person will be released.

(f) Nothing in this article shall be construed to limit any other lawful disposition of the acts for which an arrest was deferred.

Appendix H

Expansion of the Professionals Who May Make an Electronic Application for Emergency Detention Warrant

Amendment to Tex. Health & Safety Code, §573.012, as follows:

(h) A judge or magistrate may permit an applicant who is a physician or an employee of a local mental health authority 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.

Appendix I

Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

Amendment to Tex. Health & Safety Code, §573.012, adding a new subsection (d-1) as follows:

(d-1) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Amendment to Tex. Code of Criminal Procedure, Art. 18.191, as follows:

Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS.

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001 or 573.012, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Sections 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee:

(i) will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001 or 573.012, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the

sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, may not be destroyed or forfeited to the state.

Appendix J

Authorization for Blood Draws for Patients Receiving Court-Ordered Medication

Amendment to Tex. Health & Safety Code §574.106 by adding new subsection (j-1), as follows:

(j-1) The authority to administer a medication involuntarily to a patient under subsection (a) includes the authority to obtain blood samples for analysis and to conduct evaluations and laboratory tests that are reasonable and medically necessary to safely administer psychoactive medications.

Appendix K

Clarification of Law Enforcement Officer's Duties Upon Presenting an Individual for Mental Health Services

Amendment to Tex. Health & Safety Code §573.012 by adding new section (d-2) as follows:

(d-2) A peace officer does not have a duty to wait at a hospital or other facility for the person to be medically screened, treated, or to have their insurance verified. The officer's duties are complete when the officer makes a responsible delivery of the person to the appropriate hospital or facility staff member along with the completed documentation required by this subchapter.

Appendix L

Family Code Revision and Addition Recommendations Concerning Children with Mental Illness and/or Intellectual Disability

CHAPTER 51. GENERAL PROVISIONS

Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION. (a) At any stage of the proceedings under this title, including when a child is initially detained in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility, the juvenile court may, at its discretion or at the request of the child's parent or guardian, order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by a disinterested expert, including a physician, psychiatrist, or psychologist, qualified by education and clinical training in mental health or ~~mental retardation~~ intellectual disability and experienced in forensic evaluation, to determine whether the child has a mental illness as defined by Section 571.003, Health and Safety Code, is a person with ~~mental retardation~~ intellectual disability as defined by Section 591.003, Health and Safety Code, or suffers from chemical dependency as defined by Section 464.001, Health and Safety Code.—~~If the examination is to include a determination of the child's fitness to proceed, an expert may be appointed to conduct the examination only if the expert is qualified under Subchapter B, Chapter 46B, Code of Criminal Procedure, to examine a defendant in a criminal case, and the examination and the report resulting from an examination under this subsection must comply with the requirements under Subchapter B, Chapter 46B, Code of Criminal Procedure, for the examination and resulting report of a defendant in a criminal case.~~

(b) If, after conducting an examination of a child ordered under Subsection (a) and reviewing any other relevant information,

there is reason to believe that the child has a mental illness or ~~mental retardation~~ intellectual disability or suffers from chemical dependency, the probation department shall refer the child to the local mental health ~~or mental retardation~~ authority, to the local intellectual and developmental disability authority, or to another appropriate and legally authorized agency or provider for evaluation and services, unless the prosecuting attorney has filed a petition under Section 53.04.

(c) If, while a child is under deferred prosecution supervision or court-ordered probation, a qualified professional determines that the child has a mental illness or ~~mental retardation~~ intellectual disability or suffers from chemical dependency and the child is not currently receiving treatment services for the mental illness, ~~mental retardation~~ intellectual disability, or chemical dependency, the probation department shall refer the child to the local mental health ~~or mental retardation~~ authority, to the local intellectual and developmental disability authority, or to another appropriate and legally authorized agency or provider for evaluation and services.

(d) A probation department shall report each referral of a child to a local mental health ~~or mental retardation~~ authority, to a local intellectual and developmental disability authority, or another agency or provider made under Subsection (b) or (c) to the Texas Juvenile Justice Department in a format specified by the department.

(e) At any stage of the proceedings under this title, the juvenile court may order a child who has been referred to the juvenile court or who is alleged by the petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be subjected to a physical examination by a licensed physician.

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.01. DEFINITIONS. In this chapter: ~~(a) MEANING OF "HAVING A MENTAL ILLNESS". For purposes of this chapter, a child who is described as having a mental illness "Child with mental illness" means a child with a mental illness as defined by Section 571.003, Health and Safety Code, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:~~

(1) substantially impairs a child's thought, perception of reality, emotional process, or judgment; or

(2) grossly impairs behavior as demonstrated by recent disturbed behavior.

(b) "Child with an intellectual disability" means a child determined by a physician or psychologist licensed in this state to have significantly subaverage general intellectual functioning that:

(1) is concurrent with deficits in adaptive behavior - the effectiveness with or degree to which a child meets the standards of personal independence and social responsibility expected of the child's age and cultural group, and

(2) originates during the developmental period.

(c) "Restoration Classes" means curriculum-based educational sessions a child attends to assist in restoring the child's fitness to proceed, including the child's capacity to understand the proceedings in juvenile court and/or to assist in the child's own defense.

(d) "Interdisciplinary team" means a group of intellectual disability professionals and paraprofessionals who assess the

treatment, training, and habilitation needs of a person with an intellectual disability and make recommendations for services for that person.

(e) "Least restrictive appropriate setting" means the treatment or service setting closest to the child's home that provides the child with the greatest probability of improvement and is no more restrictive of the child's physical or social liberties than is necessary to provide the child with the most effective treatment or services and to adequately against any danger the child poses to self or others.

(f) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the instruments used.

Sec. 55.02. MENTAL HEALTH AND INTELLECTUAL DISABILITY JURISDICTION.

For the purpose of initiating proceedings to order mental health or intellectual disability 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.

Sec. 55.03. STANDARDS OF CARE. (a) Except as provided by this chapter, a child for whom inpatient or outpatient 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~~ ordered by a court to a residential care facility or ordered to participate in outpatient services due to an intellectual disability

shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

Sec. 55.04. FORENSIC MENTAL EXAMINATION. (a) For purposes of this chapter, a forensic mental examination is:

(1) ordered by the juvenile court after the court determines that 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; is unfit to proceed in juvenile court due to mental illness or intellectual disability; and/or lacks responsibility for conduct due to mental illness or intellectual disability.

(2) an examination by a disinterested expert, including a physician, psychiatrist or psychologist, to determine if 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; is unfit to proceed in juvenile court due to mental illness or intellectual disability; and/or lacks responsibility for conduct due to mental illness or intellectual disability.

(b) To qualify for appointment under this chapter as an expert, a physician, 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, fitness to proceed, lack of responsibility for conduct, or insanity evaluations; and

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

(c) In addition to meeting qualifications required by Subsection (b), to be appointed as an expert a physician, 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.

(d) A court may appoint as an expert a physician, psychiatrist, or psychologist who does not meet the requirements of Subsections (b) and (c) 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 child that would not ordinarily be possessed by a physician, psychiatrist, or psychologist who meets the requirements of Subsections (b) and (c).

Sec. 55.05. COMMITMENT CRITERIA FOR COURT-ORDERED MENTAL HEALTH SERVICES FOR A CHILD ALLEGED BY PETITION OR FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT OR CONDUCT INDICATING A NEED FOR SUPERVISION. (a)

Temporary Inpatient Mental Health Services. The judge may order a child to whom this chapter applies to receive temporary inpatient mental health services only if the judge or jury finds from clear and convincing evidence that:

- (1) The child is a child with mental illness, and
- (2) as a result of that mental illness the child:

- (A) is likely to cause serious harm to the child;

- (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 child's ability to function independently; and

- (iii) unable to make a rational and informed decision as to whether or not to submit to treatment or is unwilling to submit to treatment.

(b) Temporary Outpatient Mental Health Services. The judge may order a child to whom this chapter applies to receive temporary outpatient mental health services only if:

- (1) the judge finds that appropriate mental health services are available to the child; and

- (2) the judge or jury finds, from clear and convincing evidence, that:

- (A) the child is a child with severe and persistent mental illness;

- (B) as a result of the mental illness, the child will, if not treated, experience deterioration of the ability to function independently to the extent that the child will be unable to live safely in the community without court-ordered outpatient mental health services;

- (C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the child or others;

- (D) the child has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the child's actions occurring within the two-year period that immediately precedes the hearing;
or

(ii) specific characteristics of the child's clinical condition that significantly impair the child's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment.

(c) Extended Inpatient Mental Health Services. The judge may order a child to whom this chapter applies to receive 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 child is a child with mental illness, and
- (2) as a result of that mental illness the child:

- (A) is likely to cause serious harm to the child;
- (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 child's ability to function independently; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment or is unwilling to submit to treatment;

(3) the child's condition is expected to continue for more than 90 days; and

(4) the child has received court-ordered inpatient mental health services under this chapter or under Subtitle C, Chapter 574, Health and Safety Code, for at least 60 consecutive days during the preceding 12 months.

(d) Extended Outpatient Mental Health Services. The judge may order a child to whom this chapter applies to receive extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the child; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the child is a child with severe and persistent mental illness;

(B) as a result of the mental illness, the child will, if not treated, experience deterioration of the ability to function independently to the extent that the child will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the child or others;

(D) the child has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the child's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the child's clinical condition that significantly impair the child's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the child's condition is expected to continue for more than 90 days; and

(F) the child has received:

(i) court-ordered inpatient mental health services under this chapter or under Subtitle C, Chapter 574 of the Health and Safety Code, for at least 60

consecutive days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this chapter or under Subtitle C, Chapter 574 of the Health and Safety Code, during the preceding 60 days.

Sec. 55.06. CRITERIA FOR COURT-ORDERED INTELLECTUAL DISABILITY SERVICES. A child may not be court-ordered to a residential care facility unless:

(1) the child is a child with an intellectual disability;

(2) evidence is presented showing that because of the child's intellectual disability, the child:

(A) represents a substantial risk of physical impairment or injury to the child or others; or

(B) is unable to provide for and is not providing for the child's most basic personal physical needs;

(3) the child cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) a residential care facility provides habilitative services, care, training, and treatment appropriate to the child's needs; and

(5) an interdisciplinary team recommends placement in a residential care facility.

SUBCHAPTER B. COURT-ORDERED MENTAL HEALTH SERVICES FOR CHILD WITH MENTAL ILLNESS

Sec. 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION. (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~~. 55.04. The information obtained from the examination, under this subchapter, must include expert opinion as to:

(1) whether the child ~~has~~ is a child with a mental illness,
and

(2) whether the child meets the ~~commitment~~ criteria for
court-ordered mental health services under Sec. 55.05 for: ~~under~~
Subtitle C, Title 7, Health and Safety Code,

(A) temporary inpatient mental health services,

(B) temporary outpatient mental health services,

(C) extended inpatient mental health services, or

(D) extended outpatient mental health services; and

(3) which specific criteria the child meets.

~~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~~ 55.04, 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 for court-ordered mental health services under Sec. 55.05 ~~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 for court-ordered mental health services under Sec. 55.05 ~~Subtitle C, Title 7, Health and Safety Code,~~ dissolve the stay and continue the juvenile court proceedings.

Sec. 55.12. INITIATION OF ~~COMMITMENT~~ PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES. 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 for court-ordered mental health services under Sec. 55.05 ~~under Subtitle C, Title 7, Health and Safety Code,~~ the court shall:

(1) initiate proceedings as provided by Section 55.13~~65~~ to order temporary or extended mental health services, as provided in this chapter and Subchapter C, Chapter 574, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.14~~68~~ to the appropriate court for the initiation of proceedings in that court ~~for commitment of~~ to order the temporary or extended mental health services for the child under this chapter and Subchapter C, Chapter 574, Health and Safety Code.

~~Sec. 55.13. COMMITMENT PROCEEDINGS IN JUVENILE COURT.~~ (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 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services for the child; or~~

~~(2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services for the child.~~

~~Sec. 55.14. REFERRAL FOR COMMITMENT PROCEEDINGS.~~ ~~(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.~~

Sec. 55.15. STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES. The focus of treatment ordered under this chapter to a child with mental illness shall be to stabilize the child's mental illness and to meet the child's psychiatric needs in the least restrictive appropriate setting. 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 transported, 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.

Sec. 55.16. ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS.

(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.

Sec. 55.17. MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY.

(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.

Sec. 55.18. DISCHARGE FROM MENTAL HEALTH FACILITY COURT-ORDERED INPATIENT OR OUTPATIENT MENTAL HEALTH SERVICES BEFORE REACHING 18 YEARS OF AGE. If the child is discharged from the mental health facility or from outpatient treatment services before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) dissolve the stay and continue with proceedings under this title as though no order of mental health services had been made.

Sec. 55.19. DISCRETIONARY TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY. (a) The juvenile court ~~shall~~ may waive its exclusive original jurisdiction and transfer all pending proceedings from the juvenile court to a criminal court on or after the 18th birthday of a ~~child~~ person for whom the juvenile court or a court to which the child's case ~~is~~ was referred under Section 55.12(2) has ordered inpatient mental health services 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 of the grade of felony and a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) A waiver of jurisdiction and discretionary transfer hearing under this subsection shall be conducted according to Section 54.02 (j)-(1).

(c) If after the hearing the juvenile court waives its jurisdiction and transfers the person to criminal court, 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.

**SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF
MENTAL ILLNESS OR INTELLECTUAL DISABILITY**

Sec. 55.31. UNFITNESS TO PROCEED DETERMINATION; EXAMINATION. (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 an intellectual disability 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 an intellectual disability. 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~~ 55.04. ~~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 an intellectual disability.~~

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

(A) is a child with mental illness; or

(B) is a child with an intellectual disability;

(2) the child's capacity to:

(A) appreciate the allegations against the child;

(B) appreciate the range and nature of allowable dispositions that may be imposed in the proceedings against the child;

(C) understand the roles of the participants and the adversarial nature of the legal process;

(D) display appropriate courtroom behavior; and

(E) testify relevantly;

(3) the degree of impairment resulting from the mental illness or intellectual disability and the specific impact on the child's capacity to engage with counsel in a reasonable and rational manner.

(e) An expert's report to the court must state an opinion on a

child's fitness to proceed or explain why the expert is unable to state such an opinion and must include:

(1) the child's history and current status regarding any possible intellectual disabilities or mental illness;

(2) the child's developmental history as it relates to any possible intellectual disabilities or mental illness;

(3) the child's functional abilities related to fitness to stand trial; and

(4) the relationship between deficits in the child's functional abilities related to fitness to proceed and any mental illness or intellectual disability.

(5) if the evaluator believes the child is in need of remediation/restoration services, the evaluator should discuss:

(A) whether the child's abilities are likely to be remediated/restored within the statutory period;

(B) whether the child may be adequately treated in an alternative setting;

(C) any recommended interventions to aid in the remediation/restoration of the child's fitness;

(D) if the child meets criteria for court-ordered treatment or services under Section 55.05 or 55.06; and

(E) which specific criteria the child meets.

~~(d)~~ (f) After considering all relevant information, including information obtained from an examination under Section ~~51.20~~ 55.04, 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.

Sec. 55.32. HEARING ON ISSUE OF FITNESS TO PROCEED. (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 an intellectual disability, the court shall set the case for a hearing on that issue, unless a hearing is waived by agreement of both parties.

(b) The issue of whether the child is unfit to proceed as a result of mental illness or an intellectual disability shall be determined at a proceeding separate from any other proceeding.

(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 an intellectual disability 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 an intellectual disability, 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 an intellectual disability 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.

Sec. 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED.

(a) If the juvenile court or jury determines under Section 55.32 that a child is unfit as a result of mental illness or an intellectual disability to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) provided that the child meets the ~~commitment~~ inpatient mental health services or residential intellectual disability services criteria under Section 55.05 or 55.06 ~~under Subtitle C or D, Title 7, Health and Safety Code,~~ order the child placed with the Health and Human Services Commission ~~Department of State Health Services or the Department of Aging and Disability Services,~~ as appropriate, 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~~ commission;

(2) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility or residential care facility for a period of not more than 90 days, which order may not specify a shorter period, but only if:

(A) the unfitness to proceed is a result of mental illness or intellectual disability; and

(B) the placement is agreed to in writing by the administrator of the facility; or

(3) subject to Subsection (c), if the court determines that the child may be adequately treated or served in an alternative setting and finds that the child does not meet criteria for court-ordered inpatient mental health services or residential intellectual disability services under Section 55.05 or 55.06, order the child to receive treatment for mental illness or services for the child's intellectual disability, as appropriate, on an outpatient basis for a period of ~~not more than 90 days, which order may not specify a shorter period.~~ with the possibility of extension as ordered by the court. If a child receives treatment for mental illness or services for the child's intellectual disability in an alternative setting,

juvenile probation departments may provide restoration classes in collaboration with the outpatient or alternative setting provider.

(b) If the court orders a child placed in a private psychiatric inpatient facility or residential care facility under Subsection (a) (2) or (a) (3), the state or a political subdivision of the state may be ordered to pay any costs associated with the ~~child's placement~~ ordered services, subject to an express legislative appropriation of funds for the purpose.

(c) Before issuing an order described by Subsection (a) (3), the court shall consult with the local juvenile probation department, ~~and~~ with local treatment or service providers, with the local mental health authority, and with the local intellectual and developmental disability authority to determine the appropriate treatment or services and restoration classes for the child.

Sec. 55.34. TRANSPORTATION TO AND FROM FACILITY. (a) If the court issues a placement order under Section 55.33(a) (1) or (2), the court shall order the probation department or sheriff's department to transport the child to the designated facility on the designated admission date.

(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 department ordered by the court under Subsection (b) shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Sec. 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY OR ALTERNATIVE SETTING; REPORT TO COURT.

(a) If the juvenile court issues ~~a placement~~ an 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 intellectual disability to the public or private facility or outpatient ~~center~~ alternative setting, as appropriate.

(b) Not later than the 75th day after the date the court issues ~~a placement~~ an order under Section 55.33(a), the public or private facility or outpatient ~~center~~ alternative setting, as appropriate, shall submit to the court a report that:

(1) describes the treatment or services provided to the child by the facility or alternative setting ~~center~~; and

(2) states the opinion of the director of the facility or alternative setting as to whether the child is fit or unfit to proceed. If the report states that the child is unfit to proceed, the report shall also include an opinion and reasons therefore as to whether the child meets criteria for court-ordered mental health services or court-ordered intellectual disability services under Section 55.05 or 55.06.

(c) Outpatient alternative settings collaborating with juvenile probation departments to provide restoration classes shall include in their report to the court any information provided by the juvenile probation department regarding the child's assessment at the conclusion of the restoration classes.

(d) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Sec. 55.36. REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION. (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 or 55.40, as appropriate.

Sec. 55.37. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF ~~COMMITMENT~~ PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES. 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 court-ordered mental health services under Section 55.05 ~~under Subtitle C, Title 7, Health and Safety Code~~, the director of the public or private facility or outpatient ~~center~~ alternative setting, as appropriate, shall submit to the court two certificates of medical examination for mental illness, as described in Subchapter A, Chapter 574, Health and Safety Code. On receipt of the

certificates, the court shall:

(1) initiate proceedings as provided by Section 55.3866 to order temporary or extended mental health services, as provided in this chapter and Subchapter C, Chapter 574, ~~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 55.3968 to the appropriate court for the initiation of proceedings in that court to order temporary or extended mental health services for ~~commitment of the child under this chapter and Subchapter C, Chapter 574,~~ Subtitle C, Title 7, Health and Safety Code.

~~**Sec. 55.38. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS.** (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 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or~~

~~(2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.~~

~~Sec. 55.39. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.~~

~~(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.~~

Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF INTELLECTUAL DISABILITY.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of an intellectual disability and that the child meets the ~~commitment~~ criteria for court-ordered residential intellectual disability services under Section 55.06 ~~civil commitment under Subtitle D, Title 7, Health and Safety Code,~~ the director of the residential care

facility or alternative setting 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~~67~~⁶⁸ in the juvenile court for ~~commitment of~~ court-ordered residential intellectual disability services for the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.42~~68~~⁶⁸ to the appropriate court for the initiation of proceedings in that court for ~~commitment of~~ court-ordered residential intellectual disability services for the child under Subtitle D, Title 7, Health and Safety Code.

~~Sec. 55.41. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR CHILDREN WITH INTELLECTUAL DISABILITY.~~

~~(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 Department of Aging and Disability Services or the appropriate community center shall admit the child to a residential care facility.~~

~~Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR CHILDREN WITH INTELLECTUAL DISABILITY.~~ (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 intellectual disability 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.~~

Sec. 55.43. RESTORATION HEARING. (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 an intellectual disability; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health or intellectual disability services;

(ii) ~~committed~~ ordered by a court to a residential care facility; or

(iii) ordered by a court to receive treatment or services on an outpatient basis; or

(B) is discharged or currently on furlough from a mental health facility or ~~outpatient provider~~ discharged from an alternative setting 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.

Sec. 55.44. DISCRETIONARY TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD.

(a) The juvenile court ~~shall~~ may waive its exclusive original jurisdiction and transfer all pending proceedings from the juvenile court to a criminal court on or after the 18th birthday of a ~~child~~ person 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 an intellectual disability 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 of the grade of felony and a violation of a penal law listed in Section 53.045, and no adjudication concerning the alleged conduct has been made.

(b) A waiver of jurisdiction and discretionary transfer hearing under this subsection shall be conducted according to Section 54.02

(j)-(1).

(c) If after the hearing the juvenile court waives its jurisdiction and transfers the person to criminal court, 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.

Sec. 55.45. STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH. (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 intellectual disability services for the child ~~to~~ at 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~~ intellectual disability services for 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 Article 42A.054, 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~~ services for the child or that referred the case to a court that ordered ~~commitment of~~ services for 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.

**SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A
RESULT OF MENTAL ILLNESS OR INTELLECTUAL DISABILITY**

**Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION;
EXAMINATION.** (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 an intellectual disability, 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 an intellectual disability for the child's conduct, the court shall order the child to be examined under Section ~~51.20~~55.04. 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 an intellectual disability.:~~

(1) whether the child is a child with mental illness or a child with an intellectual disability;

(2) whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability;

(3) whether the child meets criteria for court-ordered mental health or intellectual disability services under Sec. 55.05 or 55.06; and

(4) which specific criteria the child meets.

(c) The issue of whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability 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 an intellectual disability 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 an intellectual disability.

(f) If the court or jury finds the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability, 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 an intellectual disability shall

not be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.52.

Sec. 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT.

(a) If the court or jury finds that a child is not responsible for the child's conduct under Section 55.51 as a result of mental illness or an intellectual disability, the court shall:

(1) provided that the child meets the ~~commitment~~inpatient mental health services or residential intellectual disability services criteria under Section 55.05 or 55.06 ~~under Subtitle C or D, Title 7, Health and Safety Code,~~ order the child placed with the ~~Department of State Health Services or the Department of Aging and Disability Services~~ Health and Human Services Commission, as appropriate, 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~~commission;

(2) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility or residential care facility for a period of not more than 90 days, which order may not specify a shorter period, but only if:

(A) the child's lack of responsibility is a result of mental illness or intellectual disability; and

(B) the placement is agreed to in writing by the administrator of the facility; or

(3) subject to Subsection (c), if the court determines that the child may be adequately treated or served in an alternative setting and finds that the child does not meet criteria for court-ordered inpatient mental health services or residential intellectual disability services under Section 55.05 or 55.06, order the child to receive treatment for mental illness or services for the child's intellectual disability, as appropriate, on an outpatient basis for

a period of ~~not more than 90 days, which order may not specify a shorter period.~~, with the possibility of extension as ordered by the court.

(b) If the court orders a child placed in a private psychiatric inpatient facility or residential care facility under Subsection (a)(2) or in an alternative setting under Subsection (a)(3), the state or a political subdivision of the state may be ordered to pay any costs associated with the ~~child's placement~~ ordered services, subject to an express appropriation of funds for the purpose.

(c) Before issuing an order described by Subsection (a)(3), the court shall consult with the local juvenile probation department, ~~and~~ with local treatment or service providers, with the local mental health authority, and with the local intellectual and developmental disability authority to determine the appropriate treatment or services for the child.

Sec. 55.53. TRANSPORTATION TO AND FROM FACILITY. (a) If the court issues a placement order under Section 55.52(a)(1) or (2), 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).

Sec. 55.54. INFORMATION REQUIRED TO BE SENT TO FACILITY OR ALTERNATIVE SETTING; REPORT TO COURT.

(a) If the juvenile court issues a ~~placement~~ an 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 intellectual disability to the public or private facility or ~~outpatient center~~ alternative setting, as appropriate.

(b) Not later than the 75th day after the date the court issues a ~~placement~~ an order under Section 55.52(a), the public or private facility or ~~outpatient center~~ alternative setting, as appropriate, shall submit to the court a report that:

(1) describes the treatment or services provided to the child by the facility or ~~center~~ alternative setting; and

(2) states the opinion of the director of the facility or ~~center~~ alternative setting as to whether the child has a mental illness or an intellectual disability. If the report states that the child has a mental illness or an intellectual disability, the report shall also include if the child meets criteria for court-ordered mental health services or court-ordered intellectual disability services from Section 55.05 or 55.06.

(c) The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Sec. 55.55. REPORT THAT CHILD DOES NOT HAVE MENTAL ILLNESS OR INTELLECTUAL DISABILITY; HEARING ON OBJECTION.

(a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or an intellectual disability, 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 an intellectual disability and whether the child meets the ~~commitment~~ civil commitment court-ordered mental health services or court-ordered intellectual disability services under Section 55.05 or 55.06.

(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 an intellectual disability and that the child meets the ~~commitment~~ civil commitment court-ordered mental health services or court-ordered intellectual disability services under Section 55.05 or 55.06 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 an intellectual disability and that the child does not meet the ~~commitment~~ for court-ordered treatment services under Section 55.05 or 55.06 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 an intellectual disability and that the child meets the ~~commitment~~ criteria for court-ordered treatment services under Section 55.05 or 55.06 Subtitle C or D, Title 7, Health and Safety Code, the court shall issue an appropriate ~~commitment~~ order for court-ordered mental health services or court-ordered intellectual disability services.

Sec. 55.56. REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES.

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~~ court-ordered mental health services under Section 55.05, the director of the public or private facility or ~~outpatient center~~ alternative setting, as appropriate, shall submit to the court two certificates of medical examination for mental illness, as described in Subchapter A, Chapter 574, Health and Safety Code. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.5766 in the juvenile court for ~~commitment~~ court-ordered mental health services for ~~of~~ the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.5868 to the appropriate court for the initiation of proceedings in that court for ~~commitment~~ court-ordered mental health services for ~~of~~ the child under Subtitle C, Title 7, Health and Safety Code.

~~Sec. 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS.~~

~~(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 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or~~

~~(2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.~~

~~Sec. 55.58. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS.~~

~~(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.~~

Sec. 55.59. REPORT THAT CHILD HAS INTELLECTUAL DISABILITY; INITIATION OF ~~COMMITMENT~~ PROCEEDINGS FOR COURT-ORDERED RESIDENTIAL INTELLECTUAL DISABILITY SERVICES.

If a report submitted under Section 55.54(b) states that a child has an intellectual disability and that the child meets the ~~commitment~~ criteria for ~~civil commitment~~ court-ordered intellectual disability services under ~~Subtitle D, Title 7, Health and Safety Code~~ Section 55.06, the director of the residential care facility or alternative setting 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~~67 for ~~commitment of~~ court-ordered residential intellectual disability services for 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~~68 for the initiation of proceedings in that court for ~~commitment of~~ court-ordered residential intellectual disability services for the child under Subtitle D, Title 7, Health and Safety Code.

~~Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR CHILDREN WITH INTELLECTUAL DISABILITY.~~

~~(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 Department of Aging and Disability Services or the appropriate community center shall admit the child to a residential care facility.~~

~~**Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR CHILDREN WITH INTELLECTUAL DISABILITY.** (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 intellectual disability 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.~~

SUBCHAPTER E. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH OR RESIDENTIAL INTELLECTUAL DISABILITY SERVICES

Sec. 55.65. PROCEEDINGS IN JUVENILE COURT FOR CHILD WITH MENTAL ILLNESS. (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 Subchapter A, Chapter 574, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Subchapter A, Chapter 574, Health and Safety Code;

(2) direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed juvenile's treatment, as required by Subchapter A, Chapter 574, Health and Safety Code;

(3) identify the person responsible for court-ordered outpatient mental health services at least three days before a hearing that may result in the judge ordering the child to receive court-ordered outpatient mental health services, as required by Subchapter A, Section 574.0125, Health and Safety Code;

(4) appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Subchapter A, Section 574.009, Health and Safety Code; and

(5) 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) After conducting a hearing on an application under this section and with consideration given to the least restrictive appropriate setting for treatment of the child, and the parent, managing conservator or guardian's availability and willingness to participate in the treatment of the child, the juvenile court shall:

(1) if the criteria under Section 55.05(a) or (b), are satisfied, order temporary inpatient or outpatient mental health services for the child, under Chapter 574, Health and Safety Code;
or

(2) if the criteria under Section 55.05(c) or (d), are satisfied, order extended inpatient or outpatient mental health services for the child, under Chapter 574, Health and Safety Code.

(d) On receipt of the court's order for inpatient mental health services, the Health and Human Services Commission shall identify a facility and admit the child to the identified facility.

(e) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and order the child to remain in the juvenile detention facility subject to further detention orders of the court, only if the court makes findings under Section 54.01 to support further detention of the child.

Redesignated from Family Code 55.13 and amended

Sec. 55.66. PROCEEDINGS IN JUVENILE COURT FOR CHILDREN FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO MENTAL ILLNESS. (a) If the juvenile court initiates proceedings for court-ordered mental health services under Section 55.37(1) or 55.56(1), the prosecuting attorney may file with the juvenile court an

application for court-ordered mental health services under Subchapter A, Section 574.001 and 574.002, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Subchapter A, Sections 574.005 and 574.006, Health and Safety Code;

(2) direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed juvenile's treatment, as required by Subchapter A, Section 574.012, Health and Safety Code;

(3) identify the person responsible for court-ordered outpatient mental health services at least three days before a hearing that may result in the judge ordering the child to receive court-ordered outpatient mental health services, as required by Subchapter A, Section 574.012, Health and Safety Code; and

(4) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under this section and with consideration given to the least restrictive appropriate setting for treatment of the child, and the parent, managing conservator or guardian's availability and willingness to participate in the treatment of the child, the juvenile court shall:

(1) if the criteria for court-ordered mental health services under Section 55.05(a) or (b), are satisfied, order temporary inpatient or outpatient mental health services; or

(2) if the criteria for court-ordered mental health services under Section 55.05(c) or (d), are satisfied, order extended inpatient or outpatient mental health services.

(c) On receipt of the court's order for inpatient mental health services, the Health and Human Services Commission shall identify a facility and admit the child to the identified facility.

(d) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and order the child to remain in the juvenile detention facility subject to further detention orders of the court, only if the court makes findings under Section 54.01 to support further detention of the child.

Sec. 55.67. PROCEEDINGS IN JUVENILE COURT FOR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO INTELLECTUAL

DISABILITY. (a) If the juvenile court initiates proceedings under Section 55.40(1) or 55.59(1), the prosecuting attorney may file with the juvenile court an application for an interdisciplinary team report and recommendation that the proposed child is in need of long-term placement in a residential care facility, 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 this section and with consideration given to the least restrictive appropriate setting for services for the child, and the parent, managing conservator or guardian's availability and willingness to participate in the services for the child, the juvenile court may order residential intellectual disability services for the child if the criteria under Section 55.06, are satisfied.

(c) On receipt of the court's order, the Health and Human Services Commission shall identify a residential care facility and admit the child to a facility.

(d) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and order the child to remain in the juvenile detention facility subject to further detention orders of the court, only if the court makes findings under Section 54.01 to support further detention of the child.

Sec. 55.68. REFERRAL FOR PROCEEDINGS FOR CHILD WITH MENTAL ILLNESS OR CHILD FOUND UNFIT TO PROCEED OR LACKING RESPONSIBILITY FOR CONDUCT DUE TO MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of proceedings for court-ordered treatment services under Sections 55.12(2), 55.37(2), 55.40(2), 55.56(2) or 55.59(2), the juvenile court shall:

(1) send all papers, including but not limited to, evaluations, examination reports, court findings, court orders, verdicts, judgments, and reports from facilities and alternative settings, relating to: the child's mental illness or intellectual disability; the child's unfitness to proceed, if applicable; and relating to the finding that the child was not responsible for the child's conduct, if applicable; to the clerk of the court to which the case is referred; and

(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).

(b) The papers sent to a court under Subsection (a)(1) constitute an application for court-ordered mental health services under Section 574.001, Health and Safety Code, or an application for placement under Section 593.041, Health and Safety Code.

(c) If the child is currently detained in a juvenile detention facility, the juvenile court shall:

(1) order the child released from detention to the child's home or another appropriate place;

(2) order the child detained or placed in an appropriate facility other than a juvenile detention facility; or

(3) conduct a detention hearing and order the child to remain in the juvenile detention facility subject to further detention orders of the court, only if the court makes findings under Section 54.01 to support further detention of the child.